Federal Register

12–1–09 Tuesday
Vol. 74 No. 229 Dec. 1, 2009

UNITED STATES GOVERNMENT PRINTING OFFICE

Federal Register

12–1–09 Tuesday
Vol. 74 No. 229 Dec. 1, 2009

Pages 62675–63058

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

Contents

Federal Register
Vol. 74, No. 229
Tuesday, December 1, 2009

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 74, No. 229
Tuesday, December 1, 2009

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LS–09–0026]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was reapportioned in 2006. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership is reviewed every 3 years and adjustments are made accordingly. This change results in an increase in Board membership for Ohio, increasing the total number of Board members from 68 to 69. The change will be effective for the 2010 nomination and appointment process.

DATES: *Effective Date:* December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or e-mail to *Kenneth.Payne@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2006. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. As such, these changes will not impact on persons subject to the program.

There are an estimated 589,182 soybean producers and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural firms as those having annual receipts of less than $7,000,000.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581–0093.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was originally divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each three (3) year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each three (3) year period the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000

bushels, but fewer than 15,000,000 bushels shall be entitled to one board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2006. The total Board membership increased from 64 to 68 members, with Nebraska, North Dakota, Pennsylvania, and Virginia each gaining one additional member. Additionally, Florida was grouped with the Eastern Region due to lower production levels. These changes were effective with the 2007 appointments.

Currently, the Board has 68 members representing 30 geographical units. This membership is based on average production levels for the years 2001–2005 (excluding crops in years that production was the highest and that production was the lowest) as reported by USDA's National Agricultural Statistics Service (NASS).

Comments

A proposed rule was published in the **Federal Register** (74 FR 27467) on June 10, 2009, with a 60-day comment period. The Department received one comment. The commenter was of the view that taxpayers should hold 51 percent of all seats on the Board. In accordance with the Act, members of the Board are soybean producers, who may include individuals or other entities. Accordingly, no change is made as a result of this comment.

The increase in representation on the Board, from 68 to 69 members, is based on average production levels for the years 2004–2008 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by USDA's National Agricultural Statistics Service. The change does not affect the number of geographical units.

This final rule increases Board membership from 68 members to 69 members effective with 2010 nominations and appointments.

This final rule adjusts representation on the Board as follows:

State	Previous representation	Current representation
Ohio ..	3	4

List of Subjects in 7 CFR 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, it is proposed that Title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR Part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

2. In § 1220.201(a), the table is revised to read as follows:

§ 1220.201 Membership of board.

(a) * * *

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Ohio	4
Missouri	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Oklahoma	1
New York	1
Eastern Region (Massachusetts, New Jersey, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: November 24, 2009.

Rayne Pegg,

Administrator.

[FR Doc. E9–28729 Filed 11–30–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2009–0397]

RIN 3150–AI73

Administrative Changes: Clarification of the Location of Guidance for Electronic Submission and Other Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify where persons may obtain detailed guidance for making electronic submissions to the NRC, as well as to make other miscellaneous corrections. This document is necessary to inform the public of these changes to the NRC's regulations.

DATES: *Effective date:* This rule is effective December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Angella Love Blair, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–492–3671, e-mail *angella.love-blair@nrc.gov.*

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

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0397]. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Multiple amendments to NRC regulations have resulted in inconsistent guidance and outdated information for persons making electronic submissions to the NRC through the Electronic Information Exchange (EIE). The NRC is amending its regulations at 10 CFR parts 2, 4, 9, 11, 15, 19, 20, 21. 25, 26, 30, 40, 50, 51, 52, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 76, 81, 95, 100, 110, 140, 150, 170 and 171 to clarify this guidance and information. Specifically, this rule removes the various telephone numbers and corrects the Web site and e-mail addresses for obtaining detailed guidance. This rule also makes other miscellaneous corrections, as identified in the Summary of Changes section of this document.

Summary of Changes

Removal of Telephone Number (301) 415–0439

The telephone number (301) 415–0439 is no longer assigned to the EIE and has been removed from the following sections of the NRC's regulations: §§ 2.206(a), 2.802(a), 2.811(a), 2.813(a), 4.5, 9.6, 11.15(a)(1), 15.3, 19.17, 20.1007, 20.2203(d), 25.9, 30.6(a)(3), 40.5(a)(3), 50.4(a), 51.58(a), 55.5(a)(3), 60.4, 63.4(a)(3), 70.5(a)(3), 71.1(a), 72.4, 73.4(c), 74.6(c), 76.5(c), 81.3, 95.9(c), 110.4, 170.5, and 171.9.

Removal of Telephone Number (301) 415–6030

The telephone number (301) 415–6030 is no longer assigned to the EIE and has been removed from the following sections of the NRC's regulations: § 21.5, 26.11, 52.3(a), 61.4, 62.3, 100.4, 140.5, and 150.4.

Correction of Web Site Address

The NRC Web site address has been corrected in the following sections of the NRC's regulations: §§ 2.811(a), 2.813(a), 20.2203(d), 21.5, 26.11, 30.6(a)(3), 51.58(a), 52.3(a), 61.4, 62.3, 72.70(c)(1), 72.248(c)(1), 73.57(d)(3)(ii), 76.33(a)(1), 100.4, 140.5, and 150.4.

Change in Electronic Information Exchange (EIE) E-mail Address

The NRC's recent migration to Microsoft Outlook has resulted in a change in format for the e-mail address for EIE. The new e-mail address is incorporated into the following sections of the NRC's regulations: §§ 2.206(a), 2.802(a), 2.811(a), 2.813(a), 4.5, 9.6, 11.15(a)(1), 15.3, 19.17, 20.1007, 20.2203(d), 21.5, 25.9, 26.11, 30.6(a)(3), 40.5(a)(3), 50.4(a), 51.58(a), 52.3(a), 55.5(a)(3), 60.4, 61.4, 62.3, 63.4(a)(3), 70.5(a)(3), 71.1(a), 72.4, 73.4(c), 74.6(c), 76.5(c), 81.3, 95.9(c), 100.4, 110.4, 140.5, 150.4, 170.5, and 171.9.

Correction of the Spelling of "Evaluation"

The word "evaluation" is misspelled in the definition of Survey in 10 CFR Part 20. This spelling is corrected in § 20.1003.

Correction of References

On January 14, 2004 (69 FR 2182), the NRC published a final rule amending its regulations of practice to make the NRC's hearing process more effective and efficient. Section 51.28(c) currently references the requirements of §§ 2.714 and 2.715, which were relocated by the restructuring of the January 2004 rule. This rule amends the cross-references in § 51.28(c) to correctly refer to §§ 2.309 and 2.315.

Correction of Table Headings

On October 28, 2008 (73 FR 63546), the NRC published a final rule amending its regulations for the protection of Safeguards Information (SGI) to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The October 2008 rule added Appendix I to 10 CFR part 73, but incorrectly placed the abbreviations in the heading to the table. This rule would correctly place the abbreviation "(TBq)" under the heading "Terabecquerels."

Conforming Change to Adjust for Inflation

On September 28, 2008 (73 FR 56451), the NRC published a final rule amending its regulations at 10 CFR part 140 to make the required inflation adjustments to the maximum total and annual standard deferred premiums in accordance with the Price-Anderson Act. The September 2008 rule adjusted the amount in § 140.11(a)(4) from $15 million to $17.5 million. This rule makes a conforming change in § 140.21.

Change in Division Name Due to Restructuring

The Office of Nuclear Security and Incident Response (NSIR) restructured several years ago, changing the Division of Nuclear Security into the Division of Security Policy and the Division of Security Operations. This rule replaces "Division of Nuclear Security" with "Division of Security Policy" in §§ 40.23, 40.64, 40.66, 40.67, 70.5, 70.20b, 70.32, 71.97, 73.4, 73.26, 73.27, 73.67, 73.71, 73.72, 73.73, 73.74, 76.5, and 150.17. This rule replaces "Division of Nuclear Security" with "Division of Security Operations" in §§ 95.9, 95.19, 95.20, 95.21, 95.36, 95.45, 95.53, and 95.57.

Rulemaking Procedure

Because these amendments constitute minor administrative corrections to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(B).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

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

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are administrative in nature and do not involve any provisions that would impose backfits as defined in 10 CFR chapter I.

Congressional Review Act (CRA)

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

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 4

Administrative practice and procedure, Blind, Buildings, Civil

rights, Employment, Equal employment opportunity, Federal aid programs, Grant programs, Handicapped, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 15

Administrative practice and procedure, Debt collection.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

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

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste treatment and disposal, Low-level waste policy amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 81

Administrative practice and procedure, Inventions and patents.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 4, 9, 11, 15, 19, 20, 21, 25, 26, 30, 40, 50, 51; 52, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 76, 81, 95, 100, 110, 140, 150, 170 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Public Law 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Public Law 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Public Law 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Public Law 101–410, 104 Stat. 90, as amended by section 3100(s), Public Law 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102, Public Law 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Public Law 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Public Law 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.206, revise the fourth sentence of paragraph (a) to read as follows:

§ 2.206 Requests for action under this subpart.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * * * * * * * * *

■ 3. In § 2.802, revise the fourth sentence of paragraph (a) to read as follows:

§ 2.802 Petition for rulemaking.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * * * * * * * * *

■ 4. In § 2.811, revise the third sentence of paragraph (a) to read as follows:

§ 2.811 Filing of standard design certification application; required copies.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * * * * * * * * *

■ 5. In § 2.813, revise the third sentence of paragraph (a) to read as follows:

§ 2.813 Written communications.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * * * * * * * * *

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

■ 6. The authority citation for part 4 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Subpart A also issued under secs. 602–605, Public Law 88 –352, 78 Stat. 252, 253 (42 U.S.C. 2000d–2000d–7); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

Subpart B also issued under sec. 504, Public Law 93–112, 87 Stat. 4 (29 U.S.C. 706); sec. 119, Public Law 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Public Law 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)).

Subpart C also issued under Title III of Public Law 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101).

Subpart E also issued under 29 U.S.C. 794.

■ 7. In § 4.5, revise the third sentence to read as follows:

§ 4.5 Communications and reports.

* * * Detailed guidance on making electronic submissions can be obtained

by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 9—PUBLIC RECORDS

■ 8. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Subpart A also issued 5 U.S.C. 552; 31 U.S.C. 9701; Public Law 99–570.

Subpart B is also issued under 5 U.S.C. 552a.

Subpart C is also issued under 5 U.S.C. 552b.

■ 9. In § 9.6, revise the third sentence to read as follows:

§ 9.6 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 10. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

■ 11. In § 11.15, revise the third sentence of paragraph (a)(1) to read as follows:

§ 11.15 Application for special nuclear material access authorization.

(a)(1) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 15—DEBT COLLECTION PROCEDURES

■ 12. The authority citation for part 15 continues to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1, Public Law 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Public Law 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 31 CFR Chapter IX, parts 900–904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec. 285; 26 U.S.C. Sec. 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Public Law 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12146 (3 CFR, 1980 Comp. pp. 409–412); Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 13. In § 15.3, revise the third sentence to read as follows:

§ 15.3 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

■ 14. The authority citation for part 19 continues to read as follows:

Authority: 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Public Law 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 19.32 is also issued under sec. 401, 88 Stat.1254 (42 U.S.C. 5891).

■ 15. In § 19.17, revise the fourth sentence of paragraph (a) to read as follows:

§ 19.17 Inspections not warranted; informal review.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 16. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186,68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

§ 20.1003 [Amended]

■ 17. In § 20.1003, in the first sentence of the definition for Survey, remove the word "evalulation" and add in its place the word "evaluation."

■ 18. In § 20.1007, revise the third sentence to read as follows:

§ 20.1007 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

■ 19. In § 20.2203, revise the third sentence of paragraph (d) to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

* * * * *

(d) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

■ 20. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 21.2 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 21. In § 21.5, revise the third sentence to read as follows:

§ 21.5 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

■ 22. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp, p. 396;

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

■ 23. In § 25.9, revise the third sentence to read as follows:

§ 25.9 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 26—FITNESS FOR DUTY PROGRAMS

■ 24. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

■ 25. In § 26.11, revise the third sentence to read as follows:

§ 26.11 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 26. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 30.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 27. In § 30.6, revise the third sentence of paragraph (a)(3) to read as follows:

§ 30.6 Communications.

(a) * * *

(3) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 28. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Public Law 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Public Law 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Public Law 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Public Law 104–134, 110 Stat. 1321, 1321 349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 29. In § 40.5, revise the third sentence of paragraph (a)(3) to read as follows:

§ 40.5 Communications.

(a) * * *

(3) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

§ 40.23 [Amended]

■ 30. In § 40.23, in paragraphs (b)(1), (b)(2)(ix), (c), and (d), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 40.64 [Amended]

■ 31. In § 40.64, in paragraphs (c)(2) and (c)(3), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

■ 32. In § 40.66:

■ a. In paragraph (a), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy";

■ b. In paragraph (b)(5), remove the words "Division of Nuclear Safety" and add in their place the words "Division of Security Policy"; and

■ c. Revise paragraph (c) to read as follows:

§ 40.66 Requirements for advance notice of export shipments of natural uranium.

* * * * *

(c) A licensee who needs to amend a notification may do so by telephoning the Division of Security Policy, Office of Nuclear Security and Incident Response, at the numbers for the NRC Headquarters Operations Center listed in Appendix A to part 73 of this chapter.

§ 40.67 [Amended]

■ 33. In § 40.67, in paragraphs (a), (c), and (d), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 34. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233,

2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 50.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 35. In § 50.4, revise the third sentence of paragraph (a) to read as follows:

§ 50.4 Communications.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 36. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Public Law 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Public Law 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Public Law 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

§ 51.28 [Amended]

■ 37. In § 51.28, in the second sentence of paragraph (c), remove the references "10 CFR 2.714 and 2.715" and add in their place the references "§§ 2.309 and 2.315 of this chapter."

■ 38. In § 51.58, revise the fourth sentence of paragraph (a) to read as follows:

§ 51.58 Environmental report-number of copies; distribution.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

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

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 40. In § 52.3, revise the third sentence of paragraph (a) to read as follows:

§ 52.3 Written communications.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 55—OPERATORS' LICENSES

■ 41. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226).

Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

■ 42. In § 55.5, revise the third sentence of paragraph (a)(3) to read as follows:

§ 55.5 Communications.

(a) * * *

(3) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 43. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Public Law 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Public Law 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 60.9 is also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

■ 44. In § 60.4, revise the third sentence of paragraph (a) to read as follows:

§ 60.4 Communications and records.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 45. The authority citation for part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C.

5842, 5846); secs. 10 and 14, Public Law 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Public Law 102–486, sec 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 61.9 is also issued under Public Law 95–601, sec. 10, 92 Stat.2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

■ 46. In § 61.4, revise the third sentence to read as follows:

§ 61.4 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*; by e-mail to *MSHD.Resource@nrc.gov*; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

■ 47. The authority citation for part 62 continues to read as follows:

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended (42 U.S.C. 2111, 2201; secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857 (42 U.S.C. 2021c, 2021d, 2021e, 2021f; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 48. In § 62.3, revise the third sentence to read as follows:

§ 62.3 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*; by e-mail to *MSHD.Resource@nrc.gov*; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 49. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Public Law 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Public Law 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 50. In § 63.4, revise the third sentence of paragraph (a)(3) to read as follows:

§ 63.4 Communications and records.

(a) * * *

(3) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*; by e-mail to *MSHD.Resource@nrc.gov*; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 51. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Public Law 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Public Law 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 52. In § 70.5:

■ a. In paragraphs (a)(1) and (a)(2), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy"; and

■ b. Revise the third sentence of paragraph (a)(3) to read as follows:

§ 70.5 Communications.

(a) * * *

(3) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*; by e-mail to *MSHD.Resource@nrc.gov*; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

§ 70.20b [Amended]

■ 53. In § 70.20b, in paragraphs (f)(1) and (g)(1), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 70.32 [Amended]

■ 54. In § 70.32, in paragraphs (c)(2), (e), (i), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 55. The authority citation for part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201,2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 71.9 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951, as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

Section 71.97 also issued under sec. 301, Public Law 96–295, 94 Stat. 789–790.

■ 56. In § 71.1, revise the third sentence of paragraph (a) to read as follows:

§ 71.1 Communications and records.

(a) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*; by e-mail to *MSHD.Resource@nrc.gov*; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

§ 71.97 [Amended]

■ 57. In § 71.97, in paragraph (c)(1) and (f)(1), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 58. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Public Law 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Public Law 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Public Law 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Public Law 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 59. In § 72.4, revise the third sentence to read as follows:

§ 72.4 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

■ 60. In § 72.70, revise the third sentence of paragraph (c)(1) to read as follows:

§ 72.70 Safety analysis report updating.

* * * * *

(c) * * *

(1) * * * See Guidance for Electronic Submissions to the Commission at *http://www.nrc.gov/site-help/e-submittals.html.*

* * * * *

■ 61. In § 72.248, revise the third sentence of paragraph (c)(1) to read as follows:

§ 72.248 Safety analysis report updating.

* * * * *

(c) * * *

(1) * * * See Guidance for Electronic Submissions to the Commission at *http://www.nrc.gov/site-help/e-submittals.html.*

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 62. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Public Law 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 63. In § 73.4:

■ a. In paragraph (a), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy"; and

■ b. Revise the third sentence of paragraph (c) to read as follows:

§ 73.4 Communications.

* * * * *

(c) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

§ 73.26 [Amended]

■ 64. In § 73.26, in paragraph (i)(6), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 73.27 [Amended]

■ 65. In § 73.27, in paragraph (b), remove the words "Division of Nuclear Security" wherever they appear and add in their place the words "Division of Security Policy."

■ 66. In § 73.57, revise the fourth sentence of paragraph (d)(3)(ii) to read as follows:

§ 73.57 Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards information.

* * * * *

(d) * * *

(3) * * *

(ii) * * * (To find the current fee amount, go to the Electronic Submittals page at *http://www.nrc.gov/site-help/e-submittals.html* and see the link for the Criminal History Program under Electronic Submission Systems.) * * *

* * * * *

§ 73.67 [Amended]

■ 67. In § 73.67, in paragraph (e)(7)(ii), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 73.71 [Amended]

■ 68. In § 73.71, in paragraph (a)(4), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 73.72 [Amended]

■ 69. In § 73.72, in paragraph (a)(1), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 73.73 [Amended]

■ 70. In § 73.73, in paragraph (a)(1), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

§ 73.74 [Amended]

■ 71. In § 73.74, in paragraph (a)(1), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

■ 72. In Appendix I to Part 73, the headings in Table I–1 are revised to read as follows:

Appendix I to Part 73—Category 1 and 2 Radioactive Materials

TABLE I–1—QUANTITIES OF CONCERN THRESHOLD LIMITS

Radionuclides	Category 1		Category 2	
	Terabecquerels (TBq)	Curies (Ci)1	Terabecquerels (TBq)	Curies (Ci)1

[1] The regulatory standard values are given in TBq. Curie (Ci) values are provided for practical usefulness only and are rounded after conversion.

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 73. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 74–75. In § 74.6, revise the third sentence of paragraph (c) to read as follows:

§ 74.6 Communications.

* * * * *

(c) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 76–77. The authority citation for part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec 234(a), 83 Stat. 444, as amended by Public Law 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sec. 76.7 also issued under Public Law 95–601. sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Public Law 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

■ 78. In § 76.5:

■ a. In paragraph (a), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy"; and

■ b. Revise the third sentence of paragraph (c) to read as follows:

§ 76.5 Communications.

* * * * *

(c) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

■ 79. In § 76.33, revise the second sentence of paragraph (a)(1) to read as follows:

§ 76.33 Application procedures.

(a) * * *

(1) * * * If the application is to be submitted electronically, see Guidance for Electronic Submissions to the Commission at *http://www.nrc.gov/site-help/e-submittals.html.*

* * * * *

PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

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

Authority: Secs. 156, 161, 68 Stat. 947, 948, as amended (42 U.S.C. 2186, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 81. In § 81.3, revise the third sentence to read as follows:

§ 81.3 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 82. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401; note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR, 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

■ 83. In § 95.9:

■ a. In paragraph (a), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Operations"; and

■ b. Revise the third sentence of paragraph (c) to read as follows:

§ 95.9 Communications.

* * * * *

(c) * * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

* * * * *

§ 95.19 [Amended]

■ 84. In paragraphs (a) and (c), remove the words "Division of Nuclear Security" wherever they appear and add in their place the words "Division of Security Operations."

§ 95.20 [Amended]

■ 85. Remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Operations."

§ 95.21 [Amended]

■ 86. Remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Operations."

§ 95.36 [Amended]

■ 87. In paragraphs (c) and (d), remove the words "Division of Nuclear Security" wherever they appear and add in their place the words "Division of Security Operations."

§ 95.45 [Amended]

■ 88. In paragraph (a), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Operations."

§ 95.53 [Amended]

■ 89. In paragraph (a), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Operations."

§ 95.57 [Amended]

■ 90. In paragraph (c), remove the words "Division of Nuclear Security" wherever they appear and add in their place the words "Division of Security Operations."

PART 100—REACTOR SITE CRITERIA

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

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 92. In § 100.4, revise the third sentence to read as follows:

§ 100.4 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 93. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 170H., 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2160d., 2201, 2210h., 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec 5, Public Law 101–575, 104 Stat 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005; Public Law 109–58, 119 Stat. 594 (2005).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Public Law 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Public Law 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Public Law 102–496 (42 U.S.C. 2151 *et seq.*).

■ 94. In § 110.4, revise the third sentence to read as follows:

§ 110.4 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 95. The authority citation for part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576 as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Public Law 109–58.

■ 96. In § 140.5, revise the third sentence to read as follows:

§ 140.5 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

§ 140.21 [Amended]

■ 97. In § 140.21, in the undesignated paragraph, remove the amount "$15 million" and add in its place the amount "$17.5 million."

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 98. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073).

Section 150.15 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

■ 99. In § 150.4, revise the third sentence to read as follows:

§ 150.4 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

§ 150.17 [Amended]

■ 100. In paragraph (c)(3), remove the words "Division of Nuclear Security" and add in their place the words "Division of Security Policy."

PART 170—FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 101. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Public Law 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Public Law 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Public Law 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Public Law 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 623, Public Law 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 102. In § 170.5, revise the third sentence to read as follows:

§ 170.5 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

■ 103. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Public Law 99–272, 100 Stat. 146, as amended by sec. 5601, Public Law 100–203, 101 Stat. 1330 as amended by sec. 3201, Public Law 101–239, 103 Stat. 2132, as amended by sec. 6101, Public Law 101–508, 104 Stat. 1388, as amended by sec. 2903a, Public Law 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Public Law 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Public Law 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 104. In § 171.9, revise the third sentence to read as follows:

§ 171.9 Communications.

* * * Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. * * *

Dated at Rockville, Maryland, this 18th day of November 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking and Directives Branch. Division of Administrative Services, Office of Administration.

[FR Doc. E9–28141 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P 3

FEDERAL RESERVE SYSTEM

12 CFR Part 233

[Regulation GG; Docket No. R–1298]

DEPARTMENT OF THE TREASURY

31 CFR Part 132

RIN 1505–AB78

Prohibition on Funding of Unlawful Internet Gambling

AGENCIES: Board of Governors of the Federal Reserve System and Departmental Offices, Department of the Treasury.

ACTION: Final rule; extension of compliance date.

SUMMARY: This document is published jointly by the Board of Governors of the Federal Reserve System ("Board") and Departmental Offices, Department of the Treasury ("Treasury") (collectively, the "Agencies") to extend the compliance date for the final regulation implementing applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act").[1] The final regulation requires non-exempt participants in designated payment systems to establish and implement written policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act. In extending the compliance date, the Agencies have consulted with the Department of Justice, as required by the Act.

DATES: The effective date of the final regulation published November 18, 2008 (73 FR 69382) remains January 19, 2009. The compliance date of the final regulation is extended from December 1, 2009 to June 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Board: Christopher W. Clubb, Senior Counsel (202/452–3904), Legal Division; Jeffrey S. Yeganeh, Manager, or Joseph Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

Treasury: Charles Klingman, Director, Office of Critical Infrastructure Protection and Compliance Policy; or Steven D. Laughton, Senior Counsel, Office of the Assistant General Counsel (Banking & Finance), 202/622–9209.

[1] The final regulation adopted by the Board is Regulation GG (12 CFR Part 233) and the final regulation adopted by the Treasury is codified in 31 CFR Part 132. Regulation GG and 31 CFR Part 132 duplicate one another.

SUPPLEMENTARY INFORMATION:

I. Summary

On November 18, 2008, the Agencies issued a joint final regulation implementing the Act.[2] Among other things, the final regulation designates payment systems that could be utilized in connection with or to facilitate unlawful Internet gambling transactions restricted by the Act; exempts certain participants in designated payment systems; requires non-exempt participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act; and identifies types of policies and procedures (including non-exclusive examples) that would be deemed to be reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act. The final regulation established an effective date of January 19, 2009 and a compliance date of December 1, 2009.

By letter dated September 18, 2009, the Agencies received a petition requesting an extension of the compliance date of the final regulation for an additional twelve months to December 1, 2010.[3] The petitioners assert that an extension of the compliance date is necessary because a significant number of regulated entities will not have in place the necessary policies and procedures by the current December 1, 2009 compliance date. Petitioners assert that many small regulated entities do not have the resources necessary to develop and implement appropriate policies and procedures by the December 1, 2009 compliance date and cite the possibility of confusion regarding the term "unlawful Internet gambling."

The Agencies have received letters in support of the petition from regulated financial institutions, associations representing regulated financial institutions, and members of Congress.[4] Some of these commenters assert that the compliance date of December 1, 2009 will not be achievable for many regulated entities despite their good-

[2] 73 FR 69382 (Nov. 18, 2008).

[3] The petition was submitted on behalf of three gambling industry associations; specifically, the Poker Players Alliance, the National Thoroughbred Racing Association, and the American Greyhound Track Owners Association.

[4] *See, e.g.*, letters from Wells Fargo (Oct. 21, 2009); the American Bankers Association (Nov. 4, 2009); the Credit Union National Association (Oct. 5, 2009); the National Association of Federal Credit Unions (Nov. 9, 2009); and members of Congress (Rep. Frank *et al.*) (Oct. 1, 2009).

faith efforts to achieve full compliance. Commenters expressed concern that the Act and the final regulation do not provide a clear definition of "unlawful Internet gambling," which is central to compliance.[5] In addition, certain members of Congress acknowledged that the Act does not contain a clear definition of "unlawful Internet gambling" and expressed an intent to consider legislation that would allow problematic aspects of the Act to be addressed.[6] Several of these members of Congress stated that there is considerable interest in Congress in clarifying the laws underlying Internet gambling, and that it would be prudent to defer the compliance date until Congress has had time to act. The Agencies have also received letters opposing the petition citing, among other things, the speculative nature of the problems raised by petitioners, the associations and other interest groups.[7] All of the opposition letters are from members of Congress.[8]

While the final regulation affords regulated entities maximum flexibility in establishing and implementing policies and procedures that are reasonably designed to prevent or prohibit unlawful Internet gambling transactions restricted by the Act, the Agencies acknowledge some of the challenges regulated entities are experiencing with the Act's definition of "unlawful Internet gambling."[9] Moreover, as noted above, several members of Congress have indicated interest in revising the Act.

The Agencies are thus persuaded that a limited extension of the compliance date for regulated entities is appropriate. While representations made by the associations whose members are required to comply with the final regulation and thus are in a position to assess the level of difficulty and burden in achieving compliance by the December 1, 2009, compliance date indicate that compliance is not achievable by some institutions by December 1, 2009, neither petitioners nor commenters supporting the petition have provided the Agencies with sufficient data or documentation to justify a twelve month extension of the compliance date. The Agencies believe that a six month extension is sufficient for regulated entities to address issues related to the definition of "unlawful Internet gambling." For example, section __.6(b) of the final regulation makes it clear that non-exempt participants may rely on documentation provided by a commercial customer regarding the legality of Internet gambling activities. This shifting of the burden will enhance the ability of regulated entities to comply with the challenging definition of "unlawful Internet gambling" contained in the Act and the final regulation. In particular, the six month extension of the compliance period will facilitate the establishment of policies and procedures that require gambling businesses to document the legality of their activities to regulated entities. Accordingly, the compliance date for the final regulation is extended to June 1, 2010.[10] The final regulation's effective date of January 19, 2009 remains unchanged.

II. Administrative Law Matters

A. Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

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

C. Administrative Procedure Act

The Agencies find that, for good cause and the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for the final regulation are impracticable, unnecessary, or contrary to the public interest.[11] In this regard, the Agencies also believe that regulated entities need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation process accordingly. The change to the compliance date is effective upon publication in the **Federal Register**.[12]

D. Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4; 2 U.S.C. 1532)

Treasury has concluded the extension of the compliance date does not contain a Federal mandate that may result in the expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year.

E. Plain Language

Each Federal banking agency, such as the Board, is required to use plain language in all proposed and final rulemakings published after January 1, 2000. 12 U.S.C. 4809. In addition, in 1998, the President issued a memorandum directing each agency in the Executive branch, such as Treasury, to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies have sought to present this final rule, to the extent possible, in a simple and straightforward manner.

By order of the Board of Governors of the Federal Reserve System, November 25, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated: November 24, 2009.

By the Department of the Treasury.

Michael S. Barr,

Assistant Secretary for Financial Institutions.

[FR Doc. E9–28746 Filed 11–27–09; 8:45 am]

BILLING CODE 6210–01–P; 4810–25–P

[5] See, *e.g.*, letter from the Independent Community Bankers of America (Nov. 5, 2009), p. 1.

[6] See, *e.g.*, letter from Senator Reid (Nov. 9, 2009); letter from Chairman Frank, House Committee on Financial Services (Oct. 1, 2009); and letter from Reps. Cohen, Berkley *et al.* (Sept. 25, 2009).

[7] See, e.g., letter from Senator Kyl and Representative Bachus (Nov. 3, 2009).

[8] The petition and comment letters are available for public inspection and copying in the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. You can make an appointment to inspect the petition and the comments by calling (202) 622–0990. The petition and comment letters are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/index.cfm?doc_id=R%2D1298&doc_ver=1.*

[9] In the final regulation, the Agencies address the desire for more certainty that would result from a precise regulatory definition of "unlawful Internet gambling" through the due diligence guidance contained in section __.6(b) of the final regulation. *See* 73 FR 69382, 69384 (Nov. 18, 2008).

[10] Regulated entities may establish and implement the written policies and procedures required by the Act and the final regulation before the June 1, 2010 compliance date.

[11] See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (hereinafter "APA") (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest.").

[12] This date is less than 30 days after publication in the **Federal Register**, in accordance with the APA, which allows effectiveness in less than 30 days after publication for "good cause." *See* 5 U.S.C. 553(d)(3). The legislative history of Section 553(d)(3) indicates that its primary purpose was to afford persons affected a reasonable time to prepare for the effective date of a rule. The Agencies believe that there is good cause for dispensing with the 30 day delayed effective date because the immediate extension of the compliance date will have the beneficial effect of affording regulated entities additional preparation time.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1103; Directorate Identifier 2009–CE–053–AD; Amendment 39–16110; AD 2009–24–16]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Models DG–500MB, DG–808C and DG–800B Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Zinc-coated starter ring gears installed on Solo 2625 01 and 2625 02 engines have shown to be prone to cracking. For that reason, AD 2009–0169–E has been published in July 2009.

From that date, collected in-service data have been revealed that painted starter ring gears with lightening holes are also subject to cracks. The reason for these cracks is still unknown at the present time.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 21, 2009.

On December 21, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by January 15, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No.: 2009–0239–E, dated November 3, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Zinc-coated starter ring gears installed on Solo 2625 01 and 2625 02 engines have shown to be prone to cracking. For that reason, AD 2009–0169–E has been published in July 2009.

From that date, collected in-service data have been revealed that painted starter ring gears with lightening holes are also subject to cracks. The reason for these cracks is still unknown at the present time.

As a consequence, Airworthiness Directive (AD) 2009–0225 dated 22 October 2009 had been published to mandate repetitive inspections of zinc-coated starter ring gears as well as painted starter ring gears with lightening holes, and their replacement when cracks are found.

This AD retains the requirements of AD 2009–0225–E which is superseded, and extends the applicability to model DG–808C sailplanes that were inadvertently omitted in the applicability of AD 2009–0225–E. On the other hand, the required actions remain unchanged.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

DG Flugzeugbau GmbH has issued Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because it has been determined that zinc-coated and paint-coated starter ring gears installed on Solo 2625 01 and 2625 02 engines are prone to cracking. These engines are certificated with the airframes. One of the zinc-coated ring gears cracked, and the escaping parts caused severe damage to the starter motor, the engine mount, and the drive belt. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD.

Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1103; Directorate Identifier 2009–CE–053–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–24–16 DG Flugzeugbau GmbH: Amendment 39–16110; Docket No. FAA–2009–1103; Directorate Identifier 2009–CE–053–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 21, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models DG–500MB, DG–808C, and DG–800B gliders, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 80: Starting.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Zinc-coated starter ring gears installed on Solo 2625 01 and 2625 02 engines have shown to be prone to cracking. For that reason, AD 2009–0169–E has been published in July 2009.

From that date, collected in-service data have been revealed that painted starter ring gears with lightening holes are also subject to cracks. The reason for these cracks is still unknown at the present time.

As a consequence, Airworthiness Directive (AD) 2009–0225 dated 22 October 2009 had been published to mandate repetitive inspections of zinc-coated starter ring gears as well as painted starter ring gears with lightening holes, and their replacement when cracks are found.

This AD retains the requirements of AD 2009–0225–E which is superseded, and extends the applicability to model DG–808C sailplanes that were inadvertently omitted in the applicability of AD 2009–0225–E. On the other hand, the required actions remain unchanged.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before further flight after December 21, 2009 (the effective date of this AD), and repetitively thereafter before every flight, inspect the installed version of the starter ring gear for cracks following paragraph 2 of the Instructions section of DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009.

(2) If, during the inspection required in paragraph (f)(1) of this AD, any crack is found, before further engine operation, replace the starter ring gear following paragraph 3 of the Instructions section of DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009.

(3) Within 90 days after December 21, 2009 (the effective date of this AD), replace the starter ring gear following paragraph 3 of the Instructions section of DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009. Replacement of the starter ring gear following paragraph 3 of the Instructions section of DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009, terminates the repetitive inspection requirement in paragraph (f)(1) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information provides for a terminating action as an option, paragraph (f)(3) of this AD requires that you perform the terminating action within 90 days after December 21, 2009 (the effective date of this AD). This is consistent with paragraph 125 of the FAA AD Manual, FAA–IR–M–8040.1B (FAA–AIR–M–8040.1), which states: "The FAA has determined that long-term continued operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures."

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Emergency AD No.: 2009–0239–E, dated November 3, 2009; and DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009, for related information.

Material Incorporated by Reference

(i) You must use DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact DG Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: + 49 (0) 7251 3020140; Fax: +49 (0) 7251 3020149; Internet: *http://www.dg-flugzeugbau.de/index-e.html;* E–Mail: *dirks@dg-flugzeugbau.de.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri on November 18, 2009.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28455 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 125 and 135

[Docket No. FAA–2007–29281; Amendment Nos. 91–310, 125–58, 135–119]

RIN 2120–AJ09

Removal of Regulations Allowing for Polished Frost

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is removing certain provisions in its regulations that allow for operations with "polished frost" (i.e., frost polished to make it smooth) on the wings and stabilizing and control surfaces of aircraft. The rule is expected to increase safety by not allowing operations with "polished frost," which the FAA has determined increases the risk of unsafe flight.

DATES: These amendments become effective February 1, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Nancy Lauck Claussen, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8166; *facsimile:* (202) 267–5229, *e-mail: nancy.l.claussen@faa.gov.*

For legal questions concerning this final rule contact Dean Griffith, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; *telephone:* (202) 267–3073; *facsimile:* (202) 267–7971; *e-mail: dean.griffith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5) which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

I. Background

A. Summary of the Notice of Proposed Rulemaking (NPRM)

The FAA published an NPRM in the **Federal Register** on May 8, 2008 (73 FR 26049). The NPRM proposed to remove language permitting pilots to takeoff with polished frost adhering to the wings or stabilizing or control surfaces from §§ 91.527(a)(3), 125.221(a), and 135.227(a). The NPRM also proposed to restructure §§ 91.527(b), 125.221(c), and 135.227(c) to clarify the provisions of those sections. The comment period closed on August 6, 2008.

As discussed in the NPRM, the FAA has recognized that adverse aerodynamic effects on lifting surfaces begin as soon as frost begins to adhere to the surfaces. For example, the presence of frost may: (1) Reduce a wing's maximum lift by 30 percent or more; (2) reduce the angle of attack for maximum lift by several degrees; (3) increase drag significantly; and (4) change unexpectedly the aircraft's handling qualities and performance. The severity of these adverse aerodynamic effects varies significantly depending on: (1) The thickness, density, and location of the frost; (2) the degree of the surface roughness; and (3) the location of the roughness relative to the surface leading edge where significant variations may occur in the local airspeed and surface air loads.

Although polishing frost is currently permitted under part 91 subpart F, and parts 125 and 135, current FAA guidance developed subsequent to the implementation of those regulations cautions against this practice. In Advisory Circular (AC) 135–17, the FAA recommends that all wing frost be removed prior to takeoff, and states that if an operator desires to polish the frost, the aircraft manufacturer's recommended procedures should be followed. *See* AC 135–17, *PILOT GUIDE Small Aircraft Ground Deicing* (Dec. 14, 1994). Additionally, the FAA issued two Safety Alerts for Operators (SAFOs) regarding polishing frost. SAFO 06002 advises that "operators should avoid smooth or polished frost on lift-generating surfaces as an acceptable preflight condition." *See* SAFO 06002, *Ground Deicing Practices for Turbine Aircraft in Nonscheduled 14 CFR Part 135 Operations and in Part 91* (Mar. 29, 2006). SAFO 06014 states that the FAA cannot support the practice of polishing frost "unless an aircraft manufacturer developed explicit, approved procedures for doing so," and pilots are trained in those procedures. *See* SAFO 06014, *Polished Frost* (Oct. 6, 2006). The FAA is not aware of any current aircraft manufacturer that has issued recommended procedures for (1) polishing frost, or (2) conducting operations with polished frost. This rulemaking codifies the FAA's current guidance regarding this practice.

Operational concerns also support removing the provisions permitting polishing frost from the regulations. The FAA has no data to support practical guidance for determining how to polish frost on a surface to make it acceptably smooth, other than completely removing the frost and returning the aircraft's critical lifting surfaces to uncontaminated smoothness. Moreover, there is no standard of acceptable smoothness for polished frost provided in regulation, guidance, or by manufacturers. Also, the FAA believes that in an operational environment it is impossible to determine whether the polished frost surface is uniformly, or symmetrically, smooth.

There are at least 12[1] known accidents in which individuals attempted to smooth or polish frost, but the aircraft failed to generate enough lift and crashed shortly after takeoff.[2] The U.S. National Transportation Safety Board (NTSB) has urged operators to ensure that critical surfaces are free of contamination prior to take off. NTSB, *Safety Alert: Aircraft Ground Icing* (2006). The United Kingdom's Department for Transport, Air Accidents Investigation Branch, recommended that the FAA remove the term polished frost from its regulations following an accident at Birmingham, England. *See* Air Accidents Investigation Branch, Department for Transport, *Aircraft Accident Report 5/2004* (2004), *available at http://www.aaib.gov.uk/sites/aaib/cms_resources/5-2004%20N90AG.pdf.*

The FAA has determined that an unsafe condition exists if all wing surfaces, other than those under the wing in the area of the fuel tanks,[3] and other critical surfaces are not uniformly smooth upon takeoff and is therefore removing references to "polished frost" from the regulations. This final rule requires operators, when performing operations under part 91 subpart F, part 125, or part 135, to remove all frost from critical surfaces in order to achieve uncontaminated surface smoothness.

In the NPRM, the FAA identified four alternatives to polishing frost that operators may use to comply with this rule. Those alternatives are: (1) Using wing covers to prevent frost accumulation on wings, (2) waiting for frost to melt, (3) storing the aircraft in a heated hangar, or (4) deicing the wing surface. The FAA identified the use of wing covers to prevent frost accumulation on wing surfaces as the lowest-cost alternative for complying with this rule.

B. Summary of the Final Rule

This final rule removes language from part 91 subpart F, and parts 125 and 135, which permits aircraft to takeoff with frost that has been polished to make it smooth ("polished frost") on critical surfaces. Under the final rule, operators will be required to remove any frost adhering to critical surfaces prior to takeoff. Additionally, the rule restructures language in parts 91, 125, and 135 to clarify that aircraft must have functioning deicing or anti-icing equipment to fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions.

C. Summary of Comments

The FAA received 20 comments in response to the proposed rule. The FAA received two comments from manufacturers (Boeing and Gulfstream); three from industry associations (General Aviation Manufacturers Association (GAMA), Air Line Pilots Association International (ALPA), and the National Air Transportation Association (NATA)); and one from the National Transportation Safety Board (NTSB). Additionally, two operators submitted comments: Webster's Flying Service, which is located in Alaska, and Centennial State Aviation, LLC. The FAA also received twelve comments from individuals, including 3 located in Alaska. Eleven of the commenters, including NTSB, GAMA, ALPA, NATA, and Gulfstream generally favored the NPRM. Boeing, Centennial State Aviation, LLC, Webster's Flying Service, and several individual commenters raised concerns, which are discussed below.

II. Discussion of the Final Rule

The FAA is adopting the rule as proposed, with minor technical and clarifying modifications. The FAA is restructuring 14 CFR 91.527(a), 125.221(a), and 135.227(a), and removing the words "unless that frost has been polished to make it smooth," as proposed.

The FAA is adopting the restructuring of 14 CFR 91.527(b), 125.221(c), and 135.227(c) as proposed in the NPRM with technical changes. The FAA is making a minor modification to proposed § 125.221(c)(1) to remove the words "rotor blade." The reference to rotor blades in that section is not necessary as part 125 applies only to airplanes.

The FAA is adopting the proposed language of 14 CFR 91.527(b)(3), 125.221(c)(3), and 135.227(b)(3) in the final rule with a technical correction. The correction clarifies that a transport category airplane must meet the transport category airplane requirements for certification for flight into icing conditions if it will be flown into known or forecast light or moderate icing conditions. This clarification is necessary to avoid any interpretation that would permit flight of transport category airplanes without icing protection into known or forecast light or moderate icing conditions. This aspect of the final rule addresses a recommendation by the Part 125/135 Aviation Rulemaking Committee, as discussed in the NPRM. See 73 FR 26051.

The remainder of this section discusses comments received in response to the NPRM and the FAA's response to those comments.

A. Exception for Takeoffs Made With Frost Under the Wing in the Area of Fuel Tanks

Boeing recommended that in §§ 91.527(a) and 121.629(b), the FAA revise the proposed phrase "except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA," to read "as otherwise authorized by the Administrator or in accordance with a manufacturer's recommendations." Boeing commented that the FAA has found that a limited amount of frost is acceptable (e.g., cold fuel frost), which does not necessarily relate only to the wing, or even only to the under side of the wing. Further, Boeing noted that the fuel tank area should not be the criterion for determining whether such frost is acceptable because "aerodynamic criticality may or may not necessarily relate to the entire fuel tank area under the wing." Boeing asserted that such a revision would "ensure that previous FAA approvals will not be 'undermined' by interpretation of the new language and would better provide for the ability to address future designs."

The FAA does not agree with Boeing's suggestion to add the words "or in accordance with a manufacturer's recommendations" to the regulatory text. The authority to assess when such takeoffs should be permitted should remain with the FAA. No changes were made to the final rule in response to this comment.

B. Applicability to Part 121

Boeing suggested revising the heading of § 91.527 to read "Except for 14 CFR part 121 operations, Operating in icing conditions." Boeing stated that this would eliminate confusion as to what does or does not apply to air carriers, and would help air carriers when conducting ferry, test, and other non-part 121 flights.

Part 121 does not permit operations with polished frost. *See* 14 CFR 121.629(b). This final rule will make part 91 subpart F, and parts 125, and 135 operations consistent with part 121 with respect to its prohibition on

[1] The FAA identified 11 accidents in the NPRM. During preparation of the final regulatory evaluation, the FAA identified an additional accident relevant to this rulemaking.

[2] Nine of the 12 accidents would not have been prevented by this rule, since the aircraft were involved in part 91 (other than subpart F) operations. Nevertheless, these accidents illustrate the risk involved in flying with polished frost.

[3] Takeoffs may be made with frost under the wing area of the fuel tanks if authorized by the Administrator. See, e.g., 14 CFR 125.221(a)(2), 135.227(a)(2).

operations with polished frost. Therefore, the FAA has determined that making this change to the rule language is unnecessary.

C. Imposes Additional Burdens

The FAA received several comments pertaining to burdens that could be caused by the proposed rule, including storage problems, availability of hangars for defrosting, overbroad application of the rule, costs associated with the rule, and that changes to the existing rule are not necessary.

Centennial State Aviation, LLC asserted that some aircraft do not have extra space to store wing covers during transport. As noted above, the use of wing covers is only one of the alternatives to polishing frost identified by the FAA. If a particular operator is unable to transport wing covers, it can utilize one of the other methods of removing frost from aircraft.

Webster's Flying Service commented that Alaskan operations should be excepted from the proposed rule changes because there are times when temperatures remain below freezing for long periods of time and hangar facilities are not available to melt frost that has accumulated on aircraft. Pursuant to current §§ 91.527(a)(2), 125.221(a), and 135.227(a), no operator, including those located in Alaska, may take off with snow or ice adhering to the wings or other control surfaces. Thus, operators in Alaska, who must adhere to those regulations, should currently have means to remove snow and ice from their aircraft. The FAA notes that operators can use the same means to rid their aircraft of frost that they use to rid their aircraft of snow and ice, or utilize wing covers or deice the aircraft as an alternative to polishing frost.

An individual commented that the FAA is burdening the entire general aviation fleet to address a problem that is only an issue for supercritical and high-wing loading aircraft. That commenter continued that it should be the manufacturer's responsibility to prohibit polishing frost if it negatively affects a particular aircraft model.

This rule does not impact the entire general aviation fleet. The rule only removes references to polished frost from part 91 subpart F, and parts 125 and 135. Further, the FAA is not aware of any manufacturer that condones polishing frost on any of its aircraft.

Boeing suggested that the FAA should revise its Regulatory Flexibility Determination regarding the cost of wing covers and develop more realistic costs for occurrences such as difficulty installing wing covers, possible need for additional personnel or specialized equipment to assist in placing wing covers on airplanes, possible damage caused by covers sticking to wings, and potential delays attributable to installation or removal of the wing covers. Also, an individual from Alaska interpreted the proposal to mean that aircraft hangars will be a necessity for operations in wintertime, when wing covers offer insufficient protection.

As stated above, other means of removing frost from an aircraft are available. Operators may choose to wait for frost to melt, store their aircraft in a heated hangar, or deice wing surfaces. Likewise, this rule does not mandate removing frost from an aircraft in hangars. Putting aircraft inside hangars is only one of four alternatives cited in the NPRM.

A commenter suggested that the proposal should have been directed to commercial aircraft only. In fact, this rule only affects operations conducted under parts 125, 135, and 91 subpart F. Operations otherwise conducted under part 91 are not affected by the rule.

Lastly, the FAA received several comments in response to the NPRM stating that polishing frost is a safe practice and that the proposed rule change was not necessary. As discussed in the NPRM and this preamble, frost has an adverse aerodynamic effect on critical lifting surfaces and the FAA has determined that polishing frost is an unsafe practice.

The FAA made no changes to the proposed rule language after considering these comments.

D. Rule Could Create Hazards

Six commenters expressed concern that implementation of the rule would create hazards to operators, aircraft, and the environment as follows. Two commenters, Centennial State Aviation, LLC, and an individual, noted that examining the top of a T-tailed aircraft is difficult. The individual was concerned that such an examination may create safety issues for individuals examining the tail if there is ice on the ramp. That commenter added that the top of a horizontal stabilizer should not be considered a critical surface because it is not a lift-producing surface.

Horizontal stabilizers are a critical surface on every aircraft, and operators must examine them as part of the normal inspections of their aircraft. Further, examining the wing of a high-wing airplane requires the same effort as examining the top of a T-tailed aircraft.

Webster's Flying Service and Boeing raised concerns about damage that could result from using wing covers. Webster's Flying Service asserted that "antennas, etc." could be damaged while putting on or taking off wing covers and that wind blowing on covers could cause aircraft damage. Boeing commented that wing covers may stick to wings and cause damage. Webster's Flying Service also discussed that under certain conditions, a sheen can form under the wing covers, but that such a sheen would not require polishing and should be determined to be acceptable.

As stated previously, the presence of polished frost on wings or other critical surfaces could be detrimental to the flight characteristics of an aircraft. The FAA recognizes that it may be impractical for some operators to use wing covers. As stated in the NPRM, there are at least three other alternatives to choose from. Those alternatives include waiting for the frost to melt, storing the aircraft in a heated hangar, or deicing the wing surface.

Webster's Flying Service expressed a concern that using deicing fluids as an alternative to polishing frost could cause pollution in lakes and streams. The FAA acknowledges that this rule may lead to an increased use of deicing fluid if operators choose this alternative to polishing frost. However, deicing is only one of the four methods identified by the FAA that operators could use to remove frost from critical surfaces. Further, several factors lead the FAA to believe that wing covers will be the most broadly adopted alternative to polishing frost. As discussed in the regulatory evaluation, wing covers are the lowest-cost alternative to polishing frost available to operators. Office of Aviation Policy and Plans, FAA, *Final Regulatory Evaluation: Removal of Regulations Allowing for Polished Frost on Wings of Airplanes (2009).* Also, from an operational standpoint, wing covers are portable, enabling operators to use them at any location, from well-equipped airports to remote landing strips, without the need to consider the availability of deicing equipment or a hangar in which to store the aircraft. Additionally, the majority of operators permitted to polish frost are located in Alaska where it is not unusual to operate at locations where deicing facilities may not be present.

Webster's Flying Service also asserted that a heating device could pose a fire hazard, especially in cold, dry air where a static spark can occur. This rule does not require operators to use heating devices. In addition, the FAA recognizes that some manufacturers state that their engines must be pre-heated before flight. The FAA notes that such heating devices used for pre-heating an engine may present the same risk noted by the commenter, and that if used appropriately, such risk is minimal.

The FAA has not revised the proposed rule language based on these comments.

E. Problem Could Be Addressed Through Pilot Training

Three individuals made comments related to pilot training. One suggested training on hazardous pre-flight icing identification in lieu of the proposed rule; another called for improved pilot training in general in lieu of the proposed rule; and the third commented that the FAA include in the rulemaking a means by which all pilots could become educated as to the FAA's rationale for the change in the regulation.

The FAA has provided guidance on polished frost and operations with ice, frost, and snow on aircraft. As discussed above, the FAA issued SAFO 06002 and SAFO 06014, which advise against polishing frost. FAA Advisory Circular 135–17, *PILOT GUIDE Small Aircraft Ground Deicing* (Dec. 14, 1994), recommends that all wing frost be removed prior to takeoff. Polished frost on critical aircraft surfaces poses a hazard and the FAA has determined that removing the provisions permitting polishing of frost is necessary for safe operations. The FAA has not revised the rule language based on these comments.

F. Possible Delays to Emergency Medical Transport Flights

Centennial State Aviation, LLC, asserted that unless an operator has the ability to polish frost, the practice of removing frost could have a negative impact on the health of a patient on an aeromedical transport flight because of delays resulting from putting on and removing wing and tail covers. The commenter noted this is especially difficult for a single pilot whose aircraft has a 14-foot tail.

The FAA does not condone operating an aircraft in unsafe conditions. Further, the FAA notes that the act of polishing frost could also delay a flight. Accordingly, the FAA has not made changes to the proposed rule language based on this comment.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current or new requirement for information collection associated with this amendment.

IV. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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

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

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This final rule will remove any references in the Federal aviation regulations that allow takeoffs in situations where frost is present on wings, stabilizing surfaces, or control surfaces, when such frost has been polished to make it smooth. The FAA believes these changes are necessary to improve aviation safety.

For the ten-year period from 2009 to 2018, the total benefits from this final rule are projected to be about $980,000 ($689,000 discounted). Of those, $925,000 ($650,000 discounted) will accrue to Alaska, while the remaining $55,000 ($39,000 discounted) will accrue to the mainland U.S. Costs will depend on which of four alternatives (wing covers, storing the aircraft in a hangar, deicing the surface areas, or waiting for the frost to melt) are selected by operators. The FAA believes that using wing covers is the least costly alternative. Assuming operators choose to use wing covers, over the ten-year period from 2009 to 2018, costs will total roughly $164,000 ($130,000 discounted). Of these, $155,000 ($123,000 discounted) will accrue to Alaska, and $9,500 ($7,500 discounted) will accrue to the mainland U.S. Because benefits exceed costs for both Alaska and the mainland U.S., the FAA concludes the rule is cost-beneficial.

Regulatory Flexibility Determination

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

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

However, if an agency determines that a rule is not expected to have a

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

This final rule will improve aviation safety by removing references to the "polished frost" technique found in 14 CFR 91.527(a), 125.221(a), and 135.227(a). This rulemaking affects operators under part 125, part 135, and those covered by subpart F of part 91 (which includes all part 91 subpart K operations). There are 57 operators operating 188 aircraft that will be affected by the rule. The FAA recognizes that all of these operators are considered small entities based on the following North American Industry Classification System (NAICS) code classifications: Nonscheduled Chartered Passenger Air Transportation—481211 (1500 employees or less); Nonscheduled Chartered Freight Air Transportation—481212 (1500 employees or less); Other Nonscheduled Air Transportation—481219 ($6.5 million or less in annual receipts). See 13 CFR 121.201.

The FAA assumes that most operators will choose to buy and use wing covers to comply with the final rule. The other alternatives (waiting for the frost to melt, storing the aircraft in a heated hangar, or deicing the aircraft) are more expensive than using wing covers. The FAA estimates that operators will choose to buy wing covers at an initial cost of $400, plus minimal additional fuel costs and, if needed, an additional cost of $400 after five years to replace a worn wing cover.

In Alaska, there are 21 operators with one aircraft apiece, and 30 operators operating the remaining 156 aircraft. In the mainland U.S., there are six operators operating 11 aircraft. The smallest operators operate only one plane, and will incur a cost of approximately $99 per year as a result of this rulemaking, a cost that the FAA does not consider significant. The operator that will be most impacted by the rule operates 16 affected aircraft, and will incur costs of approximately $1,584 per year as a result of this rulemaking. This operator has annual revenues of $5 million. The cost of this rulemaking represents 0.03 percent of the gross revenues of that operator, and the FAA does not consider that amount significant. Therefore, as the Administrator of the FAA, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This final rule does not contain such a mandate.

VI. Executive Order 13132, Federalism

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

VII. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. The FAA received comments from one operator, Webster's Flying Service, and three individuals in Alaska, which are discussed in "II. Discussion of the Final Rule and Comments." The FAA has determined that while the regulation will affect some operators in Alaska who polish frost on their aircraft, there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska because of the safety benefit gained from completely removing frost from critical surfaces.

VIII. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f. Additionally, the FAA reviewed paragraph 304 of Order 1050.1E and determined that this rulemaking involves no extraordinary circumstances.

IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In addition, it is not a "significant regulatory action" under Executive Order 12866 or DOT's Regulatory Policies and Procedures.

X. Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

XI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Freight.

14 CFR Part 125

Aircraft, Airmen, Airports, Aviation safety, Freight.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

XII. The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend § 91.527 by revising paragraphs (a) and (b) to read as follows:

§ 91.527 Operating in icing conditions.

(a) No pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, or flight attitude instrument system or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

(b) No pilot may fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) The airplane has ice protection provisions that meet section 34 of Special Federal Aviation Regulation No. 23; or

(3) The airplane meets transport category airplane type certification provisions, including the requirements for certification for flight in icing conditions.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 3. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 4. Amend § 125.221 by revising paragraphs (a) and (c) to read as follows:

§ 125.221 Icing conditions: Operating limitations.

(a) No pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

* * * * *

(c) No pilot may fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) The airplane has ice protection provisions that meet appendix C of this part; or

(3) The airplane meets transport category airplane type certification provisions, including the requirements for certification for flight in icing conditions.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 6. Amend § 135.227 by revising paragraphs (a) and (c) to read as follows:

§ 135.227 Icing conditions: Operating limitations.

(a) No pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade, propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

* * * * *

(c) No pilot may fly under IFR into known or forecast light or moderate icing conditions or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) The airplane has ice protection provisions that meet section 34 of appendix A of this part; or

(3) The airplane meets transport category airplane type certification provisions, including the requirements for certification for flight in icing conditions.

* * * * *

Issued in Washington, DC, on November 19, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–28431 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Limitations on Guaranteed Benefits; Maximum Guaranteeable Benefit

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule removes Appendix D from Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans. Appendix D is a historical list of the maximum guaranteeable monthly benefit for each year as determined in accordance with section 4022(b)(3)(B) of the Employee Retirement Income Security Act of 1974. This information is available on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, 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: Section 4022(b) of the Employee Retirement Income Security Act of 1974 (ERISA) provides for certain limitations on benefits guaranteed by Pension Benefit Guaranty Corporation (PBGC) in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in ERISA section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by PBGC. The ceiling is equal to "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]." This formula is also set forth in § 4022.22(b) of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B).[1]

PBGC has no discretion in the determination of the maximum guaranteeable benefit. The maximum guaranteeable benefit is determined by applying the formula in ERISA section 4022(b)(3)(B) to the contribution and benefit base. Each year Social Security Administration determines, and notifies PBGC of, the contribution and benefit base to be used under ERISA section 4022(b)(3)(B), and PBGC applies the statutory formula to arrive at the maximum guaranteeable benefit. PBGC has historically published a table showing the maximum guaranteeable benefit for each year in appendix D to the benefit payment regulation and updated the list each year by amending the table in the appendix. In recent years, PBGC has also published this information on its Web site (*http://www.pbgc.gov*; click on "Workers & Retirees," then on "Maximum monthly guarantee tables" under the heading "Benefits Information" in the center column).

PBGC has concluded that since the maximum guaranteeeable benefits are easily accessible to the public on its Web site, it is no longer necessary to publish the information in the **Federal Register** (where annual updates to appendix D to the benefit payment regulation are published) or the Code of Federal Regulations (where the appendix itself is published). Accordingly, PBGC is removing appendix D from the benefit payment regulation. This action has no substantive legal effect.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply eliminates one of the methods PBGC currently uses to inform the public of the maximum guaranteeable benefit.

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 regulation, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4022

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. Appendix D to part 4022 is removed.

Issued in Washington, DC, this 15th day of November, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–28638 Filed 11–30–09; 8:45 am]

BILLING CODE 7709–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2010. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–

[1] For example, under section 230 of the Social Security Act, $79,200 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2010. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $79,200/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC for plans that terminate in 2010 is $4,500.00 per month in the form of a life annuity beginning at age 65. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $4,500.00 per month.)

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: Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–09 with Table I–10 in order to provide an updated correlation, appropriate for calendar year 2010, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–10 will be used to value benefits in plans with valuation dates during calendar year 2010.

PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2010, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2010.

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 regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I–09 and adding in its place Table I–10 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–10—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 2009, and before January 1, 2011]

If participant reaches URA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at URA is less than—	Medium[2] if monthly benefit at URA is—		High[3] if monthly benefit at URA is greater than—
		From—	To—	
2011	562	562	2,376	2,376
2012	573	573	2,419	2,419
2013	583	583	2,465	2,465
2014	595	595	2,514	2,514
2015	608	608	2,567	2,567
2016	620	620	2,621	2,621
2017	633	633	2,676	2,676
2018	647	647	2,732	2,732
2019	660	660	2,790	2,790
2020 or later	674	674	2,848	2,848

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 13th day of November, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–28636 Filed 11–30–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID: DoD–2009–OS–0006]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule with request for comments; withdrawal.

SUMMARY: The Department of Defense is withdrawing the final rule published on October 29, 2009 (74 FR 55781–55782), which updated the Defense Logistics Agency Privacy Act Program Rules, 32 CFR part 323, by replacing the (k)(2) exemption with a (k)(5) exemption for their Defense Logistics Agency Criminal Incident Reporting System Records.

DATES: The final rule amending 32 CFR part 323 published on October 29, 2009 (74 FR 55781–55782) is withdrawn as of December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 703–696–5284.

Dated: November 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28527 Filed 11–30–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID: DoD–2009–OS–0008]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule with request for comments; withdrawal.

SUMMARY: The Department of Defense is withdrawing the final rule published on October 29, 2009 (74 FR 55782–55783), which claimed existing exemptions for the Defense Logistics Agency Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records when an exemption had been previously claimed for the records in another Privacy Act system of records.

DATES: The final rule amending 32 CFR part 323 published on October 29, 2009 (74 FR 55782–55783) is withdrawn as of December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 703–696–5284.

Dated: November 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28528 Filed 11–30–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0759]

Southern California Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation in 33 CFR 100.1101 for the San Diego Christmas Boat Parade of Lights on the San Diego Bay from 5:30 p.m. through 8 p.m. on December 13, 2009, and from 5:30 p.m. through 8 p.m. on December 20, 2009. This action is necessary to provide for the safety of the participants, crew, spectators, and other vessels and users of the waterway. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area, unless cleared for such entry by or through an official patrol vessel.

DATES: The regulation in 33 CFR 100.1101 will be enforced from 5:30 p.m. through 8 p.m. on December 13, 2009, and from 5:30 p.m. through 8 p.m. on December 20, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619–278–7262, e-mail *Kristen.a.beer@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual San Diego Christmas Boat Parade of Lights in 33 CFR 100.1101 on December 13, 2009, from 5:30 to 8 p.m. and on December 20, 2009, from 5:30 to 8 p.m.

Under the provisions of 33 CFR 100.1101, spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of ship parade participants or official patrol vessels, unless cleared for such entry by or through an official patrol vessel. When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1101 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the COTP or his designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: September 25, 2009.

T. H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–28719 Filed 11–30–09; 8:45 am]

BILLING CODE 9910–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0917]

Notice of Enforcement for Special Local Regulation; Mission Bay Parade of Lights; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Mission Bay Parade of Lights Special Local Regulation on Mission Bay, CA from 5 p.m. through 10 p.m. on 12 December 2009. This action is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and general users of the waterway. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared

for such entry by or through an official patrol vessel.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 5 p.m. through 10 p.m. on 12 December 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the special local regulation for the annual Mission Bay Parade of Lights in 33 CFR 100.1101 from 5 p.m. through 10 p.m. on 12 December 2009.

Under the provisions of 33 CFR 100.1101, a vessel may not enter the regulated area, unless it receives permission from the COTP. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of ship parade participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1101 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the COTP or his designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: November 13, 2009.

T. H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–28703 Filed 11–30–09; 8:45 am]

BILLING CODE 9910–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–1011]

Drawbridge Operating Regulations; Victoria Barge Canal, Bloomington, Texas

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad (UPRR) Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. The deviation is necessary to allow for replacement of the steel lift cables of the draw span.

DATES: This deviation is effective from 8 a.m. on Wednesday, December 9, 2009 until 6 p.m. on Wednesday, December 23, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–1011 and are available online by going to *www.regulations.gov,* inserting USCG–2009–1011 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Victoria County Navigation District has requested a temporary deviation from the operating schedule of the UPRR Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Texas. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge opens on signal for the passage of vessels. This deviation allows the draw span of the bridge to remain closed to navigation for 10 consecutive hours between 8 a.m. and 6 p.m. on intermittent days from December 9 through December 23, 2009. Uncontrollable variables such as material supply delays and inclement weather make it difficult to predict the exact dates that work can be conducted. Thus, the exact dates for the closures cannot be firmly scheduled. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System as soon as information pertaining to the exact closure dates becomes available. Navigation on the waterway consists mainly of tugs with tows. Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

No alternate routes are available. The closures are necessary for the replacement of the steel lift cables on the bridge. The Coast Guard will coordinate the closures with the commercial users of the waterway as exact closure dates are known.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 18, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–28704 Filed 11–30–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0920]

RIN 1625–AA00

Safety Zone; Naval Training December 2009 and January 2010; San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Pacific Ocean at the north end of San Clemente Island in support of Naval Live Fire Training. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective in the CFR on December 1, 2009 until January 31, 2010. This rule is effective with actual notice for purposes of enforcement on December 1, 2009 until January 31, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0920 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0920 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 e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@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 immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of any live fire training on the dates and times this rule will be in effect, and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date of this rule would expose mariners to the dangers posed by the training operations.

Background and Purpose

The Navy will be conducting intermittent training involving live fire exercises throughout December 2009 and January 2010. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from December 1, 2009 through January 31, 2010. The limits of the safety zone will be the navigable waters of the Pacific Ocean at the north end of San Clemente Island bounded by the following coordinates:

33°01.09′ N, 118°36.34′ W; 32°59.95′ N, 118°39.77′ W; running parallel to the shoreline at approximately 3 NM to 33°02.81′ N, 118°30.65′ W; 33°01.29′ N, 118°33.88′ W; along the shoreline to 33°01.09′ N, 118°36.34′ W.

This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his 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

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during specified times of training.

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 transit or anchor in a portion of the Pacific Ocean on the north end of San Clemente Island from December 1, 2009 until January 31, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced only during naval training exercises. Vessel traffic can pass safely around the zone. Traffic will be allowed to pass through the zone with the permission of the U.S. Navy or U.S. Coast Guard. Before the effective period, the Coast Guard will issue broadcast notice to mariners (BNM) alerts.

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 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary § 165.T11–252 to read as follows:

§ 165.T11–252 Safety Zone; Naval Training December 2009 and January 2010; San Clemente Island, CA.

(a) *Location.* The limits of the safety zone will be the navigable waters of the Pacific Ocean at the north end of San Clemente Island bounded by the following coordinates:

33°01.09′ N, 118°36.34′ W; 32°59.95′ N, 118°39.77′ W; running parallel to the shoreline at approximately 3 NM to 33°02.81′ N, 118°30.65′ W; 33°01.29′ N, 118°33.88′ W; along the shoreline to 33°01.09′ N, 118°36.34′ W.

(b) *Enforcement Period.* This section will be enforced from December 1, 2009 through January 31, 2010 during naval training exercises. If the training is concluded prior to the scheduled termination time, the Captain of the Port (COTP) will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section:

Designated representative, means any Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP; *non-authorized personnel and vessels*, means any civilian vessels, fishermen, divers, and swimmers.

(d) *Regulations.*

(1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the COTP San Diego or his designated representative.

(2) Non-authorized personnel and vessels requesting permission to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative. They may be contacted on VHF–FM Channel 16, or at telephone number (619) 278–7033.

(3) Naval units involved in the exercise are allowed in the confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

(5) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other Federal, State, or local agencies including the U.S. Navy.

Dated: November 12, 2009.

T. H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–28656 Filed 11–30–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0921]

RIN 1625-AA00

Safety Zone; San Clemente Island Northwest Harbor December and January Training; Northwest Harbor, San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Northwest Harbor of San Clemente Island in support of the Naval Underwater Detonation. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective in the CFR on December 1, 2009. This rule is effective with actual notice for purposes of enforcement on December 1, 2009 through January 31, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0921 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0921 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 e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@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 immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of any underwater detonation on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delay in the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

The Navy will be conducting intermittent training involving the detonation of military grade explosives underwater throughout December 2009 and January 2010. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from December 1, 2009 through January 31, 2010. The limits of the safety zone will be the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33°02′06″ N, 118°35′36″ W; 33°02′00″ N, 118°34′36″ W; thence along San Clemente Island shoreline to 33°02′06″ N, 118°35′36″ W. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his 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

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during the specified times while training is being conducted.

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 commercial and recreational vessels intending to transit or anchor in a portion of the Northwest Harbor of San Clemente Island from December 1, 2009 through January 31, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of the harbor, commercial and recreational vessels will be allowed to pass through the zone with the permission of the U. S. Navy or Coast

Guard COTP San Diego. Before the effective periods, the Coast Guard will issue broadcast notice to mariners (BNM) alerts and publish local notice to mariners (LNM).

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 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 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary § 165.T11–253 to read as follows:

§ 165.T11–253 Safety Zone; San Clemente Island Northwest Harbor December and January Training; Northwest Harbor, San Clemente Island, CA.

(a) *Location.* The limits of the safety zone will include the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33°02′06″ N, 118°35′36″ W; 33°02′00″ N, 118°34′36″ W; thence along the coast of San Clemente Island to 33°02′06″ N, 118°35′36″ W.

(b) *Enforcement Period.* This section will be enforced from December 1, 2009

through January 31, 2010 during naval training exercises. If the training is concluded prior to the scheduled termination time, the Captain of the Port (COTP) will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP.

(2) *Non-authorized personnel and vessels,* means any civilian boats, fishermen, divers, and swimmers.

(d) *Regulations.*

(1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the COTP San Diego or his designated representative.

(2) Non-authorized personnel and vessels requesting permission to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative. They may be contacted on VHF–FM Channel 16, or at telephone number (619) 278–7033.

(3) Naval units involved in the exercise are allowed in the confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

(5) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other federal, state, or local agencies and the U.S. Navy.

Dated: November 12, 2009.

T. H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–28714 Filed 11–30–09; 8:45 am]

BILLING CODE 9910–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2009–7 CRB NCBRA]

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment ("COLA") of –0.2% in the royalty rates that colleges, universities, and other nonprofit educational institutions that are not affiliated with National Public Radio pay for the use of published nondramatic musical compositions in the ASCAP, BMI and SESAC repertories. The COLA is based on the change in the Consumer Price Index from October 2008 to October 2009.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist. *Telephone:* (202) 707–7658. *E-mail: crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR parts 253 and 381.

Final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works for the license period beginning January 1, 2008, and ending December 31, 2012, were published in the **Federal Register** on November 30, 2007. *See* 72 FR 67646. Pursuant to these regulations, on or before December 1 of each year the Judges shall publish a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items ("CPI–U")) during the period from the most recent index published prior to the previous notice, to the most recent index published prior to December 1 of that year. *See* 37 CFR 381.10(a). The regulations also require that the Judges publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the CPI–U. 37 CFR 381.10(a)(requiring publication of a revised schedule of rates for 37 CFR 381.5). Accordingly, the Judges are hereby announcing the change in the CPI–U and applying the annual COLA to the rates set out in 37 CFR 381.5(c).

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2008, to the most recent index published before December 1, 2009, is –0.2%.[1] Rounding to the nearest dollar,[2] the royalty rates for the performance of published nondramatic musical compositions in the repertories of ASCAP, BMI, and SESAC are $297, $297, and $120,[3] respectively.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Final Regulations

■ For the reasons set forth in the preamble, Part 381 of title 37 of the Code of Federal Regulations is amended to read as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1), and 803.

■ 2. Section 381.5 is amended by revising paragraphs (c)(1) and (c)(2) as follows:

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $297 annually.

(2) For all such compositions in the repertory of BMI, $297 annually.

* * * * *

Dated: November 23, 2009.

James Scott Sledge,

Chief, U.S. Copyright Royalty Judge.

[FR Doc. E9–28386 Filed 11–30–09; 8:45 am]

BILLING CODE 1410–72–P

[1] The most recent CPI–U figures are published in November of each year and use the period 1982–1984 to establish a reference base of 100. The index for October 2008 was 218.783, while the figure for October 2009 was 215.969.

[2] *See* 37 CFR 381.10(b) (adjusted royalty rates shall be "fixed at the nearest dollar").

[3] The 2009 rate for SESAC remains the same as it was in 2008.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AN39

Servicemembers' Group Life Insurance–Dependent Coverage

Correction

In rule document E9–27644 beginning on page 59478 in the issue of Wednesday, November 18, 2009, make the following correction:.

§9.1 [Corrected]

On page 59479, in §9.1, in the second column, in paragraph (k)(1)(ii)(B), in the first line, "Ff" should read "If".

[FR Doc. Z9–27644 Filed 11–30–09; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2456; MB Docket No. 09–170; RM–11567]

Television Broadcasting Services; Fort Myers, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Fort Myers Broadcasting Company, the licensee of WINK–TV, channel 9, Fort Myers, Florida requesting the substitution of channel 50 for channel 9 at Fort Myers.

DATES: This rule is effective December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09–170, adopted November 19, 2009, and released November 20, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida, is amended by adding channel 50 and removing channel 9 at Fort Myers.

Federal Communications Commission.

James J. Brown,

Deputy Chief, Video Division, Media Bureau.

[FR Doc. E9–28693 Filed 11–30–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206144 9697 02]

RIN 0648–XS73

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the States of Connecticut and Florida are transferring commercial bluefish quota to the State of New York from their 2009 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quotas for New York, Connecticut, and Florida.

DATES: Effective November 30, 2009 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, (978) 281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Connecticut and Florida have agreed to transfer 75,000 lb (34,019 kg) and 200,000 lb (90,718 kg), respectively, of their 2009 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2009 are: New York, 1,401,384 lb (635,657 kg); Connecticut, 48,219 lb (21,872 kg); and Florida, 778,869 lb (353,289 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 24, 2009

Emily H. Menashes,

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

[FR Doc. E9–28759 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 229
Tuesday, December 1, 2009

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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1261

RIN 2590–AA03

Federal Home Loan Bank Boards of Directors: Eligibility and Elections

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its regulations relating to the process by which successor directors are chosen after a Federal Home Loan Bank (Bank) directorship is redesignated to a new state prior to the end of its term as a result of the annual designation of Bank directorships. The current rules deem the redesignation to create a vacancy on the board, which is filled by the remaining directors. The proposed amendment would deem the redesignation to cause the original directorship to terminate and a new directorship to be created, which would then be filled by an election of the members.

DATES: Written comments on the proposed amendment must be received on or before December 31, 2009. For additional information, *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed amendment, identified by regulatory information number "RIN 2590–AA03," by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA03, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590–AA03, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov*. Please include "RIN 2590–AA03" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Comments/RIN 2590–AA03.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Associate General Counsel, *janice.kaye@fhfa.gov*, (202) 343–1514 or Patricia L. Sweeney, Management Analyst, *pat.sweeney@fhfa.gov*, (202) 408–2872, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed amendment and will take all comments into consideration in determining whether further modifications are appropriate. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, established FHFA as an independent agency of the Federal Government to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Banks (collectively, the Regulated Entities). FHFA ensures that the Regulated Entities operate in a safe and sound manner, including being adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with applicable statutes, rules, regulations, and orders; and carry out their missions through authorized activities. FHFA also ensures that the activities and operations of the Regulated Entities are consistent with the public interest.

Section 1202 of HERA amended section 7 of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1427, which governs the eligibility and election of individuals to serve on the boards of directors of the 12 Banks. FHFA published an interim final rule and request for comments to implement section 1202 of HERA. *See* 73 FR 55710 (September 26, 2008). After considering the comments it received, FHFA published a final rule. *See* 74 FR 51452 (October 7, 2009). In the supplementary information to that final rule, FHFA noted that it had identified an issue relating to the redesignation of directorships to another state prior to the end of their terms of office, which it planned to address in a separate rulemaking because it would involve a change of agency policy. This proposed rule addresses that issue.

III. Discussion of the Proposed Rule

With certain limited exceptions, the Bank Act requires that member directorships be allocated among the states of each Bank district in proportion to the amount of Bank stock owned by the members located in each state, and requires the Director to conduct an annual "designation of directorships" to allocate each member directorship to a particular state. If the amount of Bank stock owned by members in one state changes relative to the amount of stock owned by members in another state from one year to the next, some member directorships may be re-allocated to another state, even if their terms have not expired. Under the rules of the Federal Housing Finance Board (Finance Board), a redesignated directorship with one or more years of its term remaining continued to exist, but became vacant as of the end of the

year because the incumbent no longer satisfied the statutory requirement that each member director be an officer or director of a member located in the state represented by the directorship. The board of directors of the Bank would elect a replacement director from the newly designated state to fill the directorship for the remainder of the term of office. Section 1261.4(d) of the final rule carried forward the Finance Board practice, although the **SUPPLEMENTARY INFORMATION** noted that FHFA intended to address this issue in a separate rulemaking.

Notwithstanding the Finance Board's policy, FHFA believes that the relevant provisions of the Bank Act also would allow FHFA to deem any redesignated member directorship to terminate as of the end of the year in which it is designated to another state. Under that interpretation, FHFA would create a new directorship to replace the terminated directorship and would allocate the new directorship to the state gaining a directorship under the annual designation of directorships. The principal effect of such a change in agency policy would be that the newly created directorship would be filled by an election of the members in the newly designated state, rather than by the Bank's board of directors. FHFA anticipates that any such newly created directorship would be assigned a shortened term of office that corresponds to the amount of time remaining on the term of office for the terminated directorship. Although a directorship ordinarily has a term of four years, assigning a four year term to a newly created directorship would disrupt the existing staggering of the terms on the board of the Bank. Section 7(d) of the Bank Act, however, authorizes the Director to adjust the terms of any directors "first elected after the date of enactment" of HERA to ensure that the board remains appropriately staggered. Because any individual elected by the members to fill such a new directorship would be the first to be elected to that directorship, FHFA believes that section 7(d) authorizes the Director to adjust the term of any such directorships to correspond to the amount of time remaining on the term of the previous directorship. Doing so would maintain the appropriate staggering of the directorships, and FHFA believes that this treatment better serves both the language in section 7(d) and the intent of Congress.

In order to implement this change in policy, FHFA is proposing to modify or eliminate several provisions in part 1261 of its regulations, as those provisions have been most recently amended by the final rule published on October 7, 2009 at 74 FR 51452. Specifically, FHFA is proposing to make the following changes to part 1261:

1. All but the first sentence in § 1261.3(d) would be removed because it no longer would be applicable. The removed language provides that a seat redesignated to another state will be deemed vacant rather than extinguished.

2. New § 1261.3(e) would provide that, in the event of redesignation of a member directorship from one state to another, the directorship in the previous state would terminate, and a new directorship would begin in the successor state, which would be filled by vote of the members in that state and would have a term equal in length to the remaining term of the terminated directorship, in order to maintain the staggering of director terms.

3. Section 1261.4(e)(1) would be revised in two respects. All references to "redesignation" of a directorship from one state to another would be removed, because that is not what occurs when a directorship ceases in one state at the time that a directorship begins in another state. In addition, the last sentence would be deleted. That sentence provides that any directorship that ceases in one state before its time expires, because it is either eliminated or moved to another state, shall not be a full-term directorship that counts toward the three-term limit provided in section 7(d) of the Bank Act. Under section 7(d), a term is counted for term limits if a director was elected to a full term, regardless of whether he or she serves a full term.

4. Section 1261.4(e)(2) would be removed because it no longer would be applicable. It is the paragraph that provides that a relocated directorship will be filled by the board of directors.

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed amendment as it relates to the Banks.

IV. Paperwork Reduction Act

The proposed amendment does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed amendment under the Regulatory Flexibility Act. FHFA certifies that the proposed amendment is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for the purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1261

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, under the authority of 12 U.S.C. 1426, 1427, 1432, 4511 and 4526, the Federal Housing Finance Agency proposes to amend Subpart A of part 1261 of Title 12 CFR Chapter XII as follows:

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

Subpart A—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

1. The authority citation for part 1261 continues to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

2. Amend § 1261.3 by revising paragraph (d) and adding new paragraph (e) to read as follows:

§ 1261.3 Designation of member directorships.

* * * * *

(d) *Notification.* On or before June 1 of each year, FHFA will notify each

Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting state in the Bank district.

(e) *Change of state.* If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different State, that directorship shall be deemed to terminate in the previous State as of December 31 of that year, and a new directorship to begin in the succeeding State as of January 1 of the next year. The new directorship shall be filled by vote of the members in the succeeding State and, in order to maintain the staggered terms of directorships, shall have a term equal to the remaining term of the previous directorship if it had not been redesignated to another State.

3. Amend § 1261.4 by revising paragraph (e) to read as follows:

§ 1261.4 Director eligibility.

* * * * *

(e) *Loss of eligibility.* A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

Dated: November 20, 2009..

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. E9–28716 Filed 11–30–09; 8:45 am]

BILLING CODE 8070–$$–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: U.S. Small Business Administration.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) announces it is holding a public meeting in Washington, DC on the topic of the proposed changes to the 8(a) Business Development (BD) Program Regulations and Small Business Size Regulations. Testimony and comments presented at the public comment meetings will become part of the administrative record as comments addressing the proposed changes to the regulations pertaining to the 8(a) BD program and small business size standards. Additional public meetings will be scheduled prior to the end of the comment period for the proposed rule-making.

DATES: The public meetings will be held on Thursday, December 10, 2009, from 9 a.m. to 4 p.m.; and Friday, December 11, 2009, from 9 a.m. to 4 p.m. Prospective participants must pre-register for either or both sessions on or before Monday, December 7, 2009, 5 p.m., Eastern Standard Time.

ADDRESSES: The public meetings will be conducted at SBA Headquarters in Washington DC in the Eisenhower Conference room located on the 2nd floor.

1. SBA is located at 409 3rd Street, SW., Washington DC 20416.

2. Send pre-registration requests to attend and/or testify to Ms. Latrice Andrews, SBA's Office of Business Development at *Latrice.Andrews@sba.gov* or by facsimile to (202) 481–4042.

3. Send all written comments to Mr. Joseph Loddo, Associate Administrator for Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

4. Visitors to SBA will be subject to a security screening and will be required to present identification.

FOR FURTHER INFORMATION CONTACT: If you have any questions on this proposed rulemaking, call or e-mail LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205–5852, or *leann.delaney@sba.gov*. If you have any questions about registering or attending the public meeting please contact Ms. Latrice Andrews, SBA's Office of Business Development at (202) 205–6031, or *latrice.andrews@SBA.gov*, or by facsimile to (202) 481–4042.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2009 (74 FR 55694–01), SBA issued a Notice of Proposed Rulemaking (NPRM). In that document, SBA proposed to make a number of changes to the regulations governing the 8(a) BD Program Regulations and several changes to its Small Business Size Regulations. Some of the changes involve technical issues. Other changes are more substantive and result from SBA's experience in implementing the current regulations. In addition to written comments, SBA is requesting oral comments on the various approaches for the proposed changes.

II. Public Hearings

The public meeting format will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony. SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the public meetings is to allow the general public to comment on SBA's proposed rulemaking. SBA requests that the comments focus on the proposed changes as stated in the NPRM. SBA requests that commentors do not raise issues pertaining to other SBA small business programs. Presenters may provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

SBA will hold additional public meetings before the close of the comment period for this rulemaking.

III. Registration

Any individual interested in attending and making an oral presentation shall pre-register in advance with SBA. Registration requests must be received by SBA no later than 5 p.m., Monday, December 7, 2009. Please contact Ms. Latrice Andrews of SBA's Office of Business Development in writing at *Latrice.Andrews@sba.gov* or by facsimile to (202) 481–4042. Please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, E-mail address, and Fax number. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will send confirmation of registration in writing to the presenters and attendees.

IV. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Ms. Latrice Andrews at the telephone number or e-mail address indicated under the **FOR**

FURTHER INFORMATION CONTACT section of this notice.

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

Dated: November 24, 2009.

Joseph Jordan,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. E9–28664 Filed 11–25–09; 4:15 pm]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1108; Directorate Identifier 2009–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> It was noticed in production that in the area between frame (FR) C53.9 and FR C55 RH [right-hand], the distance between the route 9R of the In-Flight Entertainment system and the wire harness for the Lower Deck-Mobile Crew Rest system provisions is too small.
>
> This limited distance may cause chafing between the affected electrical harness 6581VB and the harness 5495VB or 6938VB.
>
> This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.
>
> * * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 15, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1108; Directorate Identifier 2009–NM–131–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0076, dated April 6, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> It was noticed in production that in the area between frame (FR) C53.9 and FR C55 RH [right-hand], the distance between the route 9R of the In-Flight Entertainment system and the wire harness for the Lower Deck-Mobile Crew Rest system provisions is too small.
>
> This limited distance may cause chafing between the affected electrical harness 6581VB and the harness 5495VB or 6938VB.
>
> This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.
>
> For the reasons described above, this AD requires the installation of a stirrup on the terminal block 5507VT between FR53.9 and FR54, and the re-routing of the wiring route 9R.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–92–3080, dated November 12, 2008; and Mandatory Service Bulletin A340–92–4080, dated November 12, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified

of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **Note** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 43 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $66 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $13,158, or $306 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2009–1108; Directorate Identifier 2009–NM–131–AD.

Comments Due Date

(a) We must receive comments by January 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, –343 series airplanes; and Airbus Model A340–311, –312, and –313 series airplanes, certificated in any category; all manufacturer serial numbers; modified in production by modifications identified in both paragraphs (c)(1)(i) and (c)(1)(ii) of this AD; excluding those on which Airbus modification 57744 has been embodied in production.

(i) Airbus modification 40379; and

(ii) One of the following Airbus modifications, as applicable:

(A) For all models except Model A340–311, A340–312, and A340–313 airplanes: Modification 49894, 51304, 52048, 52712, 53559, 53732, 54115, 55632, or 55722.

(B) For Model A340–311, A340–312, and A340–313 series airplanes: Modification 51603, 53400, or 55024.

Subject

(d) Air Transport Association (ATA) of America Code 92.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It was noticed in production that in the area between frame (FR) C53.9 and FR C55 RH [right-hand], the distance between the route 9R of the In-Flight Entertainment system and the wire harness for the Lower Deck-Mobile Crew Rest system provisions is too small.

This limited distance may cause chafing between the affected electrical harness 6581VB and the harness 5495VB or 6938VB.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the installation of a stirrup on the terminal block 5507VT between FR53.9 and FR54, and the re-routing of the wiring route 9R.

Actions and Compliance

(f) Within 24 months after the effective date of this AD, unless already done: Install a stirrup on the terminal block 5507VT between FR53.9 and FR54 and modify the wiring route 9R in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3080, dated November 12, 2008; or Airbus Mandatory Service Bulletin A340–92–4080, dated November 12, 2008; as applicable.

FAA AD Differences

Note 1: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using

any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0076, dated April 6, 2009; Airbus Mandatory Service Bulletin A330–92–3080, dated November 12, 2008; and Airbus Mandatory Service Bulletin A340–92–4080, dated November 12, 2008; for related information.

Issued in Renton, Washington, on November 19, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28799 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1107; Directorate Identifier 2009–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 Series Airplanes and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

[European Aviation Safety Agency (EASA)] AD 2006–0191 [which corresponds to FAA AD 2006–21–08] required the installation of new heat shield panels with drainage over the air conditioning packs in order to avoid an undetected fire in this zone following a fuel leak from the centre tank.

These new heat shield panels have holes. In case of fuel leaking through these holes from the centre tank, any fuel vapour may develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.* * *

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 15, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1107; Directorate Identifier 2009–NM–138–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0150, dated July 9, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

* * * EASA AD 2006–0191 [which corresponds to FAA AD 2006–21–08] required the installation of new heat shield panels with drainage over the air conditioning packs in order to avoid an undetected fire in this zone following a fuel leak from the centre tank.

These new heat shield panels have holes. In case of fuel leaking through these holes from the centre tank, any fuel vapour may develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane. Airbus has developed a repair solution for these holes to prevent a fuel vapour ignition source in this area and improve the protection of the hot air equipment.

[T]his AD requires the installation of plugs on the heat shield panels of the Left Hand (LH) and Right Hand (RH) Air Conditioning packs.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–21–3148, including Appendix 1, dated January 30, 2009; and Mandatory Service Bulletin A340–21–4147, including Appendix 1, dated January 30, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **Note** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 12 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,880, or $240 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2009–1107; Directorate Identifier 2009–NM–138–AD.

Comments Due Date

(a) We must receive comments by January 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category; on which Airbus Modification 49520 has been embodied in production, or on which Airbus Service Bulletin A330–21–3096, Revision 01, or Airbus Service Bulletin A340–21–4107, Revision 01, has been embodied in service; except those airplanes on which Airbus Modification 58551 has been embodied in production.

(1) Airbus Model A330–201, –202, –203, –223, and –243 airplanes, all manufacturer serial numbers.

(2) Airbus Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air conditioning.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

EASA [European Aviation Safety Agency] AD 2006–0191 [which corresponds to FAA AD 2006–21–08] required the installation of new heat shield panels with drainage over the air conditioning packs in order to avoid an undetected fire in this zone following a fuel leak from the centre tank.

These new heat shield panels have holes. In case of fuel leaking through these holes from the centre tank, any fuel vapour may develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane. Airbus has developed a repair solution for these holes to prevent a fuel vapour ignition source in this area and improve the protection of the hot air equipment.

[T]his AD requires the installation of plugs on the heat shield panels of the Left Hand (LH) and Right Hand (RH) Air Conditioning packs.

Actions and Compliance

(f) Unless already done, within 24 months after the effective date of this AD: Plug the six receptacle holes on the heat shield of the left-hand air conditioning pack and plug the four receptacle holes on the heat shield of the right-hand air conditioning pack, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–21–3148, dated January 30, 2009 (for Model A330–201, –202, –203, –223, and –243 series airplanes); or Airbus

Mandatory Service Bulletin A340–21–4147, dated January 30, 2009 (for Model A340–211, –212, and –213 series airplanes; and Model A340–311, –312, and –313 series airplanes); as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0150, dated July 9, 2009; Airbus Mandatory Service Bulletin A330–21–3148, dated January 30, 2009; and Airbus Mandatory Service Bulletin A340–21–4147, dated January 30, 2009; for related information.

Issued in Renton, Washington, on November 19, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28800 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

[Docket No. USCBP–2009–0035]

RIN 1651–AA79

Further Consolidation of CBP Drawback Centers

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to reflect a planned closing of the CBP drawback center at the Port of Los Angeles-Long Beach ("Los Angeles"), California. CBP believes that the further consolidation in the number of drawback processing centers from five to four is necessary because of decreases in claim filings and drawback claim values at the Los Angeles center. This proposed closure of this drawback center is intended to conserve resources, increase efficiency, exercise fiscal responsibility, and promote greater uniformity in the processing of drawback claims.

DATES: Written comments must be received on or before December 31, 2009.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP 2009–0035.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229–1179.

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. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Christine Kegley, Import Operations Branch, Office of Field Operations, Customs and Border Protection, (202) 344–2319.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

To conserve resources, increase efficiency, exercise fiscal responsibility, and promote greater uniformity in the processing of drawback claims, U.S. Customs Service (now CBP) published on January 24, 2003, Treasury Decision (T.D.) 03–05 in the **Federal Register** (68 FR 3381), which consolidated the drawback centers from eight to the current five by closing the centers located in Miami, Florida; New Orleans, Louisiana; and Boston, Massachusetts and redirecting that all claims be filed in the remaining five centers located in Chicago, Illinois; Houston, Texas; New York, New York; Los Angeles-Long Beach ("Los Angeles"), California; and San Francisco, California. Additionally, T.D. 03–05 noted that the agency would re-evaluate further consolidations as needed. In 2008, CBP further evaluated the number of drawback claims processed at its remaining drawback centers. Based on this evaluation, CBP proposes to further consolidate the drawback centers by closing the Los Angeles, California Drawback Center to achieve its goal of four drawback centers

to cover its key geographical areas of North, South, East, and West.

On May 27, 2008 and April 29, 2009, in accordance with 19 U.S.C. 2075(g)(2)(C), the Homeland Security Act of 2002 (6 U.S.C. 217(b)(2)), and the SAFE Port Act of 2006 (6 U.S.C. 115(D)), CBP notified the House Committee on Ways & Means, the Senate Committee on Finance, and House Committee on Homeland Security of its intent to close the Los Angeles Drawback Center. The Congressional notification period expired July 27, 2009, and CBP did not receive from Congress any objections to the proposed closing of the Los Angeles Drawback Center. Out of the remaining five drawback centers, Los Angeles receives and processes the fewest claims. Drawback statistics from fiscal years 2006, 2007, and 2008 reveal that only 8.4, 9.01, and 7.49 percent of all claims were filed in Los Angeles. Moreover, the claims paid out by the Los Angeles center during those years represented only 2.6, 2.42, and 3.15 percent of all drawback claims paid nationally. Because of the decrease in the number of drawback claims filed and processed at the Los Angeles Drawback Center since 2003 and the small number of claims filed overall in the Los Angeles center, CBP is proposing to close this drawback center, thus leaving four centers located in its key geographical areas of Chicago, Houston, New York, and San Francisco. CBP believes that closing the Los Angeles Drawback Center is required in order to attain CBP's original goals of conserving resources, increasing efficiency, exercising fiscal responsibility, and promoting greater uniformity in the processing of drawback claims.

If this proposal is adopted, then future claims will be required to be sent to one of the four remaining drawback centers located in Chicago, Houston, New York, or San Francisco. All remaining claims that were filed at the Los Angeles Drawback Center prior to closure that have not been liquidated and still require CBP review will be forwarded to the San Francisco Drawback Center for final processing.

In order to file a drawback claim at one of the four remaining centers, persons must ensure that all license/permit and bond requirements are met in accordance with the regulations. *See* 19 CFR Parts 111 and 113 of the CBP regulations.

Explanation of Amendment

Section 101.3(b)(1) of the CBP regulations lists all the CBP ports of entry. Five ports are denoted with a "plus" sign that designates their status as a "Drawback unit/office." This document proposes to amend § 101.3(b)(1) to remove the "plus" sign in § 101.3(b)(1) next to the port listing for Los Angeles-Long Beach.

Inapplicability of the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Although this document is being issued with notice for public comment, it is noted that this proposal, which relates to agency management and organization, does not directly regulate small entities and is not subject to the notice and public procedure requirements of 5 U.S.C. 553. The proposed change is part of CBP's continuing program to conserve resources, increase efficiency, and exercise fiscal responsibility, and to provide better service to importers and the general public.

Because this proposal does not directly regulate small entities and because CBP estimates that virtually all transactions are accomplished through either electronic or mailed submissions, and any follow-up is handled by telephone, fax and/or email, the physical location of a drawback center is largely irrelevant to the process. Accordingly, CBP does not believe that this rule will have a significant economic impact on a substantial number of small entities. However, CBP welcomes comments on this assumption. If we do not receive any comments to the contrary, we may certify in the final rule that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This proposed rule does not meet the criteria to be considered an economically "significant regulatory action" under Executive Order 12866 because it will not result in the expenditure of over $100 million in any one year. The Office of Management and Budget (OMB) has not reviewed this proposed rule under that Order.

As stated previously, CBP estimates that virtually all of follow-up transactions are through fax, email, or telephone; it is a very rare occasion for any member of the public to visit a drawback center. Thus, CBP anticipates that this rule will have *de minimus* costs to the public as a result of the further consolidation of drawback centers.

Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to § 403(l) of the Homeland Security Act of 2002. Accordingly, this notice of proposed rulemaking to amend such regulations may be signed by the Secretary of Homeland Security (or her delegate).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry.

Proposed Amendment to the Regulations

For the reasons set forth above, CBP proposes to amend part 101 of the CBP regulations (19 CFR Part 101) as follows:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * *

§ 101.3—[Amended].

2. In § 101.3, the table in paragraph (b)(1) is amended by removing the plus sign in the "Ports of entry" column before the column listing for "Los Angeles-Long Beach" under the state of California.

Dated: November 25, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E9–28674 Filed 11–30–09; 8:45 am]

BILLING CODE 9111–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0013; FRL–9087–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Redesignation Request and Maintenance Plan for Salt Lake County; Utah County; Ogden City PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove the State of Utah's requests under the Clean Air Act to redesignate the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas to attainment, and to approve some and disapprove other associated State Implementation Plan (SIP) revisions. The Governor of Utah submitted the redesignation requests and associated SIP revisions on September 2, 2005. EPA is proposing to disapprove the redesignation requests because the areas do not meet all Clean Air Act requirements for redesignation. Regarding the SIP revisions, EPA is proposing to approve several definitions in Utah rule R307–101–2 ("Definitions") and portions of Utah rule R307–302 ("Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves"). EPA is proposing to approve these SIP revisions because they meet Clean Air Act requirements. EPA is proposing to disapprove the maintenance plans for Salt Lake County, Utah County, and Ogden City, including the motor vehicle emissions budgets in those plans. EPA is also proposing to disapprove all other SIP revisions that the Governor submitted on September 2, 2005 that EPA is not proposing to approve, except that EPA is proposing to take no action on revised Utah rule R307–310 ("Salt Lake County: Trading of Emission Budgets for Transportation Conformity"). EPA is proposing to disapprove these SIP elements because they do not meet Clean Air Act requirements. EPA is proposing to take no action on Utah's revised R307–310 because acting on the revised rule would serve no purpose. EPA is also proposing that it need not act on certain revisions to the Utah PM_{10} SIP that the Governor submitted on July 11, 1996 and June 2, 1997. These revisions have been superseded by subsequent revisions to the Utah PM_{10} SIP.

This action is being taken under sections 107, 110, and 175A of the Clean Air Act.

DATES: Comments must be received on or before December 31, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0013, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I, "General Information," of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that, if at all possible, you contact the individual listed in **FOR FURTHER INFORMATION CONTACT** to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Catherine Roberts, Air Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–6025, *roberts.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

For the purpose of this document, the following definitions apply:

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

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

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

(iv) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

(v) The phrase PM_{10} means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background of State Submittal

This proposal addresses Clean Air Act (CAA) requirements for the pollutant PM_{10} as they apply to three adjacent areas in the greater Salt Lake City metropolitan area: Salt Lake County, Utah County, and Ogden City. As described below, Utah has asked EPA to approve changes to the CAA plans for each of these areas and change the areas' planning status under the Act from nonattainment to attainment.

Under section 109 of the Act, EPA has promulgated national ambient air quality standards (NAAQS) for certain pollutants, including PM_{10} (40 CFR 50.6). NAAQS define levels of air quality which the Administrator judges are necessary to protect public health and welfare (40 CFR 50.2(b)). Once EPA promulgates a NAAQS, section 107 of the Act specifies a process for the designation of all areas within a state, generally as either an attainment area (an area attaining the NAAQS) or as a nonattainment area (an area not attaining the NAAQS, or that contributes to nonattainment of the NAAQS in a nearby area). For PM_{10}, certain areas have also been designated "unclassifiable." These various designations, in turn, trigger certain state planning requirements.

For all areas, regardless of designation, section 110 of the Act requires that each state adopt and submit for EPA approval a plan to provide for implementation, maintenance, and enforcement of the NAAQS. This plan is commonly referred to as a State Implementation Plan (SIP). Section 110 contains requirements that any SIP must meet to gain EPA approval.[1] For nonattainment areas, SIPs must meet additional requirements contained in part D of Title I of the Act. Usually, SIPs include measures to control emissions of air pollutants from various sources, including stationary, mobile, and area sources. For example, a SIP may specify emission limits at power plants or other industrial sources.

Under the 1990 amendments to the CAA, Salt Lake and Utah Counties were designated nonattainment for PM_{10} and classified as moderate areas by operation of law as of November 15, 1990 (56 FR 56694, 56840, November 6, 1991). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4, part D, Title I of the Act. As described in sections 110 and 172 of the Act, areas designated nonattainment based on a failure to meet the PM_{10} NAAQS are required to develop SIPs with sufficient control measures to expeditiously attain and maintain the NAAQS.

On July 8, 1994, EPA approved the PM_{10} SIP for Salt Lake and Utah Counties (59 FR 35036). The SIP included a demonstration of attainment and various control measures, including emission limits at stationary sources. Because emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) contribute significantly to the PM_{10} problem in the area, the SIP included limits on emissions of SO_2 and NO_X in addition to emissions of PM_{10}.

On December 6, 1999, EPA approved revisions to the road salting and sanding programs for the two counties (64 FR 68031). On July 1, 2002, EPA approved additional revisions to the Salt Lake County PM_{10} SIP that allowed trading between PM_{10} and NO_X motor vehicle emissions budgets for transportation conformity determinations (67 FR 44065). On December 23, 2002, EPA approved additional revisions to the Utah County PM_{10} SIP that updated attainment demonstrations, established new 24-hour emission limits for major stationary sources, and established new motor vehicle emission budgets (67 FR 78181).

On September 26, 1995, EPA designated Ogden City as nonattainment for PM_{10} and classified the area as moderate under section 107(d)(3) of the Act (60 FR 38726, July 28, 1995). EPA has not approved a PM_{10} attainment demonstration for Ogden City.[2]

Under section 107(d)(3)(D) of the Act, a state may ask EPA to change the designation of an area. On September 2, 2005, Utah requested that EPA redesignate Salt Lake County, Utah County, and Ogden City from nonattainment to attainment for PM_{10}. Section 175A of the Act requires that a state include with its redesignation request a maintenance plan that provides for maintenance of the NAAQS for at least 10 years after redesignation. On September 2, 2005, Utah also submitted maintenance plans for each of the three areas (Utah SIP sections IX.A.10, 11, and 12). While the three maintenance plans are mostly identical, some elements are different—for example, they contain different emission limits for stationary sources

[1] EPA's approval of a SIP has several consequences. For example, after EPA approves a SIP, EPA and citizens may enforce the SIP's requirements in Federal court under section 113 and section 304 of the Act; in other words, EPA's approval of a SIP makes the SIP "Federally enforceable." Also, once EPA has approved a SIP, a state cannot unilaterally change the Federally enforceable version of the SIP. Instead, the state must first submit a SIP revision to EPA and gain EPA's approval of that revision.

[2] Under EPA's "Clean Data Policy," EPA may determine that Ogden City does not need to submit an attainment demonstration or certain other SIP elements (See, e.g., 71 FR 63642, October, 30, 2006; 71 FR 13021, March 14, 2006; 71 FR 6352, February 8, 2006; 71 FR 27440, May 11, 2006; and 72 FR 14422, March 28, 2007). We will address this issue in a separate action. Because we are proposing to disapprove the redesignation request for Ogden City, on unrelated grounds, we need not address this issue further in this action.

and different monitoring requirements. Finally, on September 2, 2005, Utah submitted other revisions to the current EPA-approved Federally enforceable SIP (hereafter referred to as "EPA-approved SIP"). As described in footnote 1, the Act allows states to adopt and submit revisions to their SIPs, but the revisions must meet certain CAA requirements before EPA will approve them. The following are the other SIP revisions that Utah submitted to us for approval on September 2, 2005:

1. Revised Sections IX.H.1 through 4 of the Utah PM_{10} SIP. These sections contain limits and requirements for stationary sources in Salt Lake County and Utah County. Utah made numerous changes to the EPA-approved version of sections IX.H.1 through 3, including deletion of some emission limits, changes to others, and changes to methods for determining compliance with emission limits. The PM_{10} maintenance plans for Salt Lake County and Utah County rely on and assume EPA approval of revised sections IX.H.1 through 3. As a matter of State law, the EPA-approved versions of sections IX.H.1 through 3 no longer exist. Section IX.H.4 is an entirely new section that contains procedures for establishing alternative stationary source requirements.

2. Revised Utah rules R307–110–10 and 110–17, which incorporate by reference into Utah's rules the PM_{10} maintenance plans for Salt Lake County, Utah County, and Ogden City, and the stationary source provisions in revised sections IX.H.1 through 4, respectively.

3. Revised Utah rule R307–101–2, which contains Utah's set of generally applicable definitions for air rules in the State. Utah revised, removed, and added certain definitions.

4. Revised Utah rule R307–165, which contains generic emission testing requirements for all areas of the State.

5. Revised Utah rule R307–302, which contains provisions related to residential fireplaces and stoves in Davis, Salt Lake, Utah, and Weber Counties.

6. Revised Utah rule R307–305, which contains generic emission standards for sources in PM_{10} nonattainment and maintenance areas.

7. Revised Utah rule R307–306, which contains provisions related to abrasive blasting in PM_{10} nonattainment and maintenance areas.

8. Revised Utah rule R307–309, which contains provisions related to fugitive emissions and fugitive dust in PM_{10} nonattainment and maintenance areas.

9. Revised Utah rule R307–310, which contains provisions related to trading between emissions budgets for PM_{10} transportation conformity in Salt Lake County.

In addition to the foregoing, in 1996 and 1997, Utah submitted revisions to the Salt Lake County and Utah County PM_{10} SIPs. Specifically, on July 11, 1996, Utah submitted revisions to section 9.A and appendix A, 2.2.A, of the PM_{10} SIP, and to Utah rule R307–2–1, to account for proposed changes to emission limits t the former Amoco refinery in Salt Lake County.[3] We have not acted on those revisions. The former Amoco refinery is now owned by Tesoro, and the proposed SIP revisions that Utah submitted on September 2, 2005 contain a new SIP section IX.H.2.l and limits for Tesoro that replace Utah's prior section 2.2.A and limits for Amoco. Because Utah replaced the emission limits for Amoco with emission limits for Tesoro as a matter of State law, and submitted the Tesoro provisions to us for approval in 2005, we consider the July 11, 1996 submittal to be superseded and effectively withdrawn. Thus, we are proposing that no action is required on Utah's July 11, 1996 submittal.

Similarly, on June 2, 1997, Utah submitted revisions to sections IX.A and H of the PM_{10} SIP, and to Utah rules R307–2–10 and R307–2–17,[4] to account for proposed changes to emissions limits for various stationary sources in Utah County, and particularly Geneva Steel. We have not acted on those revisions. On July 3, 2002, Utah submitted new SIP sections IX.A and H with new limits for stationary sources in Utah County. These new sections IX.A and H completely replaced as a matter of State law the versions of sections IX.A and H that Utah submitted on June 2, 1997. On December 23, 2002, in an action we reference above, we approved the new sections IX.A and H that Utah submitted on July 3, 2002, along with accompanying changes to Utah rules R307–110–10 and R307–110–17 (67 FR 78181). Also, the proposed SIP revisions that Utah submitted on September 2, 2005 contain further proposed revisions to sections IX.A and H. Because Utah completely replaced sections IX.A and H as contained in Utah's June 2, 1997 SIP submittal with new sections IX.A and H as a matter of State law, and submitted the replacement versions of those sections to us in 2002 and 2005, we consider the June 2, 1997 submittal to be superseded and effectively withdrawn. Thus, we are proposing that no action is required on Utah's June 2, 1997 submittal.

[3] Utah subsequently changed the numbering of its SIP and rules. Section 9 is now section IX. Appendix A is now section IX.H. R307–2–1 is now R307–110–1.

[4] Utah subsequently changed the numbering of rules R307–2–10 and R307–2–17 to R307–110–10 and R307–110–17.

III. Evaluation Criteria for the Redesignation Request

Section 107(d)(3)(E) of the Act provides that EPA may not promulgate a redesignation of a nonattainment area to attainment unless:

1. The area has attained the relevant NAAQS;

2. EPA has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

3. The improvement in air quality in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

4. EPA has fully approved a maintenance plan for the area meeting the requirements of section 175A of the Act; and

5. The State containing the area has met all requirements applicable to the area under section 110 and Part D of the Act.

If any of these criteria is not met, we must disapprove the redesignation request.

In addition, on September 4, 1992, EPA issued guidance outlining how it intended to process redesignation requests. (Memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment," signed by John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards; hereafter referred to as the "Calcagni Memo.") For further information, you may want to read the Calcagni Memo.

IV. EPA Analysis of the Redesignation Request

The areas that Utah seeks to redesignate do not meet all five criteria for redesignation. Specifically, we cannot determine that Salt Lake and Utah Counties have attained the NAAQS, and we cannot approve the maintenance plans for the three areas. Thus, we are proposing to disapprove the redesignation requests.[5] We provide more detail below.

A. Redesignation Criterion 1—the Area Must Have Attained the PM_{10} NAAQS

1. The level of the primary and secondary PM_{10} NAAQS is 150

[5] Because we are finding that the redesignation submissions for these areas do not satisfy these criteria, we do not find it necessary to address whether the additional criteria for redesignation have been met.

micrograms per cubic meter (μg/m³), 24-hour average concentration (40 CFR 50.6). Under the rounding convention contained in EPA's regulations, a monitored concentration lower than 155 μg/m³ is considered to be attaining the PM_{10} NAAQS (40 CFR part 50, appendix K).

To determine whether an area has attained the PM_{10} NAAQS for purposes of redesignation, we rely on ambient air quality data from a monitoring network representing maximum PM_{10} concentrations (40 CFR 50.6; 40 CFR part 50, appendix K; 40 CFR part 58; Calcagni Memo, page 2). The data must be quality assured and recorded in EPA's Air Quality System database (AQS). The NAAQS are attained when the expected number of exceedances of the NAAQS at each monitoring site in the area is less than or equal to 1.0 per year, based on three consecutive years of data.[6] For example, if the expected number of exceedances at a monitor for each of three consecutive years is 1.0, the expected number of exceedances averaged over the three years would also be 1.0 (3.0 divided by 3), which would not be a violation. However, if the expected number of exceedances in year one of the three-year period were 2.0 instead of 1.0 and the values remained at 1.0 for years two and three, the expected number of exceedances averaged over the three years would be 1.33 (4.0 divided by 3), which would be a violation.

For redesignations, EPA's consistent interpretation has been that the area must have attained the standard in the base year for the maintenance demonstration and in all subsequent years up through EPA's action on the redesignation request. (See, e.g., EPA's final and proposed disapprovals of the redesignation requests for various areas, including Pittsburgh (61 FR 19193, May 1, 1996), Richmond (59 FR 22757, May 3, 1994), Kentucky portion of Cincinnati-Hamilton (61 FR 50718, September 27, 1996), Ohio portion of Cincinnati-Hamilton (62 FR 7194, February 18, 1997), and Birmingham (62 FR 23421, April 30, 1997); the proposed correction of the designation for Lafourche Parish (62 FR 38237, July 17, 1997); and the Calcagni Memo, page 5.)

Between 1985 and 2006, Utah operated a total of 15 PM_{10} monitors, which were either State and Local Air Monitoring Stations (SLAMS) or National Air Monitoring Sites (NAMS), in the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas.[7] Currently, four PM_{10} SLAMS operate in Salt Lake County, two operate in Utah County, and one operates in Ogden City.

a. Salt Lake County

In June 2001, we determined that Salt Lake County had attained the PM_{10} NAAQS as of December 31, 1995 (66 FR 32752, June 18, 2001). However, beginning in 2001, which is the base year for Utah's maintenance demonstration, Salt Lake County began experiencing exceedances of the PM_{10} NAAQS that resulted in violations. Specifically, two exceedances of the PM_{10} NAAQS in 2001 at the Magna monitoring site resulted in a violation of the NAAQS in each three-year period that includes 2001—i.e., 1999–2001, 2000–2002, and 2001–2003.[8] On 12 days from 2002 through 2007, there were 15 more measured exceedances at three monitors. At least one Salt Lake County monitor has been in violation of the PM_{10} NAAQS in every three-year period since 2001. The table below summarizes the actual PM_{10} exceedances recorded in Salt Lake County in 2001 through 2007 that contributed to or are associated with violations, as well as the calculated expected number of exceedances and the violations.

TABLE 1—PM_{10} EXCEEDANCES CONTRIBUTING TO VIOLATIONS IN SALT LAKE COUNTY, 2001 THROUGH 2007

Year	Date	Monitor and AQS ID No.	PM_{10}, (μg/m³)	Expected number of exceedances	Contribution to violations
2001	March 14, 2001	Magna, 49–035–1001	201	6.4	Constitutes a violation for 1999–2001 through 2001–2003 data sets.
	April 22, 2001	Magna, 49–035–1001	156		
2003	February 1, 2003	North Salt Lake City, 49–035–0012.	169	3.1	No violation as of end of 2003, but contributes to violation with 2004 data; see below.[9]
	April 1, 2003	North Salt Lake City, 49–035–0012.	358		
	April 2, 2003	North Salt Lake City, 49–035–0012.	209		
	April 1, 2003	Magna, 49–035–1001	421	3.1	No new violation, but adds to other violations.
2004	May 10, 2004	North Salt Lake City, 49–035–0012.	189	1.0	Constitutes a violation in combination with 3.1 exceedances in 2003; 2002–2004 and 2003–2005 data sets violate.
2005	September 10, 2005	Magna, 49–035–1001	177	3.3	Constitutes a violation for 2003–2005 through 2005–2007 data sets.

[6] 40 CFR part 50, appendix K describes how to determine the expected number of exceedances each year. For monitors operating less than daily, or for monitors with data missing on some days within quarters in which exceedances are measured, the expected number of exceedances is calculated to account for possible exceedances on unsampled days within calendar quarters. Thus, for example, a single recorded exceedance at a monitor in a given year could result in an expected number of exceedances at that monitor significantly greater than 1.0 for the year.

[7] SLAMS monitoring stations are defined in 40 CFR 58.1, and are those ambient air monitors operated by State and local governments primarily used for comparison to the NAAQS. NAMS monitors were formerly defined in 40 CFR 58.1 as a subset of the SLAMS network; the NAMS monitor type was discontinued through changes to 40 CFR part 58 promulgated in 2006 (71 FR 61236, October 17, 2006).

[8] A violation occurred in each of these periods because the two measured exceedances in 2001 resulted in a calculated expected number of exceedances in that year alone of 6.4. The two measured exceedances resulted in a calculated expected number of exceedances of 6.4 because the Magna monitor operates only once every three days. (See 40 CFR part 50, appendix K.) Even if averaged with a value of zero expected exceedances in two other years, a value of 6.4 expected exceedances in a single year causes a violation (6.4 divided by 3 exceeds 1.0).

TABLE 1—PM_{10} EXCEEDANCES CONTRIBUTING TO VIOLATIONS IN SALT LAKE COUNTY, 2001 THROUGH 2007—Continued

Year	Date	Monitor and AQS ID No.	PM_{10}, ($\mu g/m^3$)	Expected number of exceedances	Contribution to violations
2006	July 4, 2006	North Salt Lake City, 49–035–0012.	188	2.2	Constitutes a new violation for the 2004–2006 data set.
	July 26, 2006	North Salt Lake City, 49–035–0012.	164		
2007	July 7, 2007	North Salt Lake City, 49–035–0012,	174	4.3	Constitutes a violation for 2005–2007 through 2007–2009 data sets.
	July 11, 2007	North Salt Lake City, 49–035–0012.	156		
	July 13, 2007	North Salt Lake City, 49–035–0012.	166		
	October 25, 2007	North Salt Lake City, 49–035–0012.	172		

State and local monitoring agencies may apply a "flag" (a flag is a code placed on the data in the AQS database) to an exceedance recorded in AQS when they believe an exceptional event such as high winds or wildfires caused the measured exceedance of the NAAQS. The State or local agency may then provide EPA with documentation on the exceptional event and request that EPA remove the data from the dataset EPA uses to calculate violations. Currently, EPA's Exceptional Events Rule governs the flagging of data (72 FR 13560, March 22, 2007, and 72 FR 28612, May 22, 2007). Before May 22, 2007, EPA's Natural Events Policy (NEP) applied.[10] Utah has placed high wind exceptional event flags on each of the data values in the table above, with the exception of the value at North Salt Lake City on October 25, 2007, and claims these data values should be excluded from EPA's regulatory calculations.

Under the NEP, EPA indicated that it would exclude data from its decisions regarding an area's attainment status when those data were attributable to uncontrollable natural events, which under certain circumstances could include high winds. The policy defined a high wind event as an event with unusually high winds where the dust originated from either (1) nonanthropogenic sources (not man made), or (2) anthropogenic sources (man made) controlled with the best available control measures (BACM).[11] When natural events such as high winds caused a violation of the PM_{10} NAAQS, states were to develop a natural events action plan (NEAP) that included certain elements listed in the NEP. For high winds, the NEAP should have included the application of BACM, and the application criteria required analysis of the technological and economic feasibility of individual control measures. In addition, a state seeking exclusion of data impacted by natural events had the responsibility to submit documentation establishing "a clear causal relationship between the measured exceedance and the natural event." (NEP, page 10). In its submission, a state had to show that BACM were required at anthropogenic sources of dust and that these sources were in compliance at the time of the high wind event. Finally, for areas allegedly affected by natural events seeking redesignation, such as the Salt Lake County nonattainment area, a state had to include the NEAP in its maintenance plan.

While Utah applied a high wind flag to the exceedances recorded at Magna, Utah on March 14, 2001 and April 22, 2001, Utah's submission to EPA failed to meet the criteria for exclusion of data under the policy. Utah's documentation identified the source of windblown dust as Kennecott Utah Copper, a major permitted source that was not in compliance with its permit at the time of the exceedances. As discussed above, Utah had to show in its submission, among other things, that anthropogenic sources of dust were in compliance at the time of the high wind event (NEP, page 11).[12] Thus, EPA did not concur on Utah's flags in AQS for the 2001 exceedances at Magna. As stated above, because the Magna monitor operates on a once in three-day schedule, the expected number of exceedances calculated for 2001 is 6.4 (see 40 CFR part 50, appendix K), which results in a PM_{10} NAAQS violation at the Magna monitoring site for any 3-year period containing 2001 (1999–2001, 2000–2002 and 2001–2003).

As stated above, Utah also placed high wind flags on later exceedances of the PM_{10} NAAQS at the Magna and North Salt Lake City monitors. While Utah submitted documentation with respect to these exceedances and a NEAP, Utah failed to include the NEAP as part of the maintenance plan submitted to EPA in 2005, as it should have done under the NEP. In addition, the analysis in the NEAP did not establish that BACM was implemented at the time of the exceedances for the three main anthropogenic sources of emissions identified as causing or contributing to the exceedances: (1) Kennecott tailings; (2) agriculture; and (3) construction. For example, the NEAP asserted that for Kennecott sources, a best available control technology (BACT) analysis had been done historically and that BACT is generally more stringent than BACM, but the NEAP did not analyze whether the control requirements constituted BACM for wind blown dust at the time of the events. Similarly, the NEAP mentioned certain control measures that the other contributing anthropogenic sources were currently implementing, but did not include a BACM analysis evaluating these control measures. Also, Utah did not determine the high wind conditions that would overcome BACM (See NEP, page 7). Thus, we were unable to concur on Utah's data flags under the NEP.

We are also unable to disregard the flagged data under our Exceptional Events Rule, which took effect on May 22, 2007. The rule implements section 319 of the CAA, as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act: A

[9] Per 40 CFR part 50, appendix K, the three-year average based on 3.1 expected exceedances in 2003 and zero expected exceedances in 2001 and 2002 is 1.03 (3.1 divided by 3), which rounds down to 1.0 and is not a violation.

[10] Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled, "Areas Affected by PM_{10} Natural Events," May 30, 1996.

[11] See 59 FR 42010, August 16, 1994, for a discussion of PM_{10} BACM.

[12] Similarly, under the current Exceptional Events Rule discussed below, an event is not eligible for consideration as an exceptional event and exclusion of data if there is source noncompliance (40 CFR 50.1(j).)

Legacy for Users (SAFE–TEA–LU) of 2005. The rule establishes procedures and criteria to govern the review and handling of air quality monitoring data influenced by exceptional events, and under certain circumstances, EPA may exclude such data from regulatory actions under the CAA, including redesignations to attainment or nonattainment.

Under the Exceptional Events Rule, a state asking EPA to exclude data from its regulatory calculations must, after notice and opportunity for public comment, submit a demonstration that shows to EPA's satisfaction that the flagged event caused a specific concentration in excess of the NAAQS at the particular monitor location. The state must submit the demonstration and any public comments to EPA within 3 years of the calendar quarter following the event, but no later than 12 months prior to an EPA regulatory decision (40 CFR 50.14(c)(3)(i)). Of particular note, 40 CFR 50.14(c)(2)(ii) states that data shall not be excluded from determinations with respect to exceedances or violations of the NAAQS, and that all flags are considered for information only, until such time as a state submits the demonstration and EPA concurs on the flags.

To date, Utah has not submitted any demonstrations for PM_{10} high wind flags under the Exceptional Events Rule, and the regulatory deadlines for submitting such demonstrations for any of the events before 2006 have passed.[13] Since concurrence was not possible on these flags under the NEP, and demonstrations meeting the requirements of the current Exceptional Events Rule have not been submitted, the flagged concentrations recorded in Salt Lake County between 2001 and 2005 may not be excluded as exceptional events from our calculations of violations. Thus, Salt Lake County violated the PM_{10} NAAQS from 2001 through 2007 based on exceedances measured in 2001, 2003, 2004, and 2005.

Similarly, because Utah has not submitted demonstrations meeting the requirements of the Exceptional Events Rule, EPA must consider the flags on exceedances in 2006 and 2007 as being informational only per 40 CFR 50.14(c)(2)(ii). Thus, these exceedances represent new PM_{10} violations that are relevant to the evaluation of attainment for 2005–2007, 2006–2008, and 2007–2009. Finally, 2008 data in AQS, not yet certified by Utah, show new exceedances at the North Salt Lake City monitor on April 15, 2008 (188 $\mu g/m^3$) and April 19, 2008 (181 $\mu g/m^3$). Additionally, the data show an exceedance at the Cottonwood monitor (AQS ID49–035–0003) on April 15, 2008 (177 $\mu g/m^3$), which, assuming the data are certified, would result in a new violation of the PM_{10} NAAQS.

Based on the monitored violations of the PM_{10} NAAQS during and subsequent to the base year for the maintenance demonstration, we are unable to determine that the Salt Lake County area has attained the NAAQS in accordance with section 107(d)(3)(E) of the Act. Therefore, Salt Lake County is currently ineligible for redesignation to attainment for the PM_{10} NAAQS.

b. Utah County

While there were exceedances of the PM_{10} NAAQS in Utah County in 2002, 2003, and 2004, there were no violations in the area in any three-year period from 1993 through 2007. However, 2008 data in AQS, not yet certified by Utah, show four exceedances of the PM_{10} NAAQS at the Lindon monitor in Utah County: 164 $\mu g/m^3$ on April 15, 2008; 181 $\mu g/m^3$ on April 19, 2008; 155 $\mu g/m^3$ on April 29, 2008; and 177 $\mu g/m^3$ on May 20, 2008. Assuming the data are certified, the four exceedances would represent a violation of the PM_{10} NAAQS in Utah County for the three-year periods that include 2008. Utah has flagged these exceedances as high wind exceptional events, but EPA must consider these flags as informational only until the demonstration requirements of the Exceptional Events Rule are met and EPA concurs on the flags.[14] Thus, given the fact that these exceedances are currently in AQS and EPA has not yet determined that they should be excluded from consideration, we are unable to determine that the area has attained the NAAQS for purposes of redesignation under section 107(d)(3)(E). Therefore, Utah County is currently ineligible for redesignation to attainment for the PM_{10} NAAQS.

c. Ogden City

While there were exceedances of the PM_{10} NAAQS in Ogden City in 2002, 2003, and 2004, there were no violations in the area in any three-year period from 1993 through 2007. Similarly, 2008 data in AQS, not yet certified by Utah, indicate there were no violations through 2008. Thus, Ogden City data indicate that the area is currently attaining the NAAQS. However, the area fails to meet other redesignation requirements, as discussed below.

B. Redesignation Criterion 4—The Area Must Have a Fully Approved Maintenance Plan That Meets the Requirements of Section 175A

1. Deficiencies applicable to all three maintenance plans.

a. The State did not adequately define 24-hour stationary source inputs to modeling. For purposes of demonstrating maintenance, Utah conducted dispersion modeling for all three nonattainment areas combined using the UAM-Aero model. While the modeling outcomes indicate the areas will maintain the PM_{10} NAAQS at least through 2017,[15] we are unable to determine and confirm the 24-hour major stationary source inputs used in the modeling. This key information is not contained in Utah's electronic data files. Thus, we cannot determine what 24-hour emission rates were used in the modeling analysis to evaluate model performance[16] or to show maintenance of the PM_{10} standard. Without this information, we cannot determine that the model met relevant performance standards, and we cannot determine that major stationary source emission limits in the Utah SIP will be adequate to maintain the NAAQS for the 10-year period required by the CAA.

While Utah did compile annual baseline and projected inventories of major stationary source emissions in its Technical Support Document (TSD),

[13] Between May 22, 2007 (the effective date of the Exceptional Events Rule) and December 31, 2007, EPA permitted states to choose to comply with either the rule or the NEP. This flexibility was limited to situations where the following two conditions were met: (a) Before May 22, 2007, a state had flagged data and submitted a timely demonstration to attempt to show that an exceptional event caused a NAAQS exceedance reflected in the data; and (b) EPA had not already determined whether an exceptional event caused the exceedance. Unless the state, in the limited circumstances described above, specifically requested that EPA evaluate a natural or exceptional event demonstration under the NEP, EPA presumed that the rule applied after May 22, 2007.

[14] The Lindon monitor recorded an additional exceedance of 200 $\mu g/m^3$ on March 4, 2009. Utah has also placed a high wind flag on this exceedance. This exceedance alone would not represent a new violation of the NAAQS.

[15] Section 175A of the Act requires that the maintenance plan demonstrate maintenance for at least 10 years following EPA's approval of a redesignation to attainment. As of the date of this proposal, the 2017 maintenance year in the Utah maintenance plans would not meet the 10-year-maintenance requirement.

[16] The performance of a photochemical grid model like UAM–Aero must be verified before it is used to model maintenance. Roughly speaking, this is done by inputting actual emissions and meteorological data for a period with known, monitored ambient values—in the case of the Utah PM_{10} plans, certain 24-hour "episodes" during 2001 and 2002—and determining whether the model predictions are sufficiently close to actual monitored values.

these are not a substitute for 24-hour inventories, and they are not a substitute for electronic data files containing 24-hour major stationary source inputs for the dispersion modeling. In addition, we cannot determine from Utah's annual inventories whether Utah evaluated and regulated all significant stationary emission sources in the maintenance plan. For example, we cannot determine whether Utah evaluated refinery flare emissions in the maintenance demonstration. Flares can be a significant source of emissions. Also, Utah's SIP submittal does not include emission limits for several major stationary sources located outside the designated PM_{10} nonattainment areas but inside the modeling domain for Utah's maintenance demonstration. It appears these sources were not included in Utah's annual inventories, but we cannot determine why they were excluded or whether exclusion was appropriate.

b. Utah did not properly model Kennecott's banked emissions. Kennecott has "banked" thousands of tons per year of SO_2 emissions reductions.[17] In the maintenance demonstration, Utah modeled 12,567 tons per year of these banked emissions as though they were being emitted from Kennecott's 1200-foot stack.[18] This assumption is not reasonable. For example, if several companies purchased these banked SO_2 emissions from Kennecott, it is highly unlikely the companies would emit the SO_2 from 1200-foot stacks. An appropriate assumption, which Utah employed when modeling other banked emissions, is that Kennecott's banked emissions would be emitted from within a core industrial area in Salt Lake County at a height of 65 meters (213 feet) or less.

This difference in the assumed stack height of future emissions is significant. Generally, the higher that emissions are released from ground level, the more the emissions disperse and the less they impact pollutant concentrations at the surface.[19] Under wintertime inversion conditions in the Salt Lake area, when the inversion height is typically 1,000 feet or less, it is particularly unlikely that pollutants emitted from a 1200-foot stack (i.e., above the inversion height) would be mixed to the surface and contribute to PM_{10} concentrations at the surface. Thus, we believe Utah's modeling substantially underestimates the potential PM_{10} impact of Kennecott's banked SO_2 emissions. This would affect the maintenance demonstration for Salt Lake County and may affect the maintenance demonstration for Utah County and Ogden City as well. In order to quantify the exact effect, the model would need to be re-run with appropriate assumptions for the location and height of release of the banked emissions. Therefore, we propose to find that the modeled maintenance demonstrations for all three areas are invalid.

c. Use of improper estimates of road dust emissions in modeling. For purposes of estimating mobile source road dust emissions in its maintenance demonstration, Utah used EPA's AP–42 document to calculate PM_{10} road dust emissions estimates but then discounted those estimates by 75%. This discount is not supported.

As discussed in EPA's policy memoranda of February 24, 2004 [20] and August 2, 2007,[21] EPA's MOBILE6.2 is the approved model for calculating direct PM_{10} and $PM_{2.5}$ from vehicle exhaust and brake and tire wear. Both memoranda state that Chapter 13.2 of AP–42 (specifically sections 13.2.1, "Paved Roads," and 13.2.2, "Unpaved Roads") contains the EPA-approved methods for calculating re-entrained road dust emissions. The August 2, 2007 memorandum indicates that November 1, 2006 revisions to AP–42 will lower estimates of $PM_{2.5}$ re-entrained road dust emissions from paved roads by 40% and from unpaved roads by 33%. But, the memorandum affirms that "* * * *PM_{10} road dust estimates are unchanged* from the previous version." [Emphasis in the original.]

While our February 24, 2004 policy memorandum suggests that states may be able to justify deviations from AP–42 and EPA's approved mobile source inventory methodology, Utah has not justified a 75% discount of re-entrained PM_{10} road dust emissions estimates. Utah's TSD indicated that the 75% discount method resulted in part from consultation with Sonoma Technologies, but provided insufficient detail (TSD, tab 2.d.ii(3)(iii), page 17). In its response to comments on the draft maintenance plan, Utah also referenced some general studies that discussed the difficulties and inaccuracies in estimating paved and unpaved road dust emissions (June 27, 2005 Response to Comments, response to comment #104, page 7). Specifically, Utah referenced "A Conceptual Model to Adjust Fugitive Dust Emissions to Account for Near Source Particle Removal in Grid Model Applications," by Thompson G. Pace, US EPA, August 22, 2003. This paper discusses, "some recent studies and proposes refinements to the "divide-by-four" factor that may be applicable to these source categories" (Pace, 2003, page 1). (Dividing estimated emissions by four has the same impact as reducing them by 75%.) As noted by Pace, an across-the-board 75% reduction requires "refinement" and case-by-case analysis. Furthermore, Pace refers to a study by the Desert Research Institute [22] that states:

> This enormous range of removal rates emphasizes that it is not appropriate to apply a single correction factor to all fugitive dust emissions as a means of accounting for near-field particle removal. Though not documented, the community of scientists and professionals has, in the last several years, been circulating the idea that if fugitive dust emissions were divided by a factor of four, then the discrepancy between emissions and ambient measurements of geological PM_{10} would disappear. While it is possible that this is true on an average basis (i.e. over large spatial domains), it is unlikely that this factor of four is applicable to every combination of air shed, land use distribution, and atmospheric conditions. Each combination of setting and meteorological conditions should be considered separately in a modeling framework that makes use of the known physics of particle dispersion and deposition.

Thus, the paper Utah relies on to discount the AP–42-estimated PM_{10} emissions actually supports EPA's view that it is *not* appropriate to employ a 75% reduction or divide-by-four methodology in all situations, and suggests that, while some change may be appropriate, the specific conditions along the Wasatch Front must be considered. Any reduction proposed by

[17] Utah allows sources who permanently reduce their emissions to "bank" the emissions reductions and later use or sell them to offset emission increases from new or modified sources anywhere in the nonattainment area. Kennecott made changes to its smelter that reduced SO_2 emissions by thousands of tons and banked the reductions.

[18] In predicting ground-level concentrations, dispersion models account for the height and location of the emissions point.

[19] Modeling for maintenance and attainment predicts pollutant concentrations at ground level because compliance with the NAAQS is evaluated against ground-level ambient concentrations. This is based on the fact that people breathe ground-level air.

[20] "Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity," signed by Margo Oge of EPA's Office of Transportation and Air Quality and Steve Page of EPA's Office of Air Quality Planning and Standards.

[21] "Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity," signed by Merrylin Zaw-Mon of EPA's Office of Transportation and Air Quality and Peter Tsirigotis of EPA's Office of Air Quality Planning and Standards.

[22] "Field Testing And Evaluation Of Dust Deposition And Removal Mechanisms: Final Report," Etyemezian, et. al, Desert Research Institute, prepared for: The WESTAR Council, January1, 2003; found January 18, 2006 at: *http://www.westar.org/Docs/Dust/Transportable_Dust_Final_Report_DRI_WESTAR.pdf.*

Utah must be supported by an analysis that explains why the reduction is appropriate for the area, considering the local geography, land use, and atmospheric conditions. Utah did not provide such an analysis.

To further evaluate the issue, EPA conducted its own analysis to determine whether a 75% reduction could be supported. EPA evaluated available information regarding the transportable fraction of PM_{10} re-entrained road dust emissions, as discussed below.

EPA has developed a method to estimate a transportable fraction of fugitive dust emissions [23] for grid modeling inventories. In that method, EPA has considered the land use, vegetation, topography, and other factors and estimated an aggregate transportable fraction for counties around the United States. The transportable fraction for each county can be seen at EPA's webpage at: *http://www.epa.gov/ttn/chief/emch/dustfractions/*.

The transportable fractions estimated for Utah, Salt Lake, and Weber Counties are .69, .66, and .75, respectively. These transportable fractions indicate that appropriate emission reductions from AP–42-based estimates, when considering the specific features of the areas, are 31% for Utah County, 34% for Salt Lake County, and 25% for Weber County, which includes the Ogden City PM_{10} nonattainment area. Thus, EPA's supplemental analysis does not support Utah's use of a 75% reduction from AP–42 estimates of PM_{10} road dust emissions. Utah's use of such reduction is inappropriate; by overestimating the reduction in re-entrained road dust emissions, Utah underestimated ambient concentrations of PM_{10} in its maintenance demonstrations for all three areas. Without accurate estimates of emissions and ambient concentrations, we cannot determine that the maintenance plans will be adequate to maintain the NAAQS for the 10-year period.

2. Deficiencies Applicable to the Maintenance Plans for Salt Lake and Utah Counties

a. Utah has not attained the NAAQS. The Calcagni Memo states that the attainment inventory used in the maintenance demonstration must come from a period for which the area attains the NAAQS. The attainment inventory used for the maintenance demonstration came from 2001, a year in which Salt Lake County did not attain the NAAQS. (See discussion in section IV.A above.) In addition, Salt Lake County has violated the PM_{10} NAAQS in every three-year period since 2001. These persistent violations indicate that the underlying basis of the maintenance demonstration for Salt Lake County is not valid.

As discussed above in section IV.A.1.b, 2008 data in AQS, not yet certified by Utah, indicate exceedances that would comprise violations of the PM_{10} NAAQS in Utah County for any three-year period that includes 2008. These data call into question the maintenance demonstration for Utah County.

b. Maintenance plans rely on inadequate methods for intermittent sources. The maintenance plans for Salt Lake and Utah Counties rely on controls contained in submitted SIP section IX.H,[24] including opacity limits for intermittent sources. Section IX.H.1 specifies a method for conducting opacity observations. The last sentence in submitted SIP section IX.H.1.g says: "For intermittent sources and mobile sources, opacity observations shall be conducted using procedures similar to Method 9, but the requirement for observations to be made at 15-second intervals over a six-minute period shall not apply." This language is not sufficiently clear.[25] The language must indicate what test method will apply. Without this, we cannot be assured that the opacity limits for intermittent and mobile sources will be enforceable or that the maintenance plan is adequate to ensure maintenance of the NAAQS.

3. Deficiencies Applicable to the Salt Lake County Maintenance Plan

a. Maintenance plan relies on deficient control measures for stationary sources in Salt Lake County. Utah revised as a matter of State law the Salt Lake County stationary source control measures in section IX.H of the SIP, incorporated these State-revised measures into its proposed maintenance plan (see submitted SIP section IX.A.10, pages 30–31), and based its maintenance demonstration on the assumption that these State-revised measures would be approved into the SIP by EPA and would therefore be in place.[26] For the reasons set forth below, many parts of State-revised section IX.H are not approvable, therefore, the maintenance plan, which relies upon assumed approval of the State's revisions to section IX.H, does not demonstrate that the area will maintain the NAAQS for ten years after redesignation.

(i) For a number of the source emission limits, submitted SIP section IX.H does not contain adequate compliance determining and reporting requirements, as required by section 110 of the Act. Absent adequate compliance determining and reporting requirements, there is no assurance that the emission limits relied on to demonstrate maintenance in Salt Lake County will be met. Thus, these flaws render the specific source requirements and the maintenance plan as a whole, which relies on them, unapprovable. The following are examples of inadequate compliance determining and reporting requirements.

(A) Lack of emission factors for PM_{10} and NO_X. For Chevron, Flying J, Holly Refining, and Tesoro West Coast, submitted SIP sections IX.H.2.c, d, f, and l, respectively, require that PM_{10} emissions from external combustion process equipment be determined daily by "multiplying the appropriate emission factor from section IX.H.1.i.2 or from testing listed below by the relevant parameter (e.g., hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group or affected unit." The same approach is prescribed for determining NO_X emissions. Submitted SIP section IX.H.1.i.(2) does not list any emission factors for PM_{10} or NO_X. The SIP should specify the appropriate emission factors and equations for determining compliance with the emission limits. In contrast to submitted SIP section IX.H.1.i.(2), the EPA-approved SIP specifies the numerical value of the emission factors for PM_{10} and NO_X at each refinery, for each type of fuel used in external combustion process equipment. The lack of specificity in submitted SIP sections IX.H.1 and 2 renders the emission limits unenforceable.

(B) Lack of metering or other measurement techniques. Submitted SIP section IX.H.1.i.(2) of the general requirements for refineries does not specify how the "hours of operation,

[23] "Methodology to Estimate the Transportable Fraction (TF) of Fugitive Dust Emissions for Regional and Urban Scale Air Quality Analyses," Thompson G. Pace, US EPA (August 3, 2005 Revision).

[24] Hereafter, when we refer to the submitted SIP or a submitted SIP section, revision, or rule, we mean the SIP or SIP section, revision, or rule that Utah submitted to us for approval on September 2, 2005, as opposed to the EPA-approved SIP or SIP section, revision, or rule.

[25] We recognize that this language is similar to language in the EPA-approved SIP. However, due to the potential problems with this language, it would be inappropriate for us to re-approve it or accept reliance on it for purposes of the maintenance plan.

[26] Note that revising the EPA-approved SIP is a two-step process. First, the state adopts changes as a matter of state law and submits them to EPA. Then, EPA either approves or disapproves those changes. Only if EPA approves the changes do they take effect as a matter of Federal law.

feed rate, or quantity of fuel combusted" are to be measured. No metering devices or other measurement techniques are specified. The submitted SIP departs from the EPA-approved SIP, which specifies the monitoring devices and measurement techniques. Because Utah did not specify the methods to measure the hours of operation, feed rate, or quantity of fuel combusted in submitted SIP section IX.H.1.i.(2), the corresponding emission limits are unenforceable.

(C) Lack of enforceable requirement for re-establishing emission factor at Flying J refinery. For the Catalyst Regeneration system at Flying J refinery, submitted SIP section IX.H.2.d.(1)(a)(ii) says the PM_{10} emission factor of 22 pounds per thousand barrels (lbs/kbbl) "may be re-established by stack testing" but does not specify a schedule for such stack testing. The PM_{10} emission control equipment (an electrostatic precipitator) could deteriorate over time without proper maintenance, and the emission factor could change. Under these circumstances, the SIP must require at least annual stack testing to re-establish the emission factor. The lack of at least annual stack testing renders the submitted SIP's methods for determining compliance with the PM_{10} limits inadequate.

(D) Lack of required technique for calculating Sulfur Recovery Unit (SRU) efficiency. Submitted SIP section IX.H.1.i.(1)(a) requires removal of a "minimum of 95% of the sulfur from feed streams processed by the SRU" at refineries. For demonstrating compliance, "SRU efficiency shall be estimated and reported to the Executive Secretary a minimum of once per year." Since no technique is specified for calculating SRU efficiency, this is not a practically enforceable requirement. Also, once-per-year reporting is not frequent enough. Performance problems can easily develop at SRUs over a shorter period of time than a year.

Continuous Emission Monitoring Systems (CEMS) for SO_2 are installed at each SRU to collect data continuously. Thus, the requirement should be to demonstrate 95% sulfur removal efficiency on a daily basis (24-hour block average) via SO_2 CEMS data, with reporting through quarterly compliance reports. The lack of such requirements renders the submitted SIP inadequate.

(E) Lack of practical enforceability of PM_{10}, SO_2, and NO_X emission limits at Kennecott Power Plant. Submitted SIP section IX.H.2.i.(1)(f), which applies to Kennecott Power Plant, does not specify any metering devices or other measurement techniques for monitoring the rate of fuel consumption at the Kennecott Power Plant. Values for fuel consumption are needed to determine compliance with emission limits in submitted SIP sections IX.H.2.i(1)(a) and (b). In contrast to the submitted SIP, the EPA-approved SIP does specify the location and technique of measuring natural gas consumption. Without specific, accurate, and replicable techniques for measuring both the natural gas consumption and the coal consumption, Utah's submitted emission limits for Kennecott Power Plant are not practically enforceable and the submitted SIP is not approvable. In addition, the opening sentence in submitted SIP section IX.H.2.i.(1)(f) reads, "To determine compliance with a daily limit owner/operator shall calculate a daily limit." This is unclear. This lack of clarity also undermines SIP enforceability.

(F) Stack tests once every five years are not frequent enough for re-establishing NO_X emission factors at Central Valley Water Reclamation. Submitted SIP section IX.H.2.b.(2), which applies to Central Valley Water Reclamation, requires a stack test at least once every five years, for re-establishing emission factors necessary to show compliance with NO_X emission limits at the engines. All of the engines are equipped with air-fuel ratio controllers that must be adjusted properly to avoid excessive NO_X emission rates, and some of the engines are also equipped with catalytic converters for NO_X control that can degrade if not maintained properly. Thus, EPA considers once every five years not frequent enough to ensure compliance with the limit. Once every year or every three years typically appears in other sections of the EPA-approved SIP for other sources where emission control devices are involved, and should be required here also. Less frequent stack testing is not acceptable without monitoring of catalyst degradation and proper adjustment of air-fuel ratio controllers on a reasonable frequency.

Unlike the submitted SIP, the EPA-approved SIP requires monthly NO_X emission measurement by a portable analyzer at all engines at Central Valley Water Reclamation. For the engines equipped with catalytic converters, the EPA-approved SIP also requires monthly evaluation of catalyst degradation.

The EPA-approved SIP also restricts Central Valley Water Reclamation's fuel to natural gas or digester gas, a restriction that Utah assumed would continue to apply when it prepared its emission inventory for its maintenance plan. However, Utah did not include the restriction in the submitted SIP. This restriction must be enforceable to be a valid assumption in the maintenance demonstration.

(ii) Blanket exemptions from emission limits at refineries during startup/shutdown/malfunction periods. Submitted SIP section IX.H.1.h.(1)(a) says the requirement for 95% sulfur removal efficiency at refinery SRUs applies "except for startup, shutdown, or malfunction of the SRU." Similarly, submitted SIP section IX.H.1.h.(1)(b) indicates that the requirement to reduce the hydrogen sulfide (H_2S) content of the refinery plant gas to 0.10 grains per dry standard cubic foot (160 parts per million or less) applies "except for startup, shutdown, or malfunction of the amine plant." These provisions constitute blanket exemptions during startups, shutdowns, and malfunctions. EPA's interpretations regarding treatment of emissions during these periods in SIPs are more fully described in the following EPA Federal Register notices and policy memoranda: (1) September 20, 1999, memorandum from Steve Herman and Robert Perciasepe, EPA Assistant Administrators, to EPA Regional Offices, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown"; (2) April 27, 1977, final rule, "Utah SO_2 Control Strategy" (42 FR 21472); and 3) November 8, 1977, final rule, "Idaho SO_2 Control Strategy" (42 FR 58171.) In short, EPA believes that it is inconsistent with the CAA to allow blanket exemptions from compliance with emission standards in SIPs for periods of startup, shutdown, and malfunction. This is because excess emissions during such periods may aggravate air quality so as to prevent attainment or interfere with maintenance of the NAAQS. Generally, EPA has said that such excess emissions must be treated as violations.[27] Thus,

[27] In our September 20, 1999, policy memorandum, we indicated that in certain limited circumstances, it may be appropriate for states, in consultation with EPA, to create narrowly-tailored exceptions in their SIPs to otherwise applicable emission limits during startup and shutdown. A state seeking to include such a narrowly-tailored startup/shutdown exception in its SIP would need to analyze the potential worst-case emissions that could occur during startup and shutdown and associated impacts on ambient air quality. The memorandum also identified other factors that EPA believes it would be important for a state to address. Also, in our September 1999 memorandum, we indicated that a SIP revision including such a narrowly-tailored startup/shutdown exception should, among other things, require the source owner or operator to show, following an exceedance of the otherwise applicable emission limit, that it operated its facility in a manner consistent with good practice for minimizing emissions; that it used

Continued

EPA proposes to disapprove the maintenance plan because it includes by reference these inappropriate exemptions in submitted SIP section IX.H.

(iii) Lack of appropriate restrictions for flaring emissions at refineries. Submitted SIP section IX.H.1.i.(2)(f) says: "Emissions due to upset flaring shall not be included in the daily (24-hr) or annual compliance demonstrations." As indicated above, EPA cannot approve SIP provisions that provide blanket exemptions from compliance with emission standards for malfunction or upset emissions. We recognize that flares are sometimes used as emergency devices, but this does not justify excluding upset flare emissions at the refineries from limits in the SIP. (See, e.g., the Billings/Laurel SO_2 Federal Implementation Plan, 73 FR 21418, April 21, 2008.) We are concerned that flare emissions during upsets might interfere with maintenance of the NAAQS, and that submitted SIP section IX.H.1.i(2) would explicitly ignore such emissions for purposes of assessing compliance with daily and annual emissions caps.

The submitted SIP also does not properly address flare emissions during periods other than upsets. In submitted SIP section IX.H.2, it is unclear whether Utah intended flare emissions (even in non-upset situations) to be accounted for in determining compliance with the daily and annual emission caps at the refineries. For example, submitted SIP section IX.H.2.c.(2)(a) for Chevron provides: "Combined emissions of sulfur dioxide from gas-fired compressor drivers and all external combustion process equipment, including the FCC CO Boiler and Catalyst Regenerator, shall not exceed 2.977 tons/day." A similar form of emission limit is expressed for the other four refineries as well. It is unclear whether the term "external combustion process equipment" includes the refinery flares. Refinery flaring can be a significant source of emissions that should be clearly accounted for in the maintenance plan. Even if it were clear that flare emissions were included in the emission limits for the refineries, Utah's submitted SIP does not specify an adequate means to determine flare emissions. The submitted SIP states that emissions from external combustion process equipment shall be determined by multiplying the appropriate emission factor (from section IX.H.1.i.2 or from testing) by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted). However, as noted above, submitted SIP section IX.H.1.i.2 specifies no emission factors for PM_{10} and NOx. For SO_2, an emission factor is specified, based on sampling of H_2S in refinery fuel gas. But, it is highly unlikely that H_2S content sampled in the refinery fuel gas would be representative of H_2S going to the flare during all periods of operation. Also, this approach would not account for other sulfur compounds that may be going to the flare. Finally, Utah's submitted SIP provides no means to determine flow to the flares (in either normal operation or upset situations), which would be essential to determining flare emissions. Because Utah did not properly address flare emissions, the maintenance plan is unapprovable.

(iv) Deletion of certain NO_X emission limits at Bountiful City Power. The EPA-approved SIP includes NO_X emission limits of 79.5 lbs/hr and 3.70 grams/hp-hr for the 9,750-horsepower dual-fuel engine, which is by far the largest potential emitting unit at the Bountiful facility. No emission limits or restrictions on operating hours are included for this engine in the submitted SIP. Similarly, the submitted SIP deletes emission limits for other dual-fuel engines, but contains no restriction on their operation. The maintenance plan's inventory and maintenance demonstration does not properly account for the lack of restrictions or limits on these engines.

(v) Permits for Kennecott Power Plant superseding the SIP. For Kennecott Power Plant, submitted SIP sections IX.H.2.i.(1)(a) and (g) provide that the requirements in submitted SIP sections IX.H.2.i.(1)(a) through (f) for emission limits and compliance demonstration requirements apply "unless and until" a Notice of Intent (i.e., New Source Review permit application) is submitted for "specific technologies" and an Approval Order (permit) is issued. This revision would undermine the enforceability of the SIP because a control measure relied on in the maintenance plan could be changed through an Approval Order, making the original limit unenforceable. Also, the process for issuing an Approval Order is an inadequate substitute for revising the SIP. The latter requires EPA approval and public involvement at both state and Federal levels. Section 110(i) of the Act, with exceptions not relevant here, does not allow a state to revise stationary source SIP requirements through issuance of an Approval Order (i.e., a New Source Review permit.)

(vi) Lack of restriction on annual NO_X emissions at Kennecott Bingham Canyon Mine, and lack of restriction on daily emissions of any pollutant. Utah's inventory assumes that NO_X emissions from the mine are limited to 5,078 tons per year, but submitted SIP section IX.H.2.h.(1) contains no corresponding NO_X limit or operating restrictions consistent with NO_X emission rates used in the inventory. It only limits SO_2 emissions. Submitted SIP section IX.H.2.h.(1) also does not restrict daily emissions of PM_{10}, NO_X, or SO_2. Since the PM_{10} maintenance plan must address the PM_{10} NAAQS, which is a 24-hour standard, the maintenance plan must include a daily emissions limit or daily operating restriction corresponding to the daily PM_{10}, NO_X, and SO_2 emission rates necessary to demonstrate maintenance. The lack of these limits renders the maintenance demonstration invalid.

(vii) Lack of requirement for control of fugitive particulate emissions at Kennecott Bingham Canyon Mine. Submitted SIP section IX.H.2.h.(1) does not include any requirements to control fugitive particulate emissions, even though the inventory and maintenance demonstration assume that fugitive dust emissions from the mine are limited. This is a significant change from the EPA-approved SIP, which contains numerous measures for control of fugitive particulate emissions from the mine.

Because of the numerous deficiencies in submitted SIP section IX.H, the maintenance plan for Salt Lake County is inadequate to ensure maintenance of the PM_{10} NAAQS as required by section 175A(a) of the Act.

b. Prior stationary source control measures for Salt Lake County sources are not included as potential contingency measures. Pursuant to section 175A(d) of the Act, the maintenance plan must include as potential contingency measures all control measures that were contained in the SIP for the area before redesignation. As noted above, as part of its adoption of the maintenance plan for Salt Lake County, Utah revised as a matter of State law the stationary source limits for Salt Lake County sources in section IX.H of the SIP, sometimes removing them entirely and sometimes making them less stringent. Contrary to the

---

best efforts to meet the otherwise applicable emission limit; that it took all possible steps to minimize the impact of emissions during startup and shutdown on ambient air quality; and that it minimized to the maximum extent practicable the frequency and duration of operation in startup or shutdown mode. Utah has not provided any analysis demonstrating the effects of these exceptions, as they relate to startup and shutdown periods, on the ability of the area to attain and maintain the standard, nor has Utah attempted to address any of the other criteria that EPA has recommended to support a narrowly-tailored exemption for periods of startup and shutdown.

requirement of section 175A(d) of the Act, the Salt Lake County maintenance plan does not list as a potential contingency measure the re-implementation of the prior version of the Salt Lake County stationary source control measures. While we are proposing to disapprove Utah's proposed changes to the Salt Lake County stationary source control measures, this is an additional, independent reason we are proposing to disapprove the Salt Lake County maintenance plan. Put another way, even if we could approve all of Utah's proposed changes to the stationary source control measures, we would be unable to approve the maintenance plan because it fails to list as a potential contingency measure the re-implementation of the relevant measures.

4. Deficiencies Applicable to the Utah County Maintenance Plan

a. Maintenance plan relies on deficient measures for stationary sources in Utah County. Utah revised as a matter of State law the stationary source control measures for Utah County in section IX.H.3 of the SIP, incorporated these State-revised measures into its proposed maintenance plan (see submitted SIP Section IX.A.10, pages 30–31), and based its maintenance demonstration on the assumption that these State-revised measures would be approved into the SIP by EPA and would therefore be in place. Utah's revisions to section IX.H.3 are not approvable. Specifically, Utah has added emission limits for Payson City Power to IX.H.3. As part of those limits, Utah has included an exemption from opacity limits for certain periods during startup and shutdown. Utah has not adequately explained or justified this exemption as a narrowly-tailored exception to the otherwise applicable emission limits in accordance with our interpretation of the Act or established appropriate conditions for such an exception. (See discussion above in section IV.B.3.a.ii of this action regarding excess emissions during startup, shutdown, and malfunctions.) This is another reason the Utah County maintenance plan, which relies on the control measures in submitted SIP section IX.H.3, is unapprovable.

V. Sections IX.H.1–4 of Utah's September 2, 2005 Submission

We are proposing to disapprove the provisions contained in submitted SIP sections IX.H.1–4. In section IV of this action, above, we identify a number of deficiencies in submitted sections IX.H.1–3. Based on these deficiencies, submitted sections IX.H.1–3 do not meet the requirements of section 110 of the Act.

We also note in section IV, above, that Utah has either removed or altered a number of stationary source requirements in section IX.H.2. Section 110(l) of the Act provides that EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The maintenance plan for PM_{10} is not approvable, and there has been no section 110(l) demonstration that these proposed changes will not interfere with attainment of the PM_{10} or other NAAQS, or with additional Act requirements. We believe these proposed changes pose a problem under section 110(l) of the Act because they will likely result in an increase in emissions in the Salt Lake County area, which is already experiencing violations of the PM_{10}, $PM_{2.5}$, and ozone NAAQS. Thus, this is another reason we cannot approve Utah's submitted revisions to section IX.H.2.

We are proposing to disapprove submitted SIP section IX.H.4 ("Establishment of Alternative Requirements") because this section depends on the validity of submitted sections IX.H.1–3, which we are proposing to disapprove. Submitted section IX.H.4 would permit Utah to establish alternatives to the requirements in sections IX.H.1–3 through the use of Utah's Title V operating permits program. Submitted section IX.H.4 reads, in part, as follows:

> In lieu of the requirements imposed pursuant to Subsections IX.H.1, 2 and 3 above, a facility owner may comply with alternative requirements, provided the requirements are established pursuant to the permit issuance, renewal, or significant permit revision process found in R307–415 and are consistent with the streamlining procedures and guidelines set forth in Subsections b and c below.

In other words, the requirements of submitted sections IX.H.1–3 are a necessary benchmark for the implementation of submitted section IX.H.4. Because we are proposing to disapprove submitted sections IX.H.1–3, we are also proposing to disapprove submitted section IX.H.4.

VI. Rule Revisions

With the redesignation requests and maintenance plans, Utah submitted several specific rule revisions. Utah relied on some of these revised rules to support the maintenance plans. Evidently, Utah made other rule revisions in anticipation that we would redesignate the areas from nonattainment to attainment. We evaluate each of these provisions below.

A. R307–101–2. "Definitions." Utah deleted certain definitions from this rule and revised or added others. We evaluate these various changes below.

1. Utah deleted the definition for "Actual Area of Nonattainment." We are proposing to disapprove this change because at least one other rule in the EPA-approved SIP uses this term. EPA-approved R307–403–2 requires a source constructed in an actual area of nonattainment to meet certain emission limits. Utah has not given us a revision to R307–403–2 to replace the term "Actual Area of Nonattainment." Also, the term may appear in other provisions of the EPA-approved SIP that EPA has not identified.

2. Utah revised the definition of "Baseline Date" so as to redefine the major source baseline date in areas redesignated to attainment. We are proposing to disapprove this change because there is no provision in the Act or our regulations that allows a state to establish a major source baseline date other than January 6, 1975 for PM_{10} and SO_2. (See section 169(4) of the CAA and 40 CFR 51.166(b)(14)(i).)

3. Utah added a definition of "EPA Method 9." Since the definition merely cross-references EPA's definition of Method 9, at 40 CFR part 60, we are proposing to approve it.

4. Utah added a definition for "Maintenance Area." The definition reads, "'Maintenance Area' means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard." The definition then lists maintenance areas in Utah for different pollutants. We are proposing to approve the first paragraph and subsections (a) and (b) of this addition and to disapprove subsections (c) and (d). Subsections (a) and (b) list maintenance areas for ozone and carbon monoxide. We have redesignated the listed areas from nonattainment to attainment and have approved maintenance plans for the areas. Subsections (c) and (d) list maintenance areas for PM_{10} and SO_2. However, for the listed areas—Salt Lake County, Utah County, and Ogden City for PM_{10}, and Salt Lake County and the eastern portion of Tooele County above 5600 feet for SO_2—we have not approved redesignations or maintenance plans. In addition, in this action, we are proposing to disapprove the redesignation requests and maintenance plans for PM_{10} for Salt Lake County,

Utah County, and Ogden City. While subsections (c) and (d), with one exception, provide that these PM_{10} and SO_2 areas would not be considered maintenance areas until EPA approves the maintenance plans for the areas, we think it would merely confuse the public and the regulated community if we were to approve language that implies that these areas may be maintenance areas or that we may approve redesignation requests and maintenance plans for these areas. The one exception we refer to pertains to Tooele County. Subsection (d) of the definition indicates that the eastern portion of Tooele County above 5600 feet is a maintenance area for SO_2 and contains no condition based on EPA approval of a maintenance plan for the area. Because EPA has not approved a redesignation request or maintenance plan for this area, it is still designated nonattainment for sulfur dioxide (40 CFR 81.34), and it would be inappropriate for us to approve a definition that indicates the area is a maintenance area.

5. Utah revised the definition of "Nonattainment Area." The revised definition reads, " 'Nonattainment Area' means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345." We are proposing to approve the revised definition because it merely cross-references our official area designations at 40 CFR 81.345.

6. Utah deleted the definition of "PM10 Nonattainment Area." The definition reads, " 'PM10 Nonattainment Area' means Salt Lake County, Utah County, or Ogden City." We are proposing to approve the deletion of this definition based on Utah's revision to the definition of "Nonattainment Area," described immediately above. If we finalize our proposal, the meaning of the term PM_{10} Nonattainment Area will depend on the PM_{10} area designations appearing at 40 CFR 81.345.

7. Utah replaced the term "PM10 Particulate Matter" with the term "PM10." We are proposing to approve this change because Utah only changed the term. Utah did not change the definition of the term.

8. Utah revised the definition of "PM10 Precursor" to delete the sentence, "It includes sulfur dioxide and nitrogen oxides." The revised definition reads, " 'PM10 Precursor' means any chemical compound or substance, which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10." We are proposing to approve this change because the deletion of the one sentence will not change the meaning of the term. Sulfur dioxide and nitrogen oxides would still be considered PM_{10} precursors under Utah's revised definition. In a memorandum to the Utah Air Quality Board dated June 23, 2005, the Utah Division of Air Quality indicated that the specific reference to sulfur dioxide and nitrogen dioxides was removed to avoid the implication that there were no other PM_{10} precursors to consider.

9. Utah added a definition of "Road." We are proposing to approve this definition as it merely defines the term to mean any public or private road.

10. Utah changed the definition of "Significant" by substituting the term "PM10" for the term "PM10 Particulate Matter." We are proposing to approve this change because it coincides with Utah's substitution of the term "PM10" for "PM10 Particulate Matter" elsewhere in the Definitions section.

B. R307–165. "Emission Testing." Utah's revised rule contains five sections: R307–165–1, "Purpose;" R307–165–2, "Testing Every 5 Years;" R307–165–3, "Notification of DAQ;" R307–165–4, "Test Conditions;" and R307–165–5, "Rejection of Test Results." R307–165–1 is new. The other four sections are contained in the EPA-approved SIP, but Utah has renumbered them and made revisions to them. R307–165–2 provides that emission testing is required at least once every five years for all sources with emission limits in Approval Orders or in section IX.H of the SIP (i.e., the PM_{10} SIP limits). In addition, R307–165–2 provides that the Utah Air Quality Board may grant exceptions to the mandatory testing requirements of R307–165–2 that are consistent with the purposes of R307. We believe five years is not frequent enough to satisfy the requirements of the Act and our regulations for practical enforceability and periodic testing and inspection of stationary sources. (See, e.g., sections 110(a)(2)(A), (C), and (F) of the Act; 40 CFR 51.210, 51.212.) We recognize that the five-year period is contained in the EPA-approved SIP. However, it would be inappropriate for us to re-approve this provision. It would also be inappropriate for us to re-approve the Board's discretionary authority to grant exceptions to R307–165–2's mandatory testing requirements because the exercise of such discretionary authority would undermine the enforceability of the SIP.

C. R307–302. "Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves." Utah's revised R307–302 contains residential fuel-burning restrictions and has five sections: R307–302–1, "Definitions;" R307–302–2, "Applicability;" R307–302–3, "No-Burn Periods for Fine Particulate;" R307–302–4, "No-Burn Periods for Carbon Monoxide;" and R307–302–5, "Opacity for Residential Heating." R307–302–1 is unchanged from the EPA-approved rule. R307–302–2 is new. R307–302–3 and 4 are contained in the EPA-approved rule, but Utah has renumbered and made revisions to them. The restrictions in R307–302–5, which are new to R307–302, also appear in EPA-approved R307–201–3; but, the geographic scope of R307–302–5 is more limited. Finally, Utah has deleted EPA-approved R307–302–4, "Violations," from its State rules.

We are proposing to approve some parts of Utah's revised R307–302 and disapprove other parts. We are proposing to approve R307–302–1, R307–302–2(1), and R307–302–3, as submitted by Utah, and we are proposing to approve Utah's deletion of EPA-approved R307–302–4, for the following reasons:

1. R307–302–1 merely defines "Sole Source of Heat" and is unchanged from the current SIP. The definition is acceptable, and, thus, we are proposing to re-approve it.

2. R307–302–2(1), part of Utah's new "Applicability" section, specifies that the residential fuel burning restrictions for particulate matter contained in R307–302–3 ("No-Burn Periods for Fine Particulate") apply in parts of Utah County, all of Salt Lake County, all of Davis County, and in parts of Weber County. This represents an expansion of the geographic scope of the EPA-approved particulate matter provision, which applies in only part of Davis County and does not apply in any part of Weber County. This expansion in area strengthens the rule. Thus, we are proposing to approve R307–302–2(1).

3. Revised R307–302–3 ("No-Burn Periods for Fine Particulate"), specifies residential fuel-burning restrictions and requirements for particulate matter only, including the trigger levels for mandatory no-burn periods. These provisions are essentially the same as those contained in the EPA-approved rule, except that Utah has expanded the area in which the rule would apply through the applicability provisions in revised R307–302–2(1) and has submitted for our approval contingency provisions that are not part of the EPA-approved SIP. If the contingency provisions are triggered, no-burn periods would start when monitored PM_{10} levels reached 110 micrograms per cubic meter instead of the normal 120

micrograms per cubic meter, and restrictions on sale and installation of solid fuel burning devices would go into effect. Because these changes would strengthen the SIP, we are proposing to approve them.[28]

4. The EPA-approved version of R307–302–4 ("Violations") provides that it is a violation of R307–302 to operate a residential solid fuel burning device or fireplace during a mandatory no-burn period. Utah deleted this provision from R307–302 and indicated in response to comments that it removed this provision because it was redundant and unnecessary. According to Utah, "As with all of our other rules, if a person does not comply with the requirements, it is considered a violation of the rule." We agree that this deletion will not affect the State's, EPA's, or citizens' ability to enforce the requirements of the rule. Thus, we are proposing to approve the deletion of R307–302–4 ("Violations").

We are proposing to disapprove R307–302–2(2) and (3), R307–302–4, and R307–302–5, as submitted by Utah, and we are proposing to disapprove Utah's proposed deletion of EPA-approved R307–302–3. These provisions are distinct from the parts of R307–302 we are proposing to approve because they either relate to a different pollutant (carbon monoxide) or a different requirement (opacity limit.) We are proposing to disapprove these submitted provisions for the following reasons:

1. R307–302–2(2), R307–302–4, and Utah's proposed deletion of current EPA-approved R307–302–3. The current EPA-approved version of R307–302–3 ("No-Burn Periods for Carbon Monoxide") contains residential fuel burning restrictions for carbon monoxide. Its no-burn requirements apply to Orem City as well as Provo. Utah has renumbered R307–302–3 as R307–302–4. In addition, through the addition of new applicability provisions in R307–302–2(2) and changes within R307–302–4, Utah has reduced the area to which the no-burn requirements for carbon monoxide would apply. Specifically, they would no longer apply to Orem City. As noted previously, section 110(l) of the Act provides that EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. There has been no section 110(l) demonstration that this change would not interfere with attainment or maintenance of NAAQS. We believe the change poses a problem under section 110(l) of the Act because it may result in an increase in emissions from residential fuel burning in Orem City that could have a negative effect on attainment or maintenance of one or more NAAQS. Thus, we are proposing to disapprove R307–302–2(2) and R307–302–4, as submitted by Utah, as well as Utah's proposed deletion of the current EPA-approved version of R307–302–3.[29]

2. R307–302–2(3) and R307–302–5. R307–302–2(3), part of Utah's new "Applicability" section in R307–302, specifies that the opacity limits in R307–302–5 ("Opacity for Residential Heating") apply in "both areas," which is a reference to the geographic areas specified in R307–302–2(1) and R307–302–2(2). As noted above, we are proposing to disapprove submitted R307–302–2(2). If we disapprove R307–302–2(2) as proposed, the meaning of R307–302–2(3), and the geographic scope of R307–302–5, will be unclear. Thus, we are also proposing to disapprove submitted R307–302–2(3) and R307–302–5.

As mentioned above, the same opacity restrictions contained in R307–302–5 are also contained in current EPA-approved R307–201–3. The only difference is that R307–201–3 applies everywhere in the State, while R307–302–5 was apparently only intended to apply in certain areas along the Wasatch Front. Utah has not submitted changes to R307–201–3 or proposed that it be deleted from the EPA-approved SIP. Because R307–201–3 is still in the EPA-approved SIP, there will be no gap in the coverage of the opacity limits on residential heating if we disapprove submitted R307–302–2(3) and R307–302–5.

D. R307–305. "Nonattainment and Maintenance Areas for PM_{10}: Emission Standards." Utah's revised R307–305 specifies certain generic requirements and standards that would apply within PM_{10} nonattainment and maintenance areas. The rule would replace the current EPA-approved version of R307–305 ("Davis, Salt Lake and Utah Counties and Ogden City, and Nonattainment Areas for PM_{10}: Particulates"). The revised rule has seven sections: R307–305–1, "Purpose;" R307–305–2, "Applicability;" R307–305–3, "Visible Emissions;" R307–305–4, "Particulate Emission Limitations and Operating Parameters (PM_{10});" R307–305–5, "Compliance Testing (PM_{10});" R307–305–6, "Automobile Emission Control Devices;" and R307–305–7, "Compliance Schedule for New Nonattainment Areas." R307–305–1, –2, –6, and –7 are new. R307–305–3 through 5 are contained in the EPA-approved rule as R307–305–1 through 3, but Utah has made revisions to these sections. Also, Utah has deleted EPA-approved rule sections R307–305–4, "Compliance Schedule (PM_{10});" R307–305–5, "Particulate Emission Limitations and Operating Parameters (TSP);" R307–305–6, "Compliance Schedule (TSP);" and R307–305–7, "Compliance Testing (TSP)."

We are proposing to disapprove Utah's revised R307–305 for the following reasons:

1. Revised R307–305–3 contains opacity limits for various sources in PM_{10} nonattainment and maintenance areas. While Utah kept the generic opacity limit of 20% for most sources and clarified various aspects of the rule, Utah deleted a 40% opacity limit that applied to certain older sources in areas other than PM_{10} nonattainment areas. Utah has not explained the deletion of the 40% opacity limit. There has been no section 110(l) demonstration that the deletion of the 40% opacity limit would not interfere with attainment of NAAQS or other Act requirements. We believe that deletion of this standard poses a problem under section 110(l) of the Act because it may lead to an increase in emissions that could have a negative impact on attainment or maintenance of one or more NAAQS. Therefore, we cannot approve the deletion.

Utah also added an exemption, at R307–305–3(4), from R307–305–3's opacity limits for short exceedances during various periods, including startup and shutdown. We recognize that EPA-approved R307–201 contains the same exemption. However, Utah has not explained or justified this exemption as a narrowly tailored exception to the otherwise applicable emission limits in accordance with our interpretation of the Act or established appropriate conditions for such an exception. (See discussion above in section IV.B.3.A.ii of this action regarding excess emissions during startup, shutdown, and malfunctions.) Thus, we do not consider it appropriate to re-approve the exemption.

2. Utah's revised R307–305 deletes various provisions from the EPA-

[28] We note that Utah did not submit one subsection of revised R307–302–3 to us for approval—specifically, R307–302–3(4), which contains no-burn triggers based on $PM_{2.5}$ concentrations. This is an entirely new provision that is not in the EPA-approved version of the rule. Because Utah did not submit it to us, we cannot act on it.

[29] If we finalize our proposal, both the current EPA-approved version of R307–302–3, which relates to no-burn periods for carbon monoxide, and Utah's revised R307–302–3, which relates to no-burn periods for particulate matter and that we are proposing to approve today, would be part of the Federally enforceable SIP.

approved SIP (R307–305–5 through –7) that pertain to control of total suspended particulates in Weber County, including emission limits for seven sources. There has been no section 110(l) demonstration that the deletion of these emission limits and related requirements will not interfere with attainment of NAAQS or other Act requirements. Utah, in its response to comments for its rulemaking action, indicated that some of the sources listed in EPA-approved R307–305–5 no longer exist, but did not specify which sources no longer exist. Utah also said that source Approval Orders contain equivalent or more stringent emission limits, but such Approval Orders are not a substitute for limits in the SIP. We believe that deletion of the limits poses a problem under section 110(l) of the Act because it may lead to an increase in emissions that could have a negative impact on attainment or maintenance of one or more NAAQS.

In addition, section 193 of the Act provides that no control requirement in effect before November 15, 1990 (which would include the provisions in EPA-approved R307–305–5 through –7) in any area which is nonattainment for any pollutant may be modified in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant. Ogden City, where some of the sources may be located, is nonattainment for PM_{10}, and Weber County has recorded a violation of the $PM_{2.5}$ NAAQS and has been designated nonattainment for that standard. We are unable to determine that Utah's proposed revisions to R307–305 will insure equivalent or greater emission reductions of $PM_{2.5}$ or PM_{10}.

Because we are unable to conclude that approval would be consistent with the requirements of sections 110(l) and 193 of the Act, we are proposing to disapprove Utah's revised R307–305.

E. R307–306. "PM_{10} Nonattainment and Maintenance Areas: Abrasive Blasting." Utah's R307–306 establishes requirements that apply to abrasive blasting operations in PM_{10} nonattainment and maintenance areas. The EPA-approved SIP does not include a rule numbered R307–306. However, the EPA-approved SIP does include R307–206, which contains essentially the same requirements for abrasive blasting requirements, but applies to both attainment and nonattainment areas.

We are proposing to disapprove R307–306 because the test method for measuring opacity at intermittent abrasive blasting operations is not adequate. As with the test method specified in submitted SIP section IX.H.1.g, which we discuss in section IV.B.2.b of this action, subsection R307–306–5 of R307–306 says: "Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six minute period shall not apply." This language is not sufficiently clear.[30] The language must indicate what test method will apply. Without this, we cannot be assured that the opacity limits for intermittent abrasive blasting operations will be enforceable.

F. R307–309. "Nonattainment and Maintenance Areas for PM10: Fugitive Emissions and Fugitive Dust." This rule, which is not in the EPA-approved SIP, establishes work practices and emission standards for sources of fugitive emissions and fugitive dust listed in section IX.H of the SIP or located in PM_{10} nonattainment or maintenance areas. The EPA-approved SIP does include R307–1–4.05 ("Emissions Standards. Fugitive Emissions and Fugitive Dust"), which contains provisions to control fugitive emissions and fugitive dust in both attainment and nonattainment areas.

We are proposing to disapprove R307–309. First, the rule doesn't adequately specify in an enforceable form the requirements that sources must meet to limit fugitive dust and fugitive emissions. For example, for mining activities and tailings piles and ponds, owners or operators must "take steps to minimize fugitive dust" (R307–309–10 and R307–309–11). This is not sufficiently defined to be an enforceable standard. R307–309–6(2) merely suggests potential control measures. Further detail is left to a fugitive dust control plan that is not part of the rule and that can be approved or modified without EPA approval or public input. EPA is unable to verify that the control plans for such sources are adequate to ensure attainment and maintenance of the NAAQS or meet other Act requirements.

Second, R307–309–5, a subsection of R307–309, specifies opacity limits for fugitive dust, but then indicates these limits do not apply when wind speeds exceed 25 miles per hour and the owner or operator is taking "appropriate actions to control fugitive dust." This exemption does not appear in EPA-approved R307–1–4.05, and we believe the exemption could lead to an increase in emissions. Furthermore, the rule defines "appropriate actions to control fugitive dust" by reference to the fugitive dust control plan, which, as explained above, EPA has no opportunity to review or approve. Finally, the rule does not adequately define or specify the method for measuring opacity at intermittent sources. We discuss this issue in greater detail in section IV.B.2.b of this action.

Third, R307–309 contains certain requirements that pertain to roads that would constitute a relaxation of EPA-approved R307–1–4.05.

There has been no section 110(l) demonstration that the various changes R307–309 would make to EPA-approved R307–1–4.05 would not interfere with attainment or maintenance of NAAQS or other Act requirements. We believe the proposed changes pose a problem under section 110(l) of the Act because they may lead to an increase in emissions that could have a negative impact on attainment or maintenance of one or more NAAQS, particularly since Salt Lake County and Utah County have already experienced exceedances of the PM_{10} NAAQS associated with fugitive emissions and dust.

We're also concerned that approval of R307–309 would make it difficult for us to delineate which aspects of EPA-approved R307–1–4.05 remain in force and which do not. We recognize that EPA-approved R307–1–4.05 contains some of the same flaws we describe above. However, once we've identified issues with the enforceability of current provisions, it would be inappropriate for us to reapprove them.

G. R307–310. "Salt Lake County: Trading of Emission Budgets for Transportation Conformity." EPA is proposing to take no action on the change to this rule. Utah has merely added section R307–310–5, "Transition Provision," to the EPA-approved R307–310 (which contains only R307–310–1 through 4), but has resubmitted the entire rule. R307–310–5 indicates that R307–310–1 through –4 only remain in effect until EPA approves the conformity budgets in Utah's PM_{10} maintenance plan for Salt Lake County. R307–310–1 through –4 allow trading between the Salt Lake County PM_{10} attainment plan's motor vehicle emission budgets for PM_{10} and NO_X.[31] EPA is proposing to disapprove the Salt Lake County PM_{10} maintenance plan and, as noted in section VII below, the maintenance plan's motor vehicle emission budgets. Our disapproval of the motor vehicle emissions budgets would moot any potential effect of R307–310–5; thus, there would be no

[30] We recognize that this language is similar to language in EPA-approved R307–201, which applies to R307–206. However, due to the problems with this language, it would be inappropriate for us to re-approve it.

[31] EPA approved the PM_{10} attainment plan on July 8, 1994 (59 FR 35036.)

purpose in our acting on R307–310–5. If, as proposed, we do not act on Utah's revised R307–310, the provisions of EPA-approved R307–310–1 through 4 will continue in effect.

H. R307–110–10. "Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter." The rule incorporates by reference into Utah's rules the submitted PM_{10} maintenance plans for Salt Lake County, Utah County, and Ogden City. Because we are proposing to disapprove the maintenance plans, we are also proposing to disapprove this rule.

I. R307–110–17. "Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits." The rule incorporates by reference into Utah's rules the stationary source requirements contained in submitted SIP section IX.H. Because we are proposing to disapprove the provisions in submitted IX.H.1–4, we are also proposing to disapprove this rule.

VII. Transportation Conformity—Motor Vehicle Emissions Budgets

We are proposing to disapprove the motor vehicle emissions budgets contained in the submitted Salt Lake County, Utah County, and Ogden City PM_{10} maintenance plans. The transportation conformity provisions of section 176(c)(2)(A) of the CAA require regional transportation plans and programs to show that "* * * emissions expected from implementation of plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan* * *" These "estimates of emissions" are in the form of motor vehicle emissions budgets (40 CFR 93.118).

Consistent with 40 CFR 93.118(e)(4)(iv), EPA will not approve a motor vehicle emissions budget unless the budget, "when considered together with all other emissions sources, is consistent with applicable requirements for * * * maintenance." As described in section IV.B of this action, above, we are proposing to disapprove the submitted PM_{10} maintenance plans and maintenance demonstrations for Salt Lake County, Utah County, and Ogden City. In that section, we identify a number of concerns with the assumptions Utah used in the modeling, including Utah's inappropriate treatment of Kennecott's banked SO_2 emissions and unjustified reduction of re-entrained road dust emissions. We also identify concerns with the control measures underlying Utah's maintenance demonstration. Due to these various concerns, we cannot find that the submitted maintenance plans will be adequate to maintain the PM_{10} NAAQS for the 10-year period, as required by section 175A of the Act.

Utah modeled its proposed motor vehicle emission budgets in its submitted maintenance plans along with emission projections for all other source categories. Under 40 CFR 93.118(e)(4)(iv), we cannot evaluate the adequacy of the motor vehicle emission budgets without considering the overall adequacy of the maintenance demonstrations, and in particular the modeling supporting the demonstrations, because the same modeling provided the basis for the proposed motor vehicle emissions budgets. Because the maintenance demonstrations for all three areas are invalid, we are unable to conclude that the motor vehicle emissions budgets, when considered together with all other emissions sources, are consistent with maintenance of the PM_{10} NAAQS.

If we finalize our proposed disapproval of the motor vehicle emissions budgets in the submitted maintenance plans, those budgets will be unavailable for use in conformity determinations, and the areas will need to continue[32] addressing transportation conformity as follows:

A. Salt Lake County: Per 40 CFR 93.118, conformity will have to be shown to the following 2003 motor vehicle emissions budgets: 40.30 tons per day (tpd) of direct PM_{10} and 32.30 tpd of NO_X. These values are derived from the Salt Lake County PM_{10} attainment plan that EPA approved on July 8, 1994 (59 FR 35036).

B. Utah County: Per 40 CFR 93.118, conformity will have to be shown to the following motor vehicle emissions budgets, which are contained in the Utah County PM_{10} attainment plan that EPA approved on December 23, 2002 (67 FR 78181):

Year	Direct PM_{10} (tpd)	NO_X (tpd)
2003	6.57	20.35
2010	7.74	12.75
2020	10.34	5.12

C. Ogden City: Because EPA has not approved a PM_{10} SIP revision for the Ogden City area, there are no motor vehicle emissions budgets as defined in 40 CFR 93.101. Instead, conformity demonstrations will have to show that direct PM_{10} and NO_X emissions are either not greater than 1990 emissions or not greater than "no build" emissions (40 CFR 93.119(d)). The 1990 direct PM_{10} emissions and NO_X emissions for the Ogden City area are currently defined as 4.57 tpd and 2.28 tpd, respectively.

[32] The submitted maintenance plans' motor vehicle emissions budgets have not been available for use pending this action because EPA never determined the budgets to be adequate pursuant to 40 CFR 93.118(e) and (f).

VIII. Proposed Action

As described above, EPA is proposing to disapprove Utah's September 2, 2005 redesignation requests for the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas, the submitted PM_{10} maintenance plans for these areas, and the motor vehicle emissions budgets contained in the maintenance plans. EPA is proposing to approve some of the associated SIP revisions, disapprove others, and take no action on one rule revision.

EPA is also proposing to find that it is not required to act on proposed SIP revisions that Utah submitted on July 11, 1996 and June 2, 1997 because those revisions have been superseded by revisions Utah subsequently adopted.

EPA is soliciting public comments on its proposed rulemaking as discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to EPA as discussed in this action.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The OMB has exempted this regulatory action from Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action merely proposes to partially approve and partially disapprove revisions to the Utah State Implementation Plan and to disapprove a redesignation request.

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.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve or disapprove requirements that the state is already imposing. Similarly, disapproval of a redesignation request only affects the legal designation of an area under the Clean Air Act and does not create any new requirements. Therefore, because the Federal SIP approval/disapproval and redesignation disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This Federal action proposes to partially approve and partially disapprove pre-existing requirements under state or local law, and to disapprove a redesignation request, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely proposes to partially approve and partially disapprove state rules implementing a Federal standard, and to disapprove a redesignation request, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it proposes to partially approve and partially disapprove a state rule implementing a Federal program and to disapprove a redesignation request.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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 EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 18, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–28692 Filed 11–30–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2263; MB Docket No. 09–190; RM–11566]

Radio Broadcasting Services; Stonewall, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 C.F.R. Section 73.202(b). The Commission requests comment on a petition filed by Katherine Pyeatt proposing the allotment of FM Channel 280A as a first local service at Stonewall, Texas. Channel 280A can be allotted at Stonewall in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 km (8.6 miles) southwest of Stonewall, at 30–08–45 North Latitude and 98–45–45 West Longitude. See Supplementary Information infra.

DATES: The deadline for filing comments is December 31, 2009. Reply comments must be filed on or before 15 days following the deadline for initial comments.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve petitioner, as follows: Katherine Pyeatt, 2215 Cedar Springs Road, Suite 1605, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket 09–190, adopted October 21, 2009, and released October 23, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Stonewall, Channel 280A.

Federal Communications Commission.

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. E9–28671 Filed 11–30–09; 8:45 am]

BILLING CODE 6712–01–S

Notices

Federal Register
Vol. 229, No. 74
Tuesday, December 1, 2009

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR Part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires 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 RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the 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. Comments may be sent to: Joyce McNeil, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Type of Request: Extension of a currently approved collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant.

Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on Federally assisted new building construction.

7 CFR Part 1792, Subpart C, Seismic Safety of Federally Assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service, hereinafter referred to as agency, through lien accommodations or subordinations approved by the agency. This subpart implements and explains the provisions of the loan contract utilized by the agency for both electric and telecommunications borrowers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 750.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 23, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–28642 Filed 11–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest; Pinedale Ranger District; Wyoming; Environmental Impact Statement for the Upper Green River Area Rangeland Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will update and supplement the 2004 Environmental Impact Statement (EIS) to analyze the effects of domestic livestock grazing in the upper Green River area. As part of the process, the Forest Service will prepare a supplemental Draft Environmental Impact Statement for public comment. This project was previously published in the **Federal Register** on the following dates: (1) Notice of intent to prepare an EIS published on 7/23/2003 (Vol. 68, #141, page 43487), (2) Notice of availability of a draft EIS published on 3/12/2004 (Volume 69, #49, page 11853), (3) Notice of availability of a final EIS published on 2/4/2005 (Volume 70, #23, page 6004). The analysis contained in the EIS will be used by the Responsible Official to

decide whether or not, and how, livestock grazing would be authorized on the grazing allotments within the project area. The project area is located in western Wyoming; approximately 30 miles northwest of Pinedale, Wyoming near the Green River Lakes. The majority of the project area lies within Sublette County, with small portions that extend into Teton and Fremont counties. The entire 162,800 acre project area lies within the boundaries of the Pinedale Ranger District. The project area is comprised of the following six grazing allotments: Badger Creek, Beaver-Twin Creeks, Noble Pastures, Roaring Fork, Upper Green River, and Wagon Creek.

DATES: Comments concerning the scope of the analysis were solicited in the 7/23/2003 Notice of Intent. All comments that were received during the previous analysis period will be reconsidered in the current analysis. The draft environmental impact statement is expected in March of 2010 and the final environmental impact statement is expected in July of 2010.

ADDRESSES: District Ranger, Pinedale Ranger District, Box 220, Pinedale, Wyoming 82941, telephone 307–367–4326, facsimile 307–367–5750 or send electronic mail to *comments-intermtn-bridger-teton-pinedale@fs.fed.us* and on the subject line, put only "Upper Green Grazing Allotments". Again, comments that were previously submitted will be considered and need not be re-submitted. Comments on the supplemental draft that is expected to be released in March of 2010 would be most helpful.

FOR FURTHER INFORMATION CONTACT: Dave Booth, Project Manager, Pinedale Ranger District, 307–367–5754, *dbooth@fs.fed.us*, and see **ADDRESSES** above. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Rescission Act of 1995 (Pub. L. 104–19, Section 504(a)) requires the Forest Service to schedule and complete analysis and decisions for grazing allotments where needed. The purpose and need for the proposed action is to authorize grazing activities on the Badger Creek, Beaver-Twin Creeks, Noble Pastures, Roaring Fork, Upper Green River, and Wagon Creek Allotments in a way that sustains the health of the land and has value to grazing permittees. The allotment management plan is the document used to implement revised or updated direction and/or refine desired rangeland conditions and institute management prescriptions to meet them. Allotment management plans may be revised by this decision. Integral to this is a need to confirm or attain compliance and consistency of this analysis and its resultant decision with legal mandates, including the National Environmental Policy Act of 1976 (NEPA), as well as policy direction, including the Bridger-Teton National Forest Land and Resource Management Plan (Forest Plan). This action contributes toward the accomplishment of Goal 1.1(h) in the Forest Plan (page 113), which states "provide for about 260,000 Animal Unit Months (AUMs) of livestock grazing annually" and Goal 4.7 which states "Grazing use of the National Forest sustains or improves overall range, soils, water, wildlife, and recreation values or experiences". To date the Forest Service has identified three alternatives.

Alternative A: Grazing as Currently Permitted (No Action Alternative)

Although allotment management plans (AMPs) would be prepared for each of the six allotments, the grazing management practices specified for the allotments with existing AMPs would not be changed. The Upper Green River and Roaring Fork allotments would continue to operate under the guidelines specified in AMPs that are over 25 years old, and season-long grazing would persist in the Badger Creek and Beaver-Twin Creeks allotments. In addition, no new utilization standards would be initiated to move existing resource conditions in the project area toward the desired future conditions (DFCs) specified in the Forest Plan.

Alternative B: Proposed Action

Authorize continued grazing under a specific management regime, designed to sustain or improve the overall ecological condition of the project area. The updated direction would be incorporated in respective allotment management plans (AMPs) to guide grazing management within the project area. New allotment management plans (AMPs) would be developed for the Badger Creek, Beaver-Twin Creeks, Noble Pastures, and Wagon Creek allotments, and the existing AMPs for the Roaring Fork and Upper Green River allotments would be updated as a result of this action. Grazing management strategies would be developed or revised in accordance with the Code of Federal Regulations (CFR), 36 CFR 222.1(b)(2), which describes allotment management planning provisions. Current grazing management strategies would be maintained where resource objectives are being achieved, and new management strategies would be implemented in areas where resource objectives have not been met. Rotational grazing systems would be initiated in the Badger Creek, Beaver-Twin Creeks, and Roaring Fork allotments and modified, as needed, in the remaining allotments to ensure desired conditions are reached.

Alternative C: No Grazing by Domestic Livestock (No Grazing Alternative)

Alternative C would eliminate livestock grazing in the project area. This alternative was developed to demonstrate the effects that eliminating domestic cattle grazing would have on the environment and to more clearly illustrate the potential effects of implementing either Alternative A or Alternative B. Under this alternative, domestic livestock grazing in all six allotments of the project area would be phased out over several years as existing Term Grazing Permits expire.

Responsible Official

District Ranger, Pinedale Ranger District, P.O. Box 220, Pinedale, Wyoming 82941.

Nature of Decision To Be Made

The District Ranger will decide whether or not to authorize continued grazing under a specific management regime designed to sustain and/or improve the overall ecological condition of the project area. The decision would include adaptive management and any mitigation measures needed in addition to those prescribed in the Forest Plan.

Preliminary Issues

The Forest Service has identified the following potential issues.

Issue 1—Effects of livestock grazing on riparian and aquatic function.

Issue 2—Effects of livestock grazing on Threatened, Endangered and Sensitive species.

Issue 3—The social and economic effects of authorizing livestock grazing in the area.

Issue 4—Effects of livestock grazing on rangeland function.

Scoping Process

The following methods were used to invite the public to participate in this project: A scoping letter was mailed to those listed on the Bridger-Teton National Forest's general mailing list on February 10, 2000. The mailing list included private landowners, term grazing permit holders, special interest

groups, interested members of the public, and local, State, and Federal agencies. The letter described the proposed action, the purpose and need for the project, the process that would be followed for completing the environmental analysis, and the scope of the decision to be made. Additionally, the letter solicited public participation in the process, specifically the submission of comments, concerns, and recommendations regarding management of the six allotments in the project area. Term grazing permit holders, or their representatives, were contacted shortly after the project was initiated to solicit their input concerning management of the six allotments within the project area. This project was previously published in the **Federal Register** on the following dates: (1) Notice of intent to prepare an EIS published on 7/23/2003 (Vol. 68, #141, page 43487), (2) Notice of availability of a draft EIS published on 3/12/2004 (Volume 69, #49, page 11853), (3) Notice of availability of a final EIS published on 2/4/2005 (Volume 70, #23, page 6004). Public comments were received in response to the scoping announced in the Notice of Intent and in response to the Draft EIS described in the 3/12/2004 Notice of Availability.

No additional comments are sought at this time. All previously submitted comments will be used to prepare the supplemental Draft EIS. All those who commented on the 2004 DEIS in a timely manner will be eligible to appeal the final decision pursuant to 36 CFR 215. In addition, all those who comment on the supplemental DEIS in a timely manner will be eligible to appeal the final decision.

Dated: November 16, 2009.

Joe Harper,

Acting District Ranger.

[FR Doc. E9–28520 Filed 11–30–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in Prather, California on January 13, 2010 and Clovis, California on January 27, 2010. The purpose of the January 13th meeting will be to review new project proposals that were submitted by the January 8th due date and the purpose of the meeting on January 27th will be to vote and approve projects to be funded under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343).

DATES: The meetings will be held on January 13, 2010 from 6 p.m. to 8:30 p.m. in Prather, CA and January 27, 2010 from 6 p.m. to 8:30 pm in Clovis, CA.

ADDRESSES: The meeting on January 13th will be held at the High Sierra Ranger District, 29688 Auberry Rd., Prather, CA and the meeting on January 27th will be held at the Sierra National Forest Supervisor's Office, 1600 Tollhouse Rd., Clovis, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. If you wish to make a presentation on your project proposal please contact Robbin Ekman by January 6, 2010. Agenda items to be covered include: (1) Review new project proposals and (2) Vote on projects to be funded.

Dated: November 23, 2009.

Ray Porter,

District Ranger..

[FR Doc. E9–28488 Filed 11–30–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC91

Proposed Directives for Forest Service Concession Campground Special Use Permits

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directives; request for comment.

SUMMARY: The Forest Service is proposing changes to its directives governing permits for operation of campground and related Granger-Thye concessions (concessions with Government-owned improvements) on National Forest System lands. The proposed directives would reduce from 50 to 10 percent the camping fee discount campground concessioners (concessioners) are required to offer to holders of Senior and Access Passes and Golden Age and Golden Access Passports. Additionally, the proposed directives would allow concessioners to propose camping fee discounts above 10 percent for these pass holders in their applications; would require concessioners to offer a 10 percent discount to holders of Senior and Access Passes and Golden Age and Golden Access Passports for standard amenity recreation fee (SARF) day use sites that they operate; and would require concessioners to provide free use to holders of Annual and Volunteer Passes at SARF day use sites they operate. Furthermore, existing concessioners could request amendment of their permit to incorporate all of these changes, as well as an increase in their land fee for the remaining term of their permit if their gross revenue increases significantly due to the reduction in the camping fee discount. Alternatively, the proposed directive changes would allow existing concessioners to continue operating under the terms of their current permit until it expires. Public comment on the proposed directives is invited and will be considered in development of the final directives.

DATES: Comments must be received in writing by February 1, 2010.

ADDRESSES: Send comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov.* Comments also may be submitted by mail to U.S. Forest Service, Attn: Carolyn Holbrook, Recreation and Heritage Resources Staff, 1400 Independence Avenue, SW., Stop 1125, Washington, DC 20250–1125. If comments are sent electronically, please do not send duplicate comments by mail. Please confine comments to issues pertinent to the proposed directives, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection. The public may inspect comments received on these proposed directives in the Office of the Director, Recreation, Heritage, and Volunteer Resources Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW.,

Washington, DC, on business days between 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at 202–205–1426 to facilitate entry into the building. Copies of comments may be requested under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, 202–205–1426, Recreation, Heritage, and Volunteer Resources Staff.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Proposed Directives

a. The Campground Concession Program

Three decades ago, Forest Service personnel operated and maintained most Government-owned recreation facilities on National Forest System lands. Around that time, the Forest Service began experimenting with concession operation of its developed recreation sites. The program has evolved to a point where most highly developed campgrounds on National Forest System lands are managed by concessioners (approximately 50 percent of Forest Service camping capacity, or 82 percent of the reservable campsites listed in the National Recreation Reservation Service (NRRS) are managed by concessioners). The Forest Service administers approximately 150 permits for operation of Government-owned campgrounds and related recreation sites under Section 7 of the Granger-Thye Act, 16 U.S.C. 580d.

These campground concessions vary based on size, the number of developed recreation sites included, and the range of revenue generated. For example, a small campground concession with one to three developed recreation sites might produce revenue ranging from $50,000 to $105,000, while a large campground concession with 10 to 12 developed recreation sites might generate revenue in excess of $1,000,000. The Agency anticipates that opportunities to camp and recreate at developed recreation sites will continue to be important to the public and that the Forest Service will continue to rely on concessioners to manage developed camping opportunities.

b. Passes Authorized by the Land and Water Conservation Fund Act and the Federal Lands Recreation Enhancement Act

The Forest Service authorizes operation of Government-owned campgrounds and related Granger-Thye concessions under Section 7 of the Granger-Thye Act (16 U.S.C. 580d).

From its enactment in 1965 until its repeal in 2004, section 4 of the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 460*l*–6a) established criteria for charging a use fee for developed recreation sites on National Forest System lands. From 1996 until its repeal in 2004, the Recreational Fee Demonstration Program (Fee Demo) statute (Pub. L. 104–134, § 315) provided separate, broader authority than the LWCFA for charging a use fee for developed recreation sites. However, as a matter of policy, until 2004, concessioners were authorized to charge fees for developed recreation sites only if the Forest Service could charge fees for those sites under the LWCFA (see Forest Service Manual (FSM) 2344.31).

In December 2004, the Federal Lands Recreation Enhancement Act (REA) (16 U.S.C. 6801–6814) supplanted the LWCFA and the Fee Demo statute as the sole recreation fee authority for the Forest Service. The Forest Service continued to utilize the same standards, now the criteria in REA, for determining whether developed recreation sites, both those managed by the Forest Service and those managed by concessioners, were eligible for charging a use fee. The campground concession prospectus was updated to reflect changes in REA. However, FSM 2344.31 must now be updated to replace references to the LWCFA with references to REA.

Additionally, the LWCFA established three passes: (1) A lifetime pass for senior citizens and permanent residents, called the Golden Age Passport; (2) a lifetime pass for citizens and permanent residents with a permanent disability under Federal law, called the Golden Access Passport; and (3) an annual pass available to anyone, called the Golden Eagle Passport. The Golden Eagle Passport entitled the holder to free admission at Federal recreation sites where an entrance fee was charged. The Golden Age and Golden Access Passports entitled the holder to free admission at Federal recreation sites where an entrance fee was charged, as well as a 50 percent discount on camping fees charged at Federal recreation sites. Forest Service policy at FSM 2344.31 also requires concessioners to provide a 50 percent discount on camping fees to holders of the Golden Age or Golden Access Passport.

REA replaced the Golden Eagle, Golden Age, and Golden Access Passports with the America the Beautiful–National Parks and Federal Recreational Lands Pass (Interagency Pass). The Interagency Pass consists of four passes: (1) The Annual Pass, which replaced the Golden Eagle Passport; (2) the Senior Pass, which replaced the Golden Age Passport; (3) the Access Pass, which replaced the Golden Access Passport; and (4) the new Volunteer Pass, for those who volunteer on Federal lands. REA provides that the Golden Eagle, Golden Age, and Golden Access Passports remain in effect under the terms under which they were issued, to the extent practicable, until they are lost, stolen, or expired.

REA prohibits the Forest Service from charging entrance fees, but authorizes the Forest Service to charge an SARF for recreation sites that meet certain criteria, including day use sites, and an expanded amenity recreation fee for campgrounds and other facilities that meet certain criteria. REA provides that the holder of an Interagency Pass, including the Annual, Senior, and Access Passes, is entitled to free use at Forest Service recreation sites where an SARF is charged. Unlike the LWCFA, however, REA does not provide that the holder of a senior citizen or disability pass is entitled to a 50 percent discount on camping fees charged at Federal recreation sites. However, the participating agencies, including the Forest Service, elected to apply the 50 percent discount on camping fees provided under the LWCFA to holders of Senior and Access Passes issued under REA at federally-operated recreation sites. Consistent with FSM 2344.31, since enactment of REA, the Forest Service has also continued to require concessioners to provide a 50 percent discount on camping fees to holders of Golden Age and Golden Access Passports and Senior and Access Passes.

c. The Effects of the 50 Percent Discount on Camping Fees

The Forest Service is the only participating agency that requires concessioners to provide a 50 percent discount on camping fees to holders of these passes. For example, the National Park Service allows its concessioners to elect whether to honor these passes, and most elect not to honor them. In addition, concessioners have raised five concerns regarding the 50 percent discount on camping fees: (1) REA does not require a camping fee discount for Senior and Access Passes; (2) a 50 percent discount is very steep and is not comparable to other discounts in the private sector; (3) the 50 percent discount is non-negotiable and thus cannot be used as a marketing tool to encourage off-peak use; (4) application of the 50 percent discount to holders of Senior and Access Passes is unreasonable in view of the growing

number of senior citizens in the United States; and (5) the 50 percent discount requires concessioners to raise camping fees to compensate for the loss in revenue, thus increasing prices for non-seniors and discouraging a future generation of campers.

d. Not Honoring the Interagency Pass at SARF Day Use Sites Operated by Concessioners

A converse problem has emerged with SARF day use sites that are operated as concessions. After enactment of REA, the Forest Service took the position that concessioners should not be required to provide free use at SARF sites to any Interagency Pass holders. There were several reasons for this policy, including the need to (1) Maintain eligibility for the regulatory exemption from the Service Contract Act at 29 CFR 4.133(b) by not requiring concessioners to provide extensive free services; (2) honor the terms under which these concessions were offered; and (3) maintain the economic viability of concessions.

However, not requiring concessioners to honor Interagency Passes at SARF day use sites has resulted in misunderstanding by some Interagency Pass holders, who expect to have their passes honored at all SARF day use sites. The problem has created a dilemma for the Forest Service. The Agency believes that all pass holders should understand how their passes will be honored at concessions. Additionally, the Agency believes that holders of the Interagency Pass have a reasonable expectation that their passes will be honored at all SARF day use sites.

However, it would not be economically viable to require concessioners to provide free use to all Interagency Pass holders. Not only were these costs not anticipated when the applications for these concessions were submitted, but these requirements, in addition to the camping fee discount, would be detrimental to the economics of the concessions and could render many of them nonviable. Furthermore, although camping fees are the primary source of revenue for most concessions, for some, the primary source of revenue is day use sites. Concessioners are concerned that the Agency will remove these sites from concessions to satisfy the expectations of Interagency Pass holders and thus eliminate viable business opportunities.

e. Annual Interagency Pass Sales by the Forest Service

Based on data obtained from a 2008 field survey, the issuance of Interagency Passes by the Forest Service can be characterized as follows:

Type of pass	Number sold	Percentage of total
Access	11,991	15.7
Senior	47,488	62.0
Annual	16,437	21.5
Volunteer	227	00.3
Total	76,143	100

Senior and Access Passes, which currently entitle the holder to a 50 percent discount on camping fees at concessions, represent more than 78 percent of Interagency Passes issued by the Forest Service. Annual Passes, which are not currently honored by concessioners for free use at SARF day use sites, represent 21.5 percent of Interagency Passes issued by the Forest Service. Volunteer Passes, which are also not currently honored by concessioners for free use at SARF day use sites, constitute an insignificant percentage of Interagency Passes issued by the Forest Service.

f. Offering Different Discounts on Camping Fees for the Two Sets of Senior and Disability Passes

It is impracticable for the Forest Service to offer different discounts on camping fees, one for holders of Golden Age and Golden Access Passports and another for holders of Senior and Access Passes. Most highly developed Forest Service campgrounds are managed by concessioners, and campsites at these campgrounds are included in the NRRS. It is not feasible under the current technological configuration and contract for the NRRS to distinguish between Golden Age and Golden Access Passports and Senior and Access Passes in providing camping fee discounts for concession sites in the NRRS. Provision of the discount to eligible customers for Forest Service sites in the NRRS is driven by provision of the holder's pass number, not the type of pass. There is no way to differentiate between the numbers for Golden Age and Golden Access Passports and the numbers for Senior and Access Passes in the NRRS because they have the same number of digits. Moreover, there is no national database of pass numbers for either type of pass. Thus, there is no means to verify which discount holders of the two types of passes should receive through the NRRS.

The Agency does not want to discourage use of the NRRS because it is known in the market as the primary portal for campground reservations on Federal lands and it reduces the need to handle cash in remote locations, thereby enhancing public safety and accountability. The Forest Service also does not want to treat reservation and walk-in customers differently with regard to how these two sets of passes are honored at concessions.

Differentiation between the two sets of passes would create an excessive workload for the NRRS because of the need to ensure at all reservation levels (that is, at the call center, over the internet, and for field sales) that the correct discount is being provided. Differentiation would add complexity to field operations by requiring verification of eligibility and would increase the risk of failure for the NRRS contractor in meeting the Government's performance standards by imposing a requirement that is difficult to verify.

Different discounts for the two sets of passes would create inequity among members of two classes of citizens, seniors and the disabled. Under the NRRS, customers are not classified. All customers are considered equal; the only differentiation is that those with a Golden Age or Golden Access Passport or Senior or Access Pass enter the pass number and receive a discount on camping fees. Furthermore, when the Interagency Pass was adopted, holders of Golden Age and Golden Access Passports were encouraged to exchange them for Senior or Access Passes, and many did. Establishing a dual discount policy would seem unfair to these pass holders.

Finally, a dual standard for the two sets of passes would be confusing to current and future pass holders. Therefore, the Forest Service is

proposing to offer the same discounts on camping fees to holders of Golden Age and Golden Access Passports as holders of Senior and Access Passes.

g. Analysis of the Concession Industry

In 2008, the Forest Service commissioned a market and financial analysis to assist the Forest Service in understanding current trends in the campground concession industry. As part of the study, interviews were conducted with Forest Service employees across the country at the regional, district, and forest levels; campground concessioners; the National Forest Recreation Association; the Good Sam Club; the National Association of RV Parks and Campgrounds; and the RV Industry Association. While AARP declined to be interviewed, the organization stated via email that it may submit comments on the proposed directives. The Forest Service used the report resulting from the study as part of its analysis in preparing this notice.

h. The Effect of Changing Demographics

Between 2008 and 2022, it is estimated that the number of senior citizens 62 years of age or older in the United States will increase at an average annual rate of approximately 3 percent a year due to the effect of the Baby Boom generation (born between 1946 and 1964). The total senior population will grow by approximately 50 percent from 47 million in 2008 to 70.7 million in 2022, increasing from 15.4 percent of the total population in 2008 to 20.7 percent in 2022 according to census estimates. In contrast, the rest of the U.S. population is expected to decline.

Between 2001 and 2006, the number of concession camping nights sold at a discount was approximately 7.4 percent nationally. By 2007, discounted senior use increased to 11.4 percent nationally. Some concessioners already provide senior discounts on 25 to 30 percent or more of their camping fees. Due to the growth of eligible seniors, the number of discounted camping nights could increase nationally to 17 percent by 2022, assuming current participation rates by seniors and non-seniors in camping.

Concessioners' cost to provide the 50 percent senior and disability discounts in 2007 was approximately $4,000,000 nationally. Given the projected growth in seniors, continuation of the 50 percent senior and disability discount policy could increase the cost of providing the 50 percent discount to $6,000,000 nationally by 2022. This increase in operating costs would likely require a corresponding increase in camping fees for non-seniors, who represent a shrinking demographic in relation to seniors.

Assuming full campsite costs ranging from $10.50 to $15.00 for non-seniors, senior pass holders who would pay $5.25 to $7.50 per night for a family campsite under current Forest Service policy would pay $9.45 to $13.50 for that campsite under the proposed directives. Non-seniors already pay an estimated $1.50 extra to offset the senior discount. If the discount policy remains unchanged, based solely on growth in the number of seniors, campsite cost for non-seniors could increase by $.75 to $1.00 by 2022 strictly to offset the senior discount. The consequential cost of the current policy to non-seniors is inequitable.

i. Forest Service Discount Versus Market Discounts

Now that the Baby Boom generation is starting to retire, many hospitality, travel, and recreation companies have reconsidered their approach to senior discounts. Nevertheless, some level of discounting remains widespread across hospitality industries. Discount levels vary and come with more or less restrictions, but a generally accepted standard appears to be approximately 10 percent, rather than 50 percent, as under current Forest Service policy. Camping discounts in the private sector are not uniquely targeted towards seniors. Where annual membership fees are charged, discounts range from 10 to 50 percent. In contrast to the Forest Service senior discount, participating campgrounds are generally required to honor the 10 percent discount at any time of year, although black-out dates may apply. The 50 percent discount is typically offered only when space is readily available and can therefore be used to encourage off-peak use without reducing peak season income.

j. Proposed Change to Pass Policy for Concessioners

To address the economic impact of escalating senior pass use on concessions, to approximate the market rate for discounts, and to treat all holders of senior and disability passes the same, the Forest Service is proposing to reduce the camping fee discount concessioners are required to offer holders of Golden Age and Golden Access Passports and Senior and Access Passes from 50 to 10 percent. Concession applicants could propose a higher discount in their application to encourage use during off-peak times.

To address the competing objectives of meeting expectations of Interagency Pass holders, while retaining the option to operate SARF day use sites as part of concessions, the Forest Service is also proposing to require concessioners to offer a 10 percent discount to holders of Golden Age and Golden Access Passports and Senior and Access Passes and free use to holders of Annual and Volunteer Passes at SARF day use sites operated by concessioners.

Revenue derived from camping fees represents approximately 88 percent of total concession revenue, while revenue derived from day use sites, most of which comes from SARFs, represents approximately 12 percent of total concession revenue. Reducing the camping fee discount for holders of Golden Age and Golden Access Passports and Senior and Access Passes from 50 percent to 10 percent would increase revenue for concessions by approximately $3,360,000 or 9.6 percent nationally. The report estimates that the current cost of the 50 percent camping fee discount to concessioners is $4.2 million. The proposed directives would reduce the camping fee discount to 10 percent or $0.84 million. The difference between the value of the current discount and the proposed discount, $3.36 million, equals the estimated increase in campground concession revenue ($4.2 million − $.84 million = $3.36 million). Additionally, the report estimates that total campground concession revenue is $35 million. Thus, reducing the camping fee discount for holders of Golden Age and Golden Access Passports and Senior and Access Passes from 50 to 10 percent would increase campground concession revenue by approximately $3.36 million or 9.6 percent of total concession revenue nationally (3.36 ÷ 35 = .096).

Based on 2007 data, the agency estimates that establishing a discount of 10 percent for holders of Golden Age and Golden Access Passports and Senior and Access Passes at concession-operated SARF day use sites would cost concessioners approximately $50,000 nationally (assuming that gross revenue is $4,200,000 and that senior represents 11.4 percent of total use). This cost could increase to $75,000 by 2022 based on the increase in the number of eligible seniors. Granting free use to holders of Annual and Volunteer Passes would cost concessioners approximately $134,000 to $420,000 nationally (assuming that annual pass use ranges from 3.2 to 10 percent of total use). There are insufficient data regarding current pass use at SARF day use sites. Therefore, the lower number in the range is based on the number of Annual and Volunteer Passes issued by the Forest Service, which represents 28 percent of the number of Senior and Access Passes issued by the agency. The

higher number in the range is based on the assumption that passes issued by other Federal agencies will be presented at these sites. These two costs combined ($184,000 to $470,000) represent approximately 0.53 to 1.3 percent of all Forest Service campground concession revenue nationally.

The agency estimates that the cost of providing a 10 percent discount for holders of Golden Age and Golden Access Passports and Senior and Access Passes and free use to holders of Annual and Volunteer Passes at SARF day use sites would be offset by the estimated $3,360,000 increase in revenue nationally from reducing the camping fee discount for holders of Golden Age and Golden Access Passports and Senior and Access Passes. The agency estimates that the concession program as a whole would experience a net revenue increase of approximately 8.3 to 9.0 percent based on the combined effect of the reduced discount on camping fees for holders of Golden Age and Golden Access Passports and Senior and Access Passes; the 10 percent discount for holders of those passes at SARF day use sites; and free use for holders of Annual and Volunteer Passes at concession-operated SARF day use sites.

If existing concessioners would experience a net decrease in revenue, they could elect not to amend their permit to include the requirements in the proposed directives. When permits are reoffered, the Agency would strive to compose the offering so that implementation of the proposed directives would not render a concession uneconomical. Where revenue generated from SARF day use sites is substantial, the prospectus would allow applicants to propose separate percentages of gross revenue for SARF day use sites and camping.

The effect of these policy changes on a particular concession would vary depending on the amount of revenue generated from camping fees relative to the amount of revenue generated from SARF day use sites. Some concessions would experience a significant increase in revenue, while others might experience little or no change. The Forest Service is proposing to amend the land use fee to maintain market value for existing concessioners who agree to have their permits changed to reflect the new policy. Specifically, the Forest Service is proposing to increase the land use fee by adding a surcharge for the balance of these concessioners' permit term in accordance with the schedule below.

Increase in gross revenue	Percentage of gross revenue added to the land use fee
$10,000 or less	No change.
$10,001 to $25,000 ...	+0.25.
$25,001 to 50,000	+0.5.
$50,001 to 75,000	+1.0.
$75,001 to 100,000 ...	+1.5.
Over $100,000	+2.0.

The example below illustrates the economic effect of the proposed directives on a concession that has a significant SARF day use component. In this example, a concession generates approximately $500,000 in revenue, 50 percent of which is generated from camping fees, and 50 percent is generated from day use; 11.4 percent of campers and day users hold Senior or Access Passes, and 3 percent of day users hold Annual or Volunteer Passes.

Overnight use	Camper nights	Current camping fee	Current revenue	Proposed camping fee	Potential revenue	Change in revenue/ land use fee
No Pass	15,703	$15.00	$235,545	$15.00	$235,545	
Senior and Access Passes.	2,021	7.50	15,158	13.50	27,284	
Totals	17,724	.....	250,703	.....	262,829	+12,126

Day use	Use days	Current use fee		Proposed use fee		Change in revenue/ land use fee
No Pass	36,581	$5.85	$213,999	$5.85	$213,999	
Senior and Access Passes.	4,872	5.85	28,501	5.27	25,675	
Annual and Volunteer Passes.	1,282	5.85	7,500	0	0	
Totals	42,735		250,000		239,674	−$10,326
Net Change in Revenue ..						+1,800
Surcharge	.....	.....	.....	.....	.....	none

In this scenario, net concession revenue would increase by only $1,800, so there would be no surcharge.

k. Summary

The proposed 10 percent discount for seniors and the disabled would be comparable to other market discounts and would be sustainable for concession operations, even with changing demographics. The reduction in the camping fee discount, combined with the added discount and free use at SARF day use sites, would generate sufficient revenue to sustain viable concession operations and correct the unsustainable cost of a non-market based senior discount. These changes are both necessary and timely. Furthermore, the proposed changes would ensure consistency and fairness in the Forest Service's concessions pass policy.

Proposed policy changes that are adopted would be incorporated as appropriate in the standard prospectus; the standard special use permit for concession campgrounds and related Granger-Thye improvements, form FS–2700–4b; and other applicable forms.

2. Section-by-Section Analysis of Proposed Changes to FSM 2344.3, Campgrounds and Related Granger-Thye Concessions

In General

FSM 2344.3 would be revised, and section 2344.31, paragraph 1, would be replaced with proposed paragraphs 1, 2, 2(a), 2(b), 2(c), and 3. Current paragraphs 2, 3, and 7 would be renumbered to 5, 6, and 10 and revised, respectively, to replace references to the

LWCFA with a reference to REA if applicable and to incorporate amendments to Section 7 of the Granger-Thye Act. The remaining current paragraphs 4, 5, 6, 8, 9 would be renumbered to 7, 8, 9, 11, and 12 respectively.

2344.3—Campground and Related Granger-Thye Concessions

FSM 2344.3 would be revised to replace the reference to the LWCFA with a reference to REA. Additionally, the title would be revised for consistency with the standard campground concession permit.

2344.31—Policy

Current Paragraph 1

This paragraph would be revised to conform to the current practice in concession prospectuses and the NRRS of requiring a 50 percent discount for holders of Senior and Access Passes. Additionally, it would limit the requirement to extend a 50 percent discount to holders of Golden Age and Golden Access Passports and Senior and Access Passes to permits that are in effect before the effective date of the revised directives, unless concessioners agree to amend their permit to reflect all of the new requirements in paragraphs 2(a), 2(b), 2(c), and 3.

Proposed Paragraph 2

This paragraph would address the new policy for honoring passes at concessions.

Proposed Paragraph 2(a)

Paragraph 2(a) would reduce the discount on camping fees which concessioners are required to provide to holders of Golden Age and Golden Access Passports and Senior and Access Passes from 50 to 10 percent. Additionally, paragraph 2(a) would allow concessioners to propose higher discounts in their applications.

Proposed Paragraph 2(b)

Paragraph 2(b) would require concessioners to provide a 10 percent discount at SARF day use sites to holders of Golden Age and Golden Access Passports and Senior and Access Passes.

Proposed Paragraph 2(c)

Paragraph 2(c) would require concessioners to provide free use to holders of Annual and Volunteer Passes at SARF day use sites.

Proposed Paragraph 3

For existing concessioners who elect to amend their permits to incorporate the changes to the concession pass policy in the proposed directives, this paragraph would impose an increase in the land use fee if their gross revenue increases by more than $10,000 from the reduction in the camping fee discount.

Proposed Paragraph 4

This paragraph would clarify that required discounts and free use to pass holders must be factored into proposed land use fees.

Current Paragraphs 2 and 3

Current paragraph 2 in FSM 2344.31 would be renumbered as paragraph 5, and current paragraph 3 would be renumbered as paragraph 6. Proposed paragraphs 5 and 6 would cite the new FSH on publicly managed recreation sites or REA, rather than the LWCFA.

Current Paragraph 7

This paragraph would be renumbered as paragraph 10 and would be revised to conform with amendments to Section 7 of the Granger-Thye Act regarding land use fee offset.

Current Paragraph 9

This paragraph would be renumbered as paragraph 12 and would cite the new FSH on publicly managed recreation sites. Additionally, this paragraph would be revised to include the requirements of the NRRS contract, including the need to make at least 60 percent of campsites reservable and to allow reservations to be made on the date of arrival or up to 4 days in advance of arrival. However, the permit clause addressing the NRRS would be removed from the FSM and placed in the standard campground concession permit form, FS–2700–4h.

Current Paragraphs 4, 5, 6, and 8

These paragraphs would be renumbered as 7, 8, 9, and 11.

3. Regulatory Requirements

Environmental Impact

These proposed directives would revise national Forest Service policy governing administration of concession permits. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." The Agency has concluded that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

These proposed directives have been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget has determined that these directives are not significant. These directives would alter recreation use fees paid by the public at concessions. Therefore, these proposed directives would not have an annual effect of $100 million or more on the economy, nor would they adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. These proposed directives would not interfere with an action taken or planned by another agency, nor would they raise new legal or policy issues. Finally, these proposed directives would not alter the budgetary impact of entitlement, grant, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, these proposed directives are not subject to Office of Management and Budget review under E.O. 12866.

Moreover, the Agency has considered these proposed directives in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Pursuant to a threshold Regulatory Flexibility Act analysis, the Agency has determined that these proposed directives would not have a significant economic impact on a substantial number of small entities as defined by the Act because the proposed directives would not impose new recordkeeping requirements on them; the proposed directives would not affect their competitive position in relation to large entities; and the proposed directives would not significantly affect their cash flow, liquidity, or ability to remain in the market. To the contrary, these proposed directives would either have a positive or neutral effect on the economics of concessions. The benefits are not likely to alter costs to small businesses. Revenue for small entities is likely to increase from 0.5 to 8.3 percent as a result of these proposed directives.

No Takings Implications

The Agency has analyzed these proposed directives in accordance with the principles and criteria contained in E.O. 12630 and has determined that the proposed directives would not pose the risk of a taking of private property.

Civil Justice Reform

These proposed directives have been reviewed under E.O. 12988 on civil justice reform. If the proposed directives were adopted, (1) All State and local laws and regulations that conflict with

the proposed directives or that would impede their full implementation would be preempted; (2) no retroactive effect would be given to the proposed directives; and (3) they would not require administrative proceedings before parties may file suit in court challenging their provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Agency has considered these proposed directives under the requirements of E.O. 13132 on federalism and has concluded that the proposed directives conform with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these proposed directives do not have tribal implications as defined by E.O. 13175, entitled "Consultation and Coordination With Indian Tribal Governments," and therefore advance consultation with Tribes is not required.

Energy Effects

The Agency has reviewed the proposed directives under E.O. 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." The Agency has determined that these proposed directives do not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of these proposed directives on State, local, and Tribal Governments and the private sector. These proposed directives would not compel the expenditure of $100 million or more by any State, local, or Tribal Government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any new recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 that are not already required by law or not already approved for use. Any information collected from the public that would be required by these proposed directives has been approved by the Office of Management and Budget and assigned control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR Part 1320 do not apply.

4. Access to the Proposed Directives

The intended audience for this direction is Forest Service employees charged with issuing and administering concession permits. To view the proposed directives, visit the Forest Service's Web site at *http://www.fs.fed.us/specialuses/*. Only the section of the FSM that is the subject of this notice has been posted, i.e., FSM 2344.3, Campgrounds and Related Granger-Thye Concessions.

Dated: November 24, 2009.

Hank Kashdan,

Associate Chief.

[FR Doc. E9–28744 Filed 11–30–09; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia 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 a planning meeting of the Virginia Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on Monday, December 14, 2009, at the Fairfax Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

The purpose of the planning meeting is to plan for a Spring briefing meeting on "The Impact of State Barriers to Economic Opportunities."

Members of the public are entitled to submit written comments; the comments must be received in the Eastern Regional Office by January 14, 2010. The address is 624 Ninth Street, NW., Washington, DC 20425. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Alfreda Greene, Secretary, 202–376–7533, TTY202–376–8116, or by e-mail: *agreene@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, November 23, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–28590 Filed 11–30–09; 8:45 am]

BILLING CODE 6335–02–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri 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 a planning meeting of the Missouri Advisory Committee to the Commission will convene by conference call at 1:30 p.m. and adjourn at approximately 2:30 p.m. on Thursday, December 17, 2009. The purpose of this meeting is to plan future activities for SAC project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 42374032. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/

TDD telephone number, by 4 p.m. on December 14, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 28, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov*. Records generated by this meeting may be inspected and reproduced at the Central 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 Central Regional Office at the above e-mail 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 23, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–28589 Filed 11–30–09; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213 of the Department of Commerce's ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review: Not later than the last day of December 2009,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping Duty Proceedings	Period
ARGENTINA: Honey, A–357–812	12/1/08–11/30/09
BRAZIL: Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/08–11/30/09
BRAZIL: Silicomanganese, A–351–824	12/1/08–11/30/09
CHILE: Certain Preserved Mushrooms, A–337–804	12/1/08–11/30/09
INDIA: Carbazole Violet Pigment 23, A–533–838	12/1/08–11/30/09
INDIA: Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	12/1/08–11/30/09
INDIA: Stainless Steel Wire Rod, A–533–808	12/1/08–11/30/09
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products, A–560–812	12/1/08–11/30/09
JAPAN: High and Ultra-High Voltage Ceramic Station Post Insulators, A–588–862	12/1/08–12/29/08
JAPAN: Polychloroprene Rubber, A–588–046	12/1/08–11/30/09
JAPAN: P.C. Steel Wire Strand, A–588–068	12/1/08–11/30/09
JAPAN: Superalloy Degassed Chromium, A–588–866	12/1/08–11/30/09
JAPAN: Welded Large Diameter Line Pipe, A–588–857	12/1/08–11/30/09
REPUBLIC OF KOREA: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/08–11/30/09
SOCIALIST REPUBLIC OF VIETNAM: Uncovered Innerspring Units, A–552–803	8/6/08–11/30/09
SOUTH AFRICA: Uncovered Innerspring Units, A–791–821	8/6/08–11/30/09
TAIWAN: Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/08–11/30/09
TAIWAN: Porcelain-On-Steel Cooking Ware, A–583–508	12/1/08–11/30/09
TAIWAN: Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Carbazole Violet Pigment 23, A–570–892	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Cased Pencils, A–570–827	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Hand Trucks and Parts Thereof, A–570–891	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Honey, A–570–863	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Malleable Cast Iron Pipe Fittings, A–570–881	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Porcelain-on-Steel Cooking Ware, A–570–506	12/1/08–11/30/09
THE PEOPLE'S REPUBLIC OF CHINA: Silicomanganese, A–570–828	12/1/08–11/30/09

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Countervailing Duty Proceedings	Period
ARGENTINA: Honey, C–357–813	1/1/09–12/31/09
INDIA: Carbazole Violet Pigment 23, C–533–839	1/1/08–12/31/08
INDIA: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/09–12/31/09
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products, C–560–813	1/1/08–12/31/08
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products, C–549–818	1/1/08–12/31/08

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 2009. If the Department does not receive, by the last day of December 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28773 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–P

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–828)

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Dena Crossland, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8029 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2009, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain hot–rolled flat–rolled carbon quality steel products from Brazil. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009). The period of review is March 1, 2008, through February 28, 2009, and the preliminary results are currently due no later than December 1, 2009. The review covers entries of subject merchandise produced/exported by Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA).[1]

[1] In prior segments of this proceeding, the Department treated USIMINAS and COSIPA as affiliated parties and collapsed these entities. *See, e.g., Notice of Final Determination of Sales at Less*

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period up to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act due to the complexity of the issues involved and the need to solicit more information from USIMINAS, regarding its affiliations and certain components of its claimed expenses and their calculation. Therefore, we have fully extended the deadline for completing the preliminary results by 120 days, to not later than March 31, 2010, in accordance with section 751(a)(3)(A) of the Act. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28750 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Notice of Second Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review

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

EFFECTIVE DATE: December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, Susan Pulongbarit, or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4047, (202) 482–4031, or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2009, the Department of Commerce ("Department") published in the **Federal Register** the preliminary results of the 2007–2008 administrative review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"), covering the period June 1, 2007, through May 31, 2008. *See Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Reviews*, 74 FR 32,885 (July 9, 2009). On October 29, 2009, the Department published a notice extending the deadline for the final results of the 2007–2008 administrative review of silicon metal from the PRC. *See Silicon Metal from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review*, 74 FR 55,811 (October 29, 2009). The final results are currently due no later than December 7, 2009.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published. On October 29, 2009, the Department extended the deadline of the final results by 31 days. Thus, the Department may extend the deadline of the final results by an additional 29 days.

The Department requires additional time to properly consider the issues raised by interested parties regarding the treatment of Export Tax, Value–Added Tax, surrogate values for factors of production, and numerous company–specific issues. Thus, it is not practicable to complete this review by December 7, 2009. Therefore, the Department is extending the time limit for completion of the final results of this review by an additional 29 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than January 5, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 24, 2009.

John M. Andersen,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28778 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin From the People's Republic of China: Preliminary Results of Changed Circumstances Review

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

SUMMARY: On July 23, 2009, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of changed circumstances review for saccharin from the People's Republic of China ("PRC") in response to a request on behalf of PMC Specialties Group, Inc. ("PMCSG").[1] The Department has preliminarily determined that there is insufficient evidence of changed circumstances to warrant revocation of this order.

DATES: *Effective Date:* December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Giselle Cubillos or Charles Riggle, 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) 482–1778 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the Department published in the **Federal Register** an antidumping duty order on saccharin from the PRC.[2] On June 8, 2009, the Department published in the **Federal Register** the notice of continuation of antidumping duty order on saccharin

Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38759 (July 19, 1999), and the accompanying Issues and Decision Memorandum at Comment 17.

[1] *See Saccharin from the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 74 FR 36456 (July 23, 2009).

[2] *See Notice of Antidumping Duty Order: Saccharin from the People's Republic of China*, 68 FR 40906 (June 9, 2003) ("*Saccharin Order*").

from the PRC.[3] On June 4, 2009, the Department received a request on behalf of PMCSG for a changed circumstances review to revoke the antidumping duty order on saccharin from the PRC. PMCSG claimed that, as the sole domestic producer of saccharin, it no longer had an interest in the *Saccharin Order*. As part of its submission, PMCSG requested that the Department combine the notice of initiation with the preliminary results to revoke the *Saccharin Order*.

On July 9, 2009, the Department received a letter opposing the request for a changed circumstances review from Kinetic Industries ("Kinetic").[4] Kinetic claimed that it produces saccharin through a third party toller in the United States and that both parties, Kinetic and its toll producer, are interested parties as domestic producers of saccharin. Both Kinetic and its toll producer requested that the Department not issue an expedited preliminary results in this changed circumstances review.

On July 23, 2009, the Department published in the **Federal Register** a notice of initiation of changed circumstances review for saccharin from the PRC. On July 23, 2009, the Department also issued questionnaires to PMCSG, Kinetic, and Kinetic's toller to solicit relevant information and fully evaluate the request to revoke the *Saccharin Order*, as well as the arguments against revocation. On July 24, 2009, the Department issued a letter to Kinetic and its toller notifying them that the Department could not grant proprietary treatment to the toll producer's name if the toll producer wished to be an interested party to the proceeding, and that, should the toller wish to continue as an interested party, the toller would need to submit a revised notice of appearance without its name bracketed. The toller did not submit a revised notice of appearance.

On August 17, 2009, the Department received questionnaire responses from Kinetic and Kinetic's toller. The Department has not received any response from PMCSG. In addition, PMCSG indicated to the Department that it would not respond to the questionnaire.[5]

On September 4, 2009, Kinetic submitted a letter urging the Department to issue an expedited negative preliminary results of the changed circumstances review and determine that domestic producers have affirmatively expressed an interest in maintaining the *Saccharin Order*. On October, 26 2009, PMCSG submitted a letter stating that it has determined not to respond to the Department's July 23, 2009, questionnaire, and that it is PMCSG's position that the record contains substantial evidence that it is a commercial producer and accounts for all U.S. production.

Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry 128–44–9); (2) calcium saccharin (CAS Registry 6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry 81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Preliminary Results of Changed Circumstances Review

In the five-year sunset review of this order the Department stated that "PMCSG claimed interested party status under section 771(9)(C) of the Act as the sole domestic producer of saccharin in the United States and the petitioner in the original investigation," which was not contested.[6] However, since PMCSG failed to respond to the Department's questionnaire in the instant review, the Department is unable to determine PMCSG's status as a producer of the domestic like product and whether it represents "substantially all of the production of the domestic like product," as required under the Department's regulations governing revocation. *See* 19 CFR 51.222(g)(1)(i). Accordingly, we are notifying the public of our intent to not revoke the antidumping duty order as it relates to imports of saccharin.

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs or other written comments may be submitted no later than seven days after the date of publication of these preliminary results. *See* 19 CFR 351.309(c). Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309(d). The Department will issue the final results of this changed circumstances review, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

The preliminary results of this review and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: November 24, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–28776 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Continuation of Antidumping Duty Order on Saccharin from the People's Republic of China*, 74 FR 27089 (June 8, 2009).

[4] Although Kinetic filed a letter opposing PMCSG's request for changed circumstances review on July 2, 2009, the Department rejected that letter because it did not contain the appropriate certifications. The Department requested that Kinetic re-file its submission by July 10, 2009. On July 9, 2009, Kinetic refiled its submission with the appropriate certifications.

[5] *See* Memorandum to The File, "Changed Circumstances Review of Saccharin from the People's Republic of China: Phone Call to Wiley Rein LLP" (August 28, 2009).

[6] *See Saccharin from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 73 FR 59604 (October 9, 2008).

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2009]

Foreign-Trade Zone 163—Ponce, Puerto Rico Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by CODEZOL, C.D., grantee of FTZ 163, requesting authority to expand its zone in the Ponce, Puerto Rico area, adjacent to the Ponce Customs and Border Protection port of entry. 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 23, 2009.

FTZ 163 was approved on October 18, 1989 (Board Order 443, 54 FR 46097, 11/01/89) and expanded on April 18, 2000 (Board Order 1091, 65 FR 24676, 4/27/00), on June 9, 2005 (Board Order 1397, 70 FR 36117, 6/22/05), on July 26, 2006 (Board Order 1467, 71 FR 44996, 8/8/06), on November 9, 2006 (Board Order 1487, 71 FR 67098, 11/20/06), and on June 26, 2009 (Board Order 1631, 74 FR 34306, 7/15/09).

The zone project currently consists of the following sites in Puerto Rico: Site 1 (106 acres)—within the Port of Ponce area, including a parcel (11 acres) located at 3309 Avenida Santiago de Los Caballeros, Ponce; Site 2 (191 acres, 5 parcels)—Peerless Oil & Chemicals, Inc., Petroleum Terminal Facilities located at Rt. 127, Km. 17.1, Penuelas; Site 3 (13 acres, 2 parcels)—Rio Piedras Distribution Center located within the central portion of the Quebrada Arena Industrial Park, and the Hato Rey Distribution Center located within the northeastern portion of the Tres Monjitas Industrial Park, San Juan; Site 4 (14 acres)—warehouse facility located at State Road No. 3, Km. 1401, Guayama; Site 5 (256 acres, 34 parcels)—located at Mercedita Industrial Park at the intersection of Route PR–9 and Las Americas Highway, Ponce; Site 6 (86 acres)—Coto Laurel Industrial Park located at the southwest corner of the intersection of Highways PR–56 and PR–52, Ponce; Site 7 (17 acres)—warehouse facility located at State Road No. 1, Km 21.1, Guaynabo; Site 8 (5 acres)—warehouse facility located at 42 Salmon Street, Ponce; Site 9 (6 acres)—warehouse facility located on PR Highway 2, at Km.165.2, Hormigueros; and, Site 10 (6 acres)—warehouse facility at Centro de Distribucion, Playa de Ponce, Building 7, Avenida de los Caballeros, Ponce.

The applicant is now requesting authority to expand Site 1 to include additional acreage and to include 1 additional site in the Ponce area: expand Site 1 (new total—270 acres) which will include 3 additional parcels (within the Port of the Americas complex)—Percon Industrial parcel (132 acres), ParkPhase III parcel (12 acres) and Bayland parcel (20 acres) and to include the following site: *Proposed Site 11* (52 acres)—ProCaribe Industrial Park, Road 385, Km. 5.4, Penuelas. The sites will provide public 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, Kathleen Boyce 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 February 1, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 16, 2010).

A copy of the application and accompanying exhibits 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 *www.trade.gov.ftz.*

For further information, contact Kathleen Boyce at 202–482–1346 or *Kathleen.Boyce@trade.gov.*

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–28777 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1652]

Approval for Expansion of Manufacturing Authority for Subzone 31B; WRB Refining LLC (Oil Refinery), Madison County, IL

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

Whereas, the Tri-City Regional Port District, grantee of FTZ 31, has requested authority on behalf of WRB Refining LLC, to expand the scope of manufacturing activity conducted under zone procedures within Subzone 31B at the WRB Refining LLC oil refinery complex at sites in Madison County, Illinois (FTZ Docket 11–2009, filed 03–12–2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 11907, 3/20/2009); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby approves the expansion of the scope of activity at Subzone 31B for the manufacture of petroleum products at the WRB Refining LLC oil refinery complex located at sites in Madison County, Illinois, as described in the application and the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix "C");

—Products for export; and
—Products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 13th day of November 2009.

Ronald K. Lorentzen,

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

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–28765 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* December 1, 2009.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–895	731–TA–1070A	PRC	Certain Crepe Paper Products	Jennifer Moats (202) 482–5047
A–570–890	731–TA–1058	PRC	Wooden Bedroom Furniture	Jennifer Moats (202) 482–5047

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*. All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Dated: *November 24, 2009.*

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28775 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA): Request for Comments on NFPA's Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes*®, which holds over 270 documents, are administered by more than 225 Technical Committees comprised of approximately 7,000 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and takes approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals (ROP); Calling for Comments on the Committee's disposition of the Proposals and these Comments are published in the Report on Comments (ROC); having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

Note: Under new rules effective Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline of October 22, 2010. Certified motions will be posted by November 19, 2010. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June 2011 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *http://www.nfpa.org* or contact NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be published in the NFPA's 2010 Fall Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-two reports are published in the 2010 Fall Revision Cycle Report on Proposals and will be available on December 28, 2009. Comments received on or before March 5, 2010, will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2010 Fall Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site at *http://www/nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before March 5, 2010 for the 2010 Fall Revision Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2010 Fall Revision Cycle Report on Comments by August 27, 2010. A copy of the Report on Comments will be sent automatically to each commenter.

2010 Fall Revision Cycle Report on Proposals

[P=Partial Revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

NFPA 2	Hydrogen Technologies Code	N
NFPA 3	Standard for the Commissioning and Integrated Testing of Fire Protection and Life Safety Systems	N
NFPA 12	Standard on Carbon Dioxide Extinguishing Systems	P
NFPA 16	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems	P
NFPA 18A	Standard on Water Additives for Fire Control and Vapor Mitigation	P
NFPA 31	Standard for the Installation of Oil-Burning Equipment	P
NFPA 32	Standard for Drycleaning Plants	P
NFPA 35	Standard for the Manufacture of Organic Coatings	P
NFPA 51A	Standard for Acetylene Cylinder Charging Plants	P
NFPA 79	Electrical Standard for Industrial Machinery	P
NFPA 85	Boiler and Combustion Systems Hazards Code	P

2010 FALL REVISION CYCLE REPORT ON PROPOSALS—Continued

[P=Partial Revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

NFPA 102	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures	P
NFPA 251	Standard Methods of Tests of Fire Resistance of Building Construction and Materials	W
NFPA 253	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source	P
NFPA 262	Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces	P
NFPA 265	Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Coverings on Full Height Panels and Walls.	P
NFPA 285	Standard Fire Test Method for Evaluation of Fire Propagation Characteristics of Exterior Non-Load-Bearing Wall Assemblies Containing Combustible Components.	P
NFPA 286	Standard Methods of Fire Tests for Evaluating Contribution of Wall and Ceiling Interior Finish to Room Fire Growth	P
NFPA 418	Standard for Heliports	P
NFPA 730	Guide for Premises Security	P
NFPA 731	Standard for the Installation of Electronic Premises Security Systems	P
NFPA 901	Standard Classifications for Incident Reporting and Fire Protection Data	R
NFPA 921	Guide for Fire and Explosion Investigations	P
NFPA 1192	Standard on Recreational Vehicles	P
NFPA 1194	Standard for Recreational Vehicle Parks and Campgrounds	P
NFPA 1401	Recommended Practice for Fire Service Training Reports and Records	R
NFPA 1405	Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires	P
NFPA 1906	Standard for Wildland Fire Apparatus	C
NFPA 1912	Standard for Fire Apparatus Refurbishing	P
NFPA 1977	Standard on Protective Clothing and Equipment for Wildland Fire Fighting	C
NFPA 1984	Standard on Respirators for Wildland Fire Fighting Operations	N
NFPA 2001	Standard on Clean Agent Fire Extinguishing Systems	P

Dated: November 24, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–28706 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA): Proposes To Revise Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that takes approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals (ROP); Calling for Comments on the Committee's disposition of the proposals and these Comments are published in the Report on Comments (ROC); having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

Note: Under new rules effective Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline stated in the ROC. Certified motions will then be posted on the NFPA Web site. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *www.nfpa.org* or contact NFPA Codes and Standards Administration.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Proposals, that is, a public notice asking for any interested persons to submit specific written proposals for developing or revising the Document. The Call for Proposals is published in a variety of publications. Interested parties have approximately twenty weeks to respond to the Call for Proposals.

Following the Call for Proposals period, the Technical Committee holds a meeting to consider and accept, reject

or revise, in whole or in part, all the submitted Proposals. The committee may also develop its own Proposals. A document known as the Report on Proposals, or ROP, is prepared containing all the Public Proposals, the Technical Committees' action and each Proposal, as well as all Committee-generated Proposals. The ROP is then submitted for the approval of the Technical Committee by a formal written ballot. If the ROP does not receive approval by a two-thirds vote calculated in accordance with NFPA rules, the Report is returned to the committee for further consideration and is not published. If the necessary approval is received, the ROP is published in a compilation of Reports on Proposals issued by NFPA twice yearly for public review and comment, and the process continues to the next step.

The Reports on Proposals are sent automatically free of charge to all who submitted proposals and each respective committee member, as well as anyone else who requests a copy. All ROPs are also available for free downloading at *www.nfpa.org*.

Once the ROP becomes available, there is a 60-day comment period during which anyone may submit a Public Comment on the proposed changes in the ROP. The committee then reconvenes at the end of the comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the committee is required for approval of actions on the Comments. All of this information is compiled into a second Report, called the Report on Comments (ROC), which, like the ROP, is published and made available for public review for a seven-week period.

The process of public input and review does not end with the publication of the ROP and ROC. Following the completion of the Proposal and Comment periods, there is yet a further opportunity for debate and discussion through the Association Technical Meeting that take place at the NFPA Annual Meeting.

The Association Technical Meeting provides an opportunity for the final Technical Committee Report (*i.e.*, the ROP and ROC) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at an Association Technical Meeting, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion. A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Association Technical Meeting.

For more information on dates/locations of NFPA Technical Committee meetings and NFPA Annual Association Technical Meeting, check the NFPA Web site at: *http://www.nfpa.org/itemDetail.asp?categoryID=822&itemID=22818*

The specific rules for the types of motions that can be made or who can make them are set forth in NFPA's Regulation Governing Committee Projects which should always be consulted by those wishing to bring an issue before the membership at an Association Technical Meeting.

Interested persons may submit proposals, supported by written data, views, or arguments to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *www.nfpa.org*.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received on or before 5 p.m. EDT/EST on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

Document—Edition	Document title	Proposal closing date
NFPA 1—2009	Fire Code	11/24/2009
NFPA 15—2007	Standard for Water Spray Fixed Systems for Fire Protection	11/24/2009
NFPA 17—2009	Standard for Dry Chemical Extinguishing Systems	5/23/2011
NFPA 17A—2009	Standard for Wet Chemical Extinguishing Systems	5/23/2011
NFPA 30—2008	Flammable and Combustible Liquids Code	11/24/2009
NFPA 30A—2008	Code for Motor Fuel Dispensing Facilities and Repair Garages	11/24/2009
NFPA 54—2009	National Fuel Gas Code	11/24/2009
NFPA 59—2008	Utility LP–Gas Plant Code	11/24/2009
NFPA 59A—2009	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)	11/24/2009
NFPA 70E—2009	Standard for Electrical Safety in the Workplace®	1/5/2010
NFPA 75—2009	Standard for the Protection of Information Technology Equipment	5/28/2010
NFPA 76—2009	Standard for the Fire Protection of Telecommunications Facilities	5/28/2010
NFPA 77—2007	Recommended Practice on Static Electricity	11/24/2009
NFPA 80A—2007	Recommended Practice for Protection of Buildings from Exterior Fire Exposures	11/24/2009
NFPA 90A—2009	Standard for the Installation of Air-Conditioning and Ventilating Systems	11/24/2009
NFPA 90B—2009	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems	11/24/2009
NFPA 92A—2009	Standard for Smoke-Control Systems Utilizing Barriers and Pressure Differences	11/24/2009
NFPA 92B—2009	Standard for Smoke Management Systems in Malls, Atria, and Large Spaces	11/24/2009
NFPA 92 P*	Standard for Smoke Management Systems	11/24/2009
NFPA 232—2007	Standard for the Protection of Records	11/24/2009
NFPA 252—2008	Standard Methods of Fire Tests of Door Assemblies	5/28/2010
NFPA 257—2007	Standard on Fire Test for Window and Glass Block Assemblies	5/28/2010
NFPA 268—2007	Standard Test Method for Determining Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source.	5/28/2010
NFPA 269—2007	Standard Test Method for Developing Toxic Potency Data for Use in Fire Hazard Modeling	5/28/2010
NFPA 275—2009	Standard Method of Fire Tests for the Evaluation of Thermal Barriers Used Over Foam Plastic Insulation.	5/28/2010
NFPA 287—2007	Standard Test Methods for Measurement of Flammability of Materials in Cleanrooms Using a Fire Propagation Apparatus (FPA).	5/28/2010

Document—Edition	Document title	Proposal closing date
NFPA 288—2007	Standard Methods of Fire Tests of Floor Fire Door Assemblies Installed Horizontally in Fire Resistance-Rated Floor Systems.	5/28/2010
NFPA 318—2009	Standard for the Protection of Semiconductor Fabrication Facilities	11/24/2009
NFPA 385—2007	Standard for Tank Vehicles for Flammable and Combustible Liquids	5/28/2010
NFPA 407—2007	Standard for Aircraft Fuel Servicing	11/24/2009
NFPA 414—2007	Standard for Aircraft Rescue and Fire-Fighting Vehicles	11/24/2009
NFPA 484—2009	Standard for Combustible Metals	11/24/2009
NFPA 496—2008	Standard for Purged and Pressurized Enclosures for Electrical Equipment	5/23/2011
NFPA 497—2008	Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	5/28/2010
NFPA 499—2008	Recommended Practice for the Classification of Combustible Dusts and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	5/28/2010
NFPA 655—2007	Standard for Prevention of Sulfur Fires and Explosions	11/24/2009
NFPA 664—2007	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities	11/24/2009
NFPA 704—2007	Standard System for the Identification of the Hazards of Materials for Emergency Response	11/24/2009
NFPA 720—2009	Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment	11/24/2009
NFPA 790 P*	Standard for Competency of Third Party Field Evaluation Bodies	11/24/2009
NFPA 791 P*	Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation	11/24/2009
NFPA 820—2008	Standard for Fire Protection in Wastewater Treatment and Collection Facilities	11/24/2009
NFPA 1081—2007	Standard for Industrial Fire Brigade Member Professional Qualifications	11/24/2009
NFPA 1125—2007	Code for the Manufacture of Model Rocket and High Power Rocket Motors	11/24/2009
NFPA 1141—2008	Standard for Fire Protection Infrastructure for Land Development in Suburban and Rural Areas	11/24/2009
NFPA 1142—2007	Standard on Water Supplies for Suburban and Rural Fire Fighting	11/24/2009
NFPA 1404—2006	Standard for Fire Service Respiratory Protection Training	5/23/2011
NFPA 1500—2007	Standard on Fire Department Occupational Safety and Health Program	11/24/2009
NFPA 1582—2007	Standard on Comprehensive Occupational Medical Program for Fire Departments	11/24/2009
NFPA 1971—2007	Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting	12/4/2009
NFPA 1981—2007	Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services	12/4/2009
NFPA 1991—2005	Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies	1/15/2010
NFPA 1992—2005	Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies	1/15/2010
NFPA 1994—2007	Standard on Protective Ensembles for First Responders to CBRN Terrorism Incidents	1/15/2010
NFPA 2112—2007	Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire	11/24/2009
NFPA 2113—2007	Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire.	11/24/2009

* Proposed NEW document drafts are available from NFPA's Web site—*www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

Dated: November 24, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–28708 Filed 11–30–09; 8:45 am]

BILLING CODE 3510–13–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., December 18, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–28840 Filed 11–27–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 4, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–28843 Filed 11–27–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, December 16, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–28841 Filed 11–27–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 11, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–28842 Filed 11–27–09; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Collection of Information; Proposed Extension of Approval; Comment Request—Follow-Up Activities for Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from persons who have been involved in or have witnessed incidents associated with consumer products. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive comments not later than February 1, 2010.

ADDRESSES: Written comments should be captioned "Product-Related Injuries" and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov* or mailed to Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act, 15 U.S.C. 2054(a), requires the Commission to collect information related to the causes and prevention of death, injury, and illness associated with consumer products. That section also requires the Commission to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products. The Commission obtains information about product-related deaths, injuries, and illnesses from a variety of sources, including newspapers, death certificates, consumer complaints, and medical facilities. In addition, the Commission receives information through its Internet Web site through forms reporting on product-related injuries or incidents.

From these sources, the Commission staff selects cases of interest for further investigation by face-to-face or telephone interviews with persons who witnessed or were injured in incidents involving consumer products. On-site investigations are usually made in cases where the Commission staff needs photographs of the incident site, the product involved, or detailed information about the incident. This information can come from face-to-face interviews with persons who were injured or who witnessed the incident, as well as contact with state and local officials, including police, coroners and fire investigators, and others with knowledge of the incident.

The Commission uses this information to support development and improvement of voluntary standards, rulemaking proceedings, information and education campaigns, and administrative and judicial proceedings for enforcement of the statutes, standards, and regulations administered by the Commission. These safety efforts are vitally important to help make consumer products safer and to remove unsafe products from the channels of distribution and from consumers' homes.

The Office of Management and Budget (OMB) approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on January 31, 2009. The Commission now proposes to request an extension of approval of this collection of information.

The Commission also operates a surveillance system known as the National Electronic Injury Surveillance System (NEISS) that provides timely data on consumer product-related injuries treated in a statistically valid sample from approximately 100 hospital emergency departments, as well as childhood poisonings in the U.S. The NEISS system has been in operation since 1971. The Commission previously has not included NEISS reports under the product-related injuries collection of information because the information obtained from hospital databases are obtained directly through CPSC employees and/or CPSC contractors, and does not involve the solicitation of any information from any individuals. The CPSC employee or contractor collects emergency department records for review which are then coded. The PRA exempts facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency. 5 CFR 1320.3(h)(3). However, because in addition to the reports themselves, further information may need to be obtained which may result in telephone and/or face-to-face communications with individuals, the proposed collection of information under the follow-up activities for product-related injuries now includes the burden hours per year for the NEISS system in addition to the other follow-up activities conducted by the Commission.

B. Estimated Burden

The NEISS system collects information on consumer-product related injuries from approximately 100 hospitals in the United States. Respondents to NEISS include hospitals that directly report information to NEISS, and hospitals that allow access to a CPSC contractor who collects the data. In FY2008, there were 157 NEISS respondents (total hospitals and CPSC contractors). These NEISS respondents reviewed an estimated 3.4 million emergency department records and reported 371,507 consumer product-related injuries and 5,030 childhood poisoning-related injuries. Based on FY2008 data, the total burden hours to respondents are estimated to be 41,497 hours. The average burden hour per hospital is 415 hours. However, the total burden hour on each hospital varies by the size (small or large) and location (rural or metropolitan) of the hospital. The smallest hospital reported less than 200 cases with a burden of approximately 100 hours, while the largest hospital reported over 16,000 cases with a burden of about 1,300 hours.

The total costs to NEISS respondents based on FY2008 data are estimated to be $1.5 million per year. NEISS respondents enter into contracts with CPSC and are compensated for these costs. The average cost per respondent is estimated to be about $15,000. The average cost per burden hour is estimated to be $36 per hour (including wages and overhead) (Bureau of Labor Statistics, June 2009, Total Compensation Civilian workers,

Hospitals). However, the actual cost to each respondent varies due to the type of respondent (hospital versus CPSC contractor), size of hospital, and regional differences in wages and overhead. Therefore, the actual annual cost for any given respondent may vary between $2,600 at a small rural hospital and $75,000 at a large metropolitan hospital which are compensated by the CPSC.

The Commission staff also obtains information about incidents involving consumer products from approximately 17,415 persons annually. The staff conducts face-to-face interviews at incident sites with approximately 915 persons each year. On average, an on-site interview takes approximately 5 hours. The staff will also conduct approximately 3,500 in-depth investigations by telephone. Each in-depth telephone investigation requires approximately 20 minutes. Additionally, the Commission's hotline staff interviews approximately 4,000 persons each year about incidents involving selected consumer products. These interviews take an average of 10 minutes each. Each year, the Commission also receives information from about 9,000 persons who complete forms requesting information about product-related incidents or injuries. These forms appear on the Commission's Internet Web site, *http:www.cpsc.gov*, and are printed in the *Consumer Product Safety Review* and other Commission publications. The staff estimates that completion of a form takes about 12 minutes.

The Commission staff estimates that this collection of information imposes a total annual burden of 7,724 hours on all respondents: 4,118 hours for face-to-face interviews; 1,155 hours for in-depth telephone interviews; 661 hours for responses to Hotline interviews; and 1,790 hours for completion of written forms.

The Commission staff estimates the value of the time of respondents to this collection of information at $29.31 per hour (Bureau of Labor Statistics, June 2009, Total Compensation, All workers). At this valuation, the estimated annual cost to the public of this information collection will be approximately $226,390.

The annual cost to the Federal government for this collection of information is estimated to be approximately $6.4 million per year. This estimate includes $1.5 million in compensation to NEISS respondents. The estimate also includes approximately $4.9 million for 354 professional staff months to oversee NEISS operation, prepare questionnaires, interviewer guidelines, and other instruments and instructions used to collect the information, conduct face-to-face and telephone interviews; and evaluate responses obtained from interviews and completed forms. Each staff month is estimated to cost the Commission approximately $13,859. This is based on an average wage rate of $55.97 (the equivalent of a GS–14 Step 5 employee) with an addition 30 percent added for benefits (Bureau of Labor Statistics, June 2009, percentage total benefits for all civilian management, professional, and related employees).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 24, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–28661 Filed 11–30–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, December 2, 2009, 2–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Weekly Report—Commission Briefing

The staff will brief the Commission on various compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 24, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–28663 Filed 11–30–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, December 2, 2009, 9 a.m.—12 noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Briefing/Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Interim Enforcement Policy on Component Testing and Certification (of Lead Paint and Content).
2. Commission Action on Existing Stay of Testing and Certification.
3. Notice of Inquiry for Tracking Labels for Drywall.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 24, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–28662 Filed 11–30–09; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–60 and 09–73]

36(b)(1) Arms Sales Notifications

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of two section 36(b)(1) arms sales notifications. They are published to fulfill the

requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION:

Transmittal No. 09–60

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–60 with attached transmittal, policy justification, and Sensitivity of Technolcgy.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 18 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No.09-60, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Italy for defense articles and services estimated to cost $63 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-60

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Italy

(ii) Total Estimated Value:

Major Defense Equipment*	$ 36 million
Other	$ 27 million
TOTAL	$ 63 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two unarmed MQ-9 Unmanned Aerial Vehicles (UAVs), one (1) Mobile Ground Control Station, maintenance support, engineering support, test equipment, ground support, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support.

(iv) Military Department: Air Force (SAG, Amd #2)

(v) Prior Related Cases, if any: FMS case SAG-$109M-02Dec08

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: NOV 18 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy – MQ-9 Unmanned Aerial Vehicles

The Government of Italy has requested a possible sale of two unarmed MQ-9 Unmanned Aerial Vehicles (UAVs), one (1) Mobile Ground Control Station, maintenance support, engineering support, test equipment, ground support, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $63 million.

Italy is a major political and economic power in NATO and a key democratic partner of the United States in ensuring peace and stability around the world.

Italy requests these capabilities to provide for the defense of deployed troops, regional security, and interoperability with the United States. This program will increase Italy's ability to contribute to future NATO, coalition, and anti-terrorism operations that the U.S. may undertake. By acquiring this capability, Italy will be able to provide greater protection for its forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region. Italy will have no difficulty absorbing these additional aircraft into its armed forces.

The principal contractors will be:

General Atomics Aeronautical Systems, Inc.	San Diego, California
Raytheon Space and Airborne Systems	El Segundo, California
General Atomics Lynx Systems	San Diego, California

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Italy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-60

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MQ-9 Unmanned Aerial Vehicle is Unclassified. The highest level of classified information required for training, operation, and maintenance is Secret. The MQ-9 is a long-endurance, high-altitude, remotely operated aircraft that can be used for surveillance, military reconnaissance, and targeting missions. Real-time missions are flown under the control of a pilot in a Ground Control Station (GCS). A data link is maintained that uplinks control commands and downlinks video with telemetry data. The data link can be a C-Band Line-of-Sight (LOS) communication or Ku–Band Over-the-Horizon Satellite Communication (SATCOM). Autonomous missions are preprogrammed by pilots in the GCS and are flown under the control of an onboard suite of redundant computers and sensors. Payload imagery and data are downlinked to a GCS. A pilot initiates autonomous missions once the aircraft is airborne and lands the aircraft when the mission is completed. Pilots can change preprogrammed mission parameters as often as required. The aircraft can also be handed off to other strategically placed ground- or sea-based Ground Control Stations. The MQ-9 is designed to carry 800 pounds of internal payload with maximum fuel and can carry multiple mission payloads aloft. The MQ-9 will be configured for the following payloads: Electro-Optical/Infrared (EO/IR), Synthetic Aperture Radar (SAR), Electronic Support Measures (ESM), Signals Intelligence (SIGINT), laser designators, and various weapons packages, but will be sold in a deweaponized state. The MQ-9 systems will include the following components:

a. The Ground Control Station (GCS) can be either fixed or mobile. The fixed GCS is enclosed in a customer-specified shelter. It incorporates workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data. The mobile GCS allows operators to perform the same functions and is contained on a mobile trailer. Workstations in either GCS can be tailored to meet customer requirements. The GCS, technical data, and documents are Unclassified.

b. The General Atomics AN/DPY-1 Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) system provides all-weather surveillance, tracking and targeting for military and commercial customers from manned and unmanned vehicles. The AN/DPY-1 operates in the Ku band, using an offset-fed dish antenna mounted on a three-axis stabilized gimbal. It has a large field of regard: 5-60 degrees in depression, ± (45-135) degrees in squint in SAR mode, and ± (0-175) degrees in squint in GMTI mode. The AN/DPY-1 has 0.1 to 3 meter resolution in stripmap mode and can image up to a 10-km wide swath (at 3 meter resolution). Swaths from multiple passes are combined for wide-area surveillance. The AN/DPY-1 SAR/GMTI radar system and technical data/documents are Unclassified.

c. The Raytheon Multi-Spectral Targeting System (MTS-B) is a multi-use infrared (IR), electro-optical (EO), and laser detecting ranging-tracking set, developed and produced for use by the U. S. Air Force in Predator B. This advanced EO and IR system provides long-range surveillance, high altitude, target acquisition, tracking, range finding, and laser designation.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–C

Transmittal No. 09–73

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–73 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 18 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-73, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $1.2 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-73

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ .400 billion
Other	$ .800 billion
TOTAL	$1.200 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to 15 AgustaWestland AW109 Light Utility Observation helicopters, or alternatively, 15 Bell Model 429 Medical Evacuation and Aerial Observation helicopters, or 15 EADS North America UH-72A Lakota Light Utility helicopters; and, up to 12 AgustaWestland AW139 Medium Utility helicopters, or alternatively, 12 Bell Model 412 Medium Utility helicopters, or 12 Sikorsky UH-60M BLACK HAWK helicopters equipped with 24 T700-GE-701D engines. Also included: spare and repair parts, publications and technical data, support equipment, personnel training and training equipment; ground support, communications equipment, U.S. Government and contractor provided technical and logistics support services, tools and test equipment, and other related elements of logistics support.

(iv) Military Department: Army (VAN)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 18NOV09

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Light and Medium Utility Helicopters

The Government of Iraq has requested a possible sale of up to 15 AgustaWestland AW109 Light Utility Observation helicopters, or alternatively, 15 Bell Model 429 Medical Evacuation and Aerial Observation helicopters, or 15 EADS North America UH-72A Lakota Light Utility helicopters; and, up to 12 AgustaWestland AW139 Medium Utility helicopters, or alternatively, 12 Bell Model 412 Medium Utility helicopters, or 12 Sikorsky UH-60M BLACK HAWK helicopters equipped with 24 T700-GE-701D engines. Also included: spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, ground support, communications equipment, U.S. Government and contractor provided technical and logistics support services, tools and test equipment, and other related elements of logistics support. The estimated cost is $1.2 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

This proposed sale will advance Iraqi efforts to develop a strong national military and police authority. A well-equipped and trained military and police/border force patrol authority and counter-terrorism force will help ensure that Iraq can continue to sustain its democratically-elected government, assist in stabilizing the various provinces, and prevent an overflow of unrest into the provinces, cities, and towns within Iraq.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be:

AgustaWestland Helicopter Company	Philadelphia, PA
Bell Helicopter Textron, Inc.	Ft Worth, TX
EADS North America	Arlington, VA
Sikorsky Aircraft Corporation	Stratford, CT
General Electric	Lynn, MA

Implementation of this proposed sale will require the assignment of U.S. Government and contractor representatives to Iraq for an extended period to assist in the delivery and deployment of the helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Dated: November 25, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28667 Filed 11–30–09; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0033]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Army is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on December 31, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title 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: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army 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 above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 24, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0040–5b DASG

SYSTEM NAME:

Army Behavioral Health Integrated Data Environment (ABHIDE).

SYSTEM LOCATION:

U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, Maryland 21010–5403.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army including National Guard and Reserves, and retired Army personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Information: Patient or individual's name, rank/grade, military status, address, date of birth, color, height, weight, place of birth, Social Security Number (SSN), duty stations, employment and job related information and history; deployment information, high school graduation date and location; highest level of education; other education, training and school information including courses and training completion; drug and alcohol screening results, treatment information and progress reports; casualty information including date and location of death and manner of death. Benefits eligibility, enrollment, designations and status information, appointment dates and locations, referrals, inpatient/outpatient care dates, diagnoses, medications ordered and received.

Legal Information: Criminal investigations, date and location of incident, offense committed, Uniform Code of Military Justice Actions, codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; and domestic violence actions including type and date of incident. Exemptions claimed for the system: Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. This information will not be used for benefit determination or access to classified information, retention and other action to or about the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; DoD Instruction 6490.2E, Comprehensive Health Surveillance; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD Instruction 1300.18, Personnel Casualty Matters, Policies, and Procedures; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; Army Regulation 195–2, Criminal Investigation Activities; Army Regulation 600–85, Army Substance Abuse Program; Army Regulation 600–8–104, Military Personnel Information Management/Records; Army Regulation 608–18, The Family Advocacy Program; 42 U.S.C. 290dd-2, Substance Abuse and Mental Health Services; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This database will provide a standardized, enterprise-wide,

information management and technology capability to integrate information from nonrelated/dispersed databases into a comprehensive health surveillance database to support mental, behavioral, social health and public health activities. Mental health can be defined as a state of well-being and self-awareness that allows the individual to work or otherwise contribute to his or her community, to enjoy life, and to cope with stress (sometimes termed psychological resilience). Behavioral health (BH) is a general concept that is often used to describe individual or societal behaviors and their relationship to physical, emotional, and spiritual health. BH is usually characterized by the absence of self-destructive behaviors, such as substance abuse, or suicidal actions. Social health overlaps with both of the other areas, but can be thought of in terms of relationships among individuals and/or communities. The ABHIDE database and its capabilities support enterprise-wide, population-based, public health surveillance (including data collection, analysis/interpretation, and reporting to appropriate authorities for public health action). Specific uses include establishing event-specific registries, such as a suicide registry, identifying risk factors, developing mitigation strategies, evaluating intervention and prevention programs, and prospectively monitoring Army communities with respect to their mental, behavioral, and social health. Other data collected in this system will include adverse behavioral health and social health outcomes, e.g., drug and/or alcohol abuse, suicidal behavior (suicides, attempts, ideations), etc. across all phases of Army service. Data from the ABHIDE are being used to analyze Army populations and will not be used to determine Soldier fitness for duty or other personnel actions, such as assignments, entitlements or benefits.

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 of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Under the need-to-know provision cited in 5 U.S.C. 552a(b) to the Chief of Staff Army, Vice Chief of Staff Army (VCSA), The Surgeon General (TSG), U.S. Army Medical Command (MEDCOM)/Office of The Surgeon General (OTSG). Information disclosed will be in response to senior leader requests pertaining to the surveillance and investigation of factors that may contribute to behavioral problems in populations (as opposed to individuals), with a special emphasis on suicides, suicidal behaviors and associated behavioral health outcomes.

To legitimate, appropriately credentialed, researchers in support of authorized studies. These researchers may be internal, e.g., Army Science Board, or external, e.g., National Institute of Mental Health, academic institutes, RAND, GAO, etc. Some studies will be of short duration and small scope (such as a focused epidemiological consultation at an individual installation) while others will be long-term formal research studies with Institutional Review Board oversight to ensure all required safeguards with respect to human subject protection, privacy, and HIPAA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By client or member's surname or Social Security Number (SSN).

SAFEGUARDS:

ABHIDE data is maintained in a controlled government facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel with a need-to-know. Access to personal data is limited to person(s) responsible for maintaining and servicing the ABHIDE data in performance of their official duties and who are properly trained, screened and cleared for a need-to-know. Access to personal data is further restricted by the use of Common Access Card (CAC) and/or strong password, which are changed periodically according to DoD security policy.

RETENTION AND DISPOSAL:

Disposition pending until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, Maryland 21010–5403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, Maryland 21010–5403.

Individual should provide full name, Social Security Number (SSN) and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system of records should address written inquiries to Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, Maryland 21010–5403.

Individual should provide full name, Social Security Number (SSN) and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data contained in this system is collected from the individual Army offices and DoD databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

An exemption rule for these exemptions will be promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. E9–28592 Filed 11–30–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services (OSERS); Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program

Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F–1.

DATES: *Applications Available:* December 1, 2009.

Deadline for Transmittal of Applications: February 1, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to enable highly qualified individuals, including those who are individuals with disabilities, to conduct research on the rehabilitation of individuals with disabilities.

Note: This program is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities: This competition contains one absolute priority and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 356.10).

Absolute Priority: For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Research Fellowships Program

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended (the Act). Section 204 authorizes research designed to maximize the full inclusion and integration of individuals with disabilities, especially individuals with the most severe disabilities, into society, by fostering improvements in the areas of employment, independent living, family, support, and economic and social self-sufficiency, and to improve the effectiveness of services authorized under the Act.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

For FY 2010, the Secretary is particularly interested in applications from qualified individuals with disabilities.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61, and parts 77, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR part 356. (c) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $110,741,000 for the NIDRR program for FY 2010, of which we intend to use an estimated $505,000 for the Research Fellowships Program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: We will reject any application that proposes a budget exceeding $65,000 for Merit Fellowships and $75,000 for Distinguished Fellowships for a single budget period of 12 months. (These Fellowships are described in the *Eligible Applicant* section of this notice.) The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: Seven total, including both Merit Fellowships and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period exceeding 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register.**

III. Eligibility Information

1. *Eligible Applicants:* Eligible individuals must have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions for this program,

Merit Fellowship recipients had research experience at the doctoral level.

(b) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

Note: Institutions are not eligible to be recipients of Research Fellowships.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, *toll free:* 1–877–433–7827. *Fax:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.ed.gov/pubs/edpubs.html* or at its *e-mail address: edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA Number 84.133F–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 24 double-spaced pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 1, 2009.

Deadline for Transmittal of Applications: February 1, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application system (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal. The Merit Fellowships and Distinguished Fellowships awards are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the term of the fellowship award. We define one FTE as equal to 40 hours per week. No Fellow is allowed to be a direct recipient of Federal government grant funds in addition to those provided by the Merit or Distinguished Fellowship grant (during the duration of the Fellowship award performance period). Fellows may, subject to compliance with their institution's policy on additional employment, work on a Federal grant that has been awarded to the Fellow's institution.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Research Fellowships Program—CFDA Number 84.133F–1 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on

the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW, room 6026, Potomac Center Plaza (PCP), Washington, DC 20202–2700. *Fax:* (202) 245–7643.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133F–1), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand,

on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133F–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research projects that use rigorous scientific methodologies. To address this interest applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge or improvements in policy and practice. Applicants should propose projects that are optimally designed to be consistent with these goals. Submission of the information identified under this paragraph is not required by law or regulation, but is desired.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period you must submit a final performance report, including financial information, as directed by the Secretary. In accordance with 34 CFR 356.51, the final report must contain at a minimum an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the Research Fellowships program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 6026, PCP, Washington, DC 20202–2700. *Telephone:* (202) 245–7532 or by *e-mail: marlene.spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: November 25, 2009.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–28758 Filed 11–30–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory

Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the Federal Register.

DATES: Wednesday, December 9, 2009—6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on the Mitchell Branch Collection System.

Public Participation: The EM·SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Pat Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following website: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on November 23, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–28654 Filed 11–30–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9087–2; Docket ID No. EPA–HQ–ORD–2009–0217]

Draft Toxicological Review of Chloroprene: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer-Review workshop.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, "Toxicological Review of Chloroprene: In Support of Summary Information in the Integrated Risk Information System (IRIS)" (EPA/635/R–09/010A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA previously announced the 60-day public comment period (ending November 30, 2009) for the draft document in the Federal Register on September 29, 2009 (74 FR 49874). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the September 29, 2009, Federal Register notice (74 FR 49874) to Versar, Inc., for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc. invites the public to register to attend this workshop as observers. In addition, Versar, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's peer-review charge are available primarily via the internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider Versar's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives.

DATES: The peer-review panel workshop will begin on January 6, 2010, at 9 a.m. and end at 5 p.m.

ADDRESSES: The peer-review workshop will be held at Marriott Courtyard Arlington Crystal City/Reagan National Airport, 2899 Jefferson Davis Highway, Arlington, VA 22202, phone: 703–549–3434. The EPA contractor, Versar, Inc., is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by December 30, 2009, by calling Versar, Inc. at 703–750–3000, ext. 579 or toll free at 1–800–2–VERSAR (1–800–283–7727), ask for Karie Riley, the Chloroprene Peer Review Workshop Coordinator; fax a registration request to 703–642–6954 (please reference the Chloroprene Peer Review Workshop and include your name, title, affiliation, full address and contact information), or send an e-mail to *KRiley@versar.com.* You may also register via the Internet at *http://epa.versar.com/chloroprene/meeting.*

The draft "Toxicological Review of Chloroprene: In Support of Summary Information in the Integrated Risk Information System (IRIS)" is available primarily via the internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, "Toxicological Review of Chloroprene: In Support of Summary Information in the Integrated Risk Information System (IRIS)." Copies are not available from Versar, Inc.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the "Chloroprene peer-review workshop"

and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Versar, Inc. by phone at 703–750–3000, ext. 579 or toll free at 1–800–2–VERSAR (1–800–283–7727), ask for Karie Riley, the Chloroprene Peer Review Workshop Coordinator, by e-mail at *KRiley@versar.com,* or via the Internet at *http://epa.versar.com/chloroprene/meeting,* preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Versar, Inc., 6850 Versar Center, Springfield, VA 22151; telephone: 703–750–3000, ext. 579 or toll free at 1–800–2–VERSAR (ask for Karie Riley, the Chloroprene Peer Review Workshop Coordinator); fax no: 703–642–6954 (please reference the "Chloroprene PeerReview Workshop" and include your name, title, affiliation and full address and contact information), or e-mail: *KRiley@versar.com* (subject line: Chloroprene Peer Review Workshop). To request accommodation of a disability, please contact Karie Riley (at the numbers and e-mail listed above), preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you have questions about the document, please contact Allen Davis, National Center for Environmental Assessment (NCEA); telephone: 919–541–3789; facsimile: 919–541–0245; e-mail: *davis.allen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: November 23, 2009.

Rebecca Clark,

Director, National Center for Environmental Assessment.

[FR Doc. E9–28697 Filed 11–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0891; FRL–9087–9]

Human Studies Review Board (HSRB); Notification of a Public Teleconference to Review Its Draft Report From the October 20–21, 2009 HSRB Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Human Studies Review Board (HSRB) announces a public teleconference meeting to discuss its draft HSRB report from the October 20–21, 2009 HSRB meeting.

DATES: The teleconference will be held on Wednesday, December 16, 2009, from 10 a.m.–12 p.m. (Eastern Time).

Location: The meeting will take place via telephone only.

Meeting Access: For information on access or services for individuals with disabilities, please contact Lu-Ann Kleibacker at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT,** so that appropriate arrangements can be made.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit ID of this notice.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the telephone conference, request a current draft copy of the Board's report or who wish further information may contact Lu-Ann Kleibacker, EPA, Office of the Science Advisor (8105R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail at (202) 564–7189 or via e-mail at *kleibacker.lu-ann@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2009–0891, by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Public Reading Room, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–ORD–2009–0891. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0891. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the index under the docket number. Even though it will be listed by title in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Copyright material, will be publicly available only in hard copy. Publicly available docket materials are electronically available either through *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room, Infoterra Room (Room Number 3334), 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you use that support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

D. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2009–0891 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to Wednesday, December 9, 2009. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, December 9, 2009, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, public comments may be possible.

2. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least 5 business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, December 9, 2009. You should submit your comments using the instructions in Unit 1.C. of this notice. In addition, the Agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The EPA Human Studies Review Board will be reviewing its draft report from the October 20–21, 2009, HSRB meeting. The Board may also discuss planning for future HSRB meetings. Background on the October 20–21, 2009, HSRB meeting can be found at **Federal Register** 74 190, 50965 (October 2, 2009) and at the HSRB Web site *http://www.epa.gov/osa/hsrb/.* The October 20–21, 2009 meeting draft report is now available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the *http://www.regulations.gov* Web site and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/.* For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: November 25, 2009.

Kevin Teichman,

Acting EPA Science Advisor.

[FR Doc. E9–28700 Filed 11–30–09; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, December 3, 2009 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Item No. 1: Ex-Im Bank Advisory Committee for 2010.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. E9–28549 Filed 11–30–09; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION.

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

11/24/2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on December 31, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations, FCC

Form 308 – 47 CFR 73.3545 and 47 CFR 73.3580.

Form No.: FCC Form 308.

Type of Review: New information collection.

Respondents: Business or other for–profit entities.

Number of Respondents/Responses: 26 respondents; 70 responses.

Estimated Time Per Response: 1 – 2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 73 hours.

Annual Cost Burden: $26,451.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission ("Commission") is requesting that the Office of Management and Budget (OMB) approve the establishment of a new information collection titled, "Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308)." Applicants use the FCC Form 308 to apply, under Section 325(c) of the Communications Act of 1934, as amended, for authority to locate, use, or maintain a studio in the United States for the purpose of supplying program material to a foreign radio or TV broadcast station whose signals are consistently received in the United States, or for extension of existing authority.

Currently, the FCC Form 308 is only available to the public in paper form. The Commission is requesting OMB approval of a revised FCC Form 308, in Excel format, that will be made available to the public on the FCC Forms page of the FCC's website, www.fcc.gov <http://www.fcc.gov/>. The form was revised to make it more user friendly and to include questions to obtain only the legal and technical information that is essential to grant authority to U.S. broadcasters to supply program material to a foreign radio or TV broadcast station whose signals are consistently received in the U.S. or to extend the current authority. After the applicant completes the form, it is mailed to the U.S. Bank along with the application fee. Then, it is forwarded to the International Bureau with the exception of fee exempt applications which are filed directly with the FCC Secretary's Office and then forwarded to the Bureau.

Broadcasters are also subject to the local public notice provisions stated in Section 73.3580 of Subpart H. The Commission adopted Section 73.3580 in order to ensure that the public is informed of a station's filing of an application or amendment by advertisements in local newspapers. The public is kept abreast of the stations' existence in a local area or plans to locate in a specific local area through such advertisements. Section 73.3580 also requires that certain applications be maintained on file for public inspection at a stated address in the community in which the station is located or is proposed to be located.

Without this collection of information, the Commission would not be able to ascertain whether the main studio owner in the US meets various legal requirements or the foreign broadcast facility, which receives and retransmits programming from the main studio in the US, meets various technical requirements that prevent harmful interference to other broadcast stations or telecommunications facilities.

Federal Communications Commission.

William F. Caton,

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

[FR Doc. E9–28609 Filed 11–30–09 8:45 am]

BILLING CODE 6712-01-S

FEDERAL COMMUNICATIONS COMMISSION.

Notice of Public Information Collection Being Submitted to the Office of Management and Budget (OMB), Comments Requested

November 19, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on December 31, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0531.

Title: Sections 101.1011, 101.1325(b), 101.1327(a), 101.527, 101.529, and 101.103 – Substantial Service Showing for Local Multipoint Distribution Service (LMDS), 24 GHz and Multiple Address System (MAS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 1,474 respondents; 1,474 responses.

Estimated Time Per Response: 2 – 15 hours.

Frequency of Response: On occasion and once every 10 years reporting requirements, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended.

Total Annual Burden: 4,261 hours.

Total Annual Cost Burden: $369,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. Respondents or applicants may request materials be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission is requesting a revision of this information collection from the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. This revision includes certain collections that were formerly approved under different OMB control numbers. Upon OMB approval, OMB Control Number 3060–0531 will incorporate requirements formerly approved under OMB Control Numbers 3060–0947 and 3060–0963. The Commission will retain OMB Control Number 3060–0531 as the active number for the OMB inventory. This submission to the OMB seeks to renew the reporting and third party requirements imposed on respondents in the Local Multipoint Distribution Service (LMDS) pursuant to 47 CFR 101.103 101.1011 and to consolidate similar reporting requirements imposed on Multiple Address System (MAS) Economic Area (EA) licensees pursuant to 47 CFR 101.1325, 101.1327 and 24 GHz licensees pursuant to 47 CFR 101.527 and 101.529. There are no changes to these reporting and third party requirements, we are only consolidating the three collections into one comprehensive information collection.

The information is used by the Commission staff to satisfy requirements for licensees to demonstrate substantial service at the time of license renewal. Without this information, the Commission would not be able to carry out its statutory responsibilities. The third party disclosure coordination requirements are necessary to ensure that licensees do not cause harmful interference to each other.

Federal Communications Commission.

William F. Caton,

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

[FR Doc. E9–28610 Filed 11–30–09 8:45 am]

BILLING CODE 6712-01-S

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: Atlantic Broadcasting of Linwood NJ Limited Liability Co., Station WTKU–FM, Facility ID 3139, BPH–20091009ACN, From Ocean City, NJ, to Petersburg, NJ; Atlantic Broadcasting of Linwood NJ Limited Liability Co., Station WJSE, Facility ID 51575, BPH–20091009ACO, From Petersburg, NJ, to Ocean City, NJ; Azalea Radio Corporation, Station New, Facility ID 183370, BNPH–20091019AEL, From Sparkman, AR, to

Caddo Valley, AR; BAS BROADCASTING, INC., Station WPFX–FM, Facility ID 7821, BPH–20090915ACX, From North Baltimore, OH, to Luckey, OH; Big Cat Broadcasting, LLC, Station NEW, Facility ID 183367, BNPH–20091019ACP, From Arthur, NE, to Hay Springs, NE; Big Cat Broadcasting, LLC, Station NEW, Facility ID 183365, BNPH–20091019AEI, From Browning, MT, to Lakeside, MT; Board of Regents, Southeast Missouri State University, Station KSEF, Facility ID 90232, BMPED–20090930AII, From Farmington, MO, to STE. Genevieve, MO; Cochise Media Licenses, LLC, Station NEW, Facility ID 183359, BNPH–20090929AMO, From Crawford, CO, to Battlement Mesa, CO; Cochise Media Licenses, LLC, Station New, Facility ID 183358, BNPH–20091016ADO, From Peach Springs, AZ, to Oatman, AZ; College Creek Media, LLC, Station KCLS, Facility ID 55461, BPH–20091016AEO, From PIOCHE, NV, to Leeds, UT; Emmis Radio License, LLC, Station KPNT, Facility ID 56525, BPH–20081121ALQ, From St. Genevieve, MO, to Collinsville, IL; Global News Consultants, LLC, Station KYTS, Facility ID 165979, BPH–20091006ACU, From Ten Sleep, WY, to Manderson, WY; Good Shepherd Radio, INC., Station WYGS, Facility ID 90693, BPED–20091023AKX, From Columbus, IN, to Hope, IN; Hoosier Broadcasting Corporation, Station WCNB, Facility ID 93231, BMPED–20090925ABC, From Lebanon, IN, to Dayton, IN; In Phase Broadcasting, Inc., Station KNPE, Facility ID 170975, BMPH–20090917ACW, From Hyannis, NE, to Bayard, NE; JLF Communications, LLP, Station KTON, Facility ID 60091, BP–20090714AAQ, From Belton, TX, to Kaufman, TX; King, Bryan A, Station New, Facility ID 183321, BNPH–20091019AFO, From Floydada, TX, to Lockney, TX; Lincoln County School District, Station New, Facility ID 175553, BMPED–20091016AEN, From Panaca, NV, to Pioche, NV; Mary V. Harris Foundation, Station WSJL, Facility ID 88660, BPED–20091023AKY, From Northport, AL, to Bessemer, AL; Miriam Media, Inc., Station New, Facility ID 170982, BNPH–20070406ABY, From Willow Creek, CA, to Loleta, CA; NRC Broadcasting Mountain Group, LLC, Station KIDN–FM, Facility ID 57339, BPH–20091026ACE, From Hayden, CO, to Burns, CO; Reising Radio Partners, Inc., Station WXCH, Facility ID 16255, BPH–20091023AKQ, From Hope, IN, to Columbus, IN; RF Services Inc., Station New, Facility ID 183347, BNPH–20091019AFF, From Rocksprings, TX, to Brackettville, TX; Southeastern Ohio Broadcasting System, Inc, Station New, Facility ID 183304, BNPH–20091015AAE, From Mcconnelsville, OH, to Philo, OH; SSR Communications, Inc., Station New, Facility ID 183340, BNPH–20091019AAO, From Lake Providence, LA, to Delta, LA; Sunnylands Broadcasting LLC, Station New, Facility ID 183327, BNPH–20091016ADU, From Amboy, CA, to Twentynine Palms Base, CA; Wifredo G. Blanco-PI, Station NEW, Facility ID 181037, BPEX–20090706AHD, From San Juan, PR, to Guayama, PR; Williams Communications, Inc., Station WFXO, Facility ID 10701, BPH–20091015ABV, From Centre, AL, to Southside, AL.

DATES: Comments may be filed through February 1, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E9–28695 Filed 11–30–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on full clearance of the following collection currently approved by OMB on an emergency basis: Qualifications for Failed Bank Acquisitions (OMB Control No. 3064–0169).

DATES: Comments must be submitted on or before January 29, 2010.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *E-mail: comments@fdic.gov.*

Include the name of the collection in the subject line of the message.

- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to obtain full clearance of the following collection of information currently approved on an emergency basis:

Title: Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Estimated Number of Respondents:

Investor reports on affiliates—20.

Maintenance of business books and records—5.

Disclosures regarding investors and entities in ownership chain—20.

Frequency of Response:

Investor reports on affiliates—12.

Maintenance of business books and records—4.

Disclosures regarding investors and entities in ownership chain—4.

Affected Public: Private capital investors seeking to acquire assets and/or liabilities of failed insured depository institutions.

Estimated Time per Response:

Investor reports on affiliates—2 hours.

Maintenance of business books and records—2 hours.

Disclosures regarding investors and entities in ownership chain—4 hours.

Total Annual Burden: 840 hours.

General Description of Collection: This collection includes reporting, recordkeeping, and disclosure requirements for private capital investors that propose to acquire, directly or indirectly, the deposit liabilities and or such liabilities and assets from the resolution of a failed insured depository institution or for applicants of deposit insurance in the case of *de novo* charters issued in connection with the resolution of failed insured depository institutions (Investors). The information sought from these Investors will provide greater transparency to the FDIC about their business models, capital structures, management, interaction with related parties, and other interests of Investors involved in the acquisition of deposit liabilities or liabilities and assets from troubled insured depository institutions.

Request for Comment

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for full clearance of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 24th day of November, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–28597 Filed 11–30–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

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 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 office 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 December 15, 2009.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. John Titus, Suzanne Titus, Paula Titus (individually and as trustee of the L.G. Titus Family Trust and the L.G. Titus Marital Trust), Eric Titus, Louis (Ted) Titus, all of Holdrege, Nebraska; and Ann Titus Nelson, Lonsdale, Minnesota; to acquire control of First Holdrege Bancshares, Inc., and thereby indirectly acquire control of The First National Bank of Holdrege, both of Holdrege, Nebraska.

Board of Governors of the Federal Reserve System, November 25, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–28666 Filed 11–30–09; 8:45 am]

BILLING CODE 6210–01–S

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 applications 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. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

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 28, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Independent Bancshares, Inc. Employee Stock Ownership Plan, Red Bay, Alabama; to acquire 26.80 percent of the voting shares of Independent Bancshares, Inc., and thereby indirectly acquire voting shares of Community Spirit Bank, both of Red Bay, Alabama, and Spirit Bancshares, Inc., and thereby indirectly acquire voting shares of Spirit Bank, both of Belmont, Mississippi.

Board of Governors of the Federal Reserve System, November 25, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–28665 Filed 11–30–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 020208F.
Name: Ghanem Forwarding, LLC.

Address: 2914 North Calvert Street, Baltimore, MD 21218.

Date Revoked: October 28, 2009.

Reason: Failed to maintain a valid bond.

License Number: 004044NF.

Name: Intermar International Inc.

Address: 1882–90 NW 82nd Ave., Miami, FL 33126.

Date Revoked: September 23, 2009 (NVOCC and October 26, 2009 (OFF).

Reason: Failed to maintain valid bonds.

License Number: 003081F.

Name: SMS Express Company, Inc. dba Dyna Freight Inc.

Address: 2415 So. Sequoia Dr., Compton, CA 90220.

Date Revoked: October 29, 2009.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–28754 Filed 11–30–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 091 0050]

Panasonic Corporation and Sanyo Electric Co., Ltd; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before December 24, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Panasonic Sanyo, File No. 091 0050" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/0910050*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/0910050*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Panasonic Sanyo, File No. 091 0050" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Brendan McNamara (202-326-3703), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 24, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Panasonic Corporation ("Panasonic"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"), which is designed to remedy the anticompetitive effects resulting from Panasonic's proposed acquisition of 100% of the voting securities of Sanyo Electric Co., Ltd. ("Sanyo"). Under the terms of the Consent Agreement, Sanyo will divest its assets relating to the manufacture and sale of portable NiMH batteries to FDK Corporation ("FDK"), a subsidiary of Fujitsu, Ltd.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement or make final the accompanying Decision and Order ("Order").

Pursuant to an agreement concluded on December 19, 2008 (the "Agreement"), Panasonic announced its intention to commence a cash tender offer to acquire 100 percent of the voting securities of Sanyo for an aggregate purchase price of approximately $9 billion (the "Acquisition"). The Commission's complaint alleges the facts described below and that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for portable NiMH batteries.

II. The Parties

Panasonic, headquartered in Osaka, Japan, is a leading manufacturer of consumer electronics such as televisions, DVD players, and computers. Panasonic's Components and Devices Division produces rechargeable batteries, as well as semiconductors and mechanical components.

Headquartered in Osaka, Japan, Sanyo Electric Co., Ltd., is a leading producer of electronic devices and components, including digital cameras, televisions, car navigation systems, home appliances, and consumer electronics. Sanyo's rechargeable battery business is operated out of its Components Division, which also manufacturers batteries, semiconductors, capacitors, small motors, and optical pickups.

III. Portable NiMH Batteries

There are three rechargeable battery chemistries: nickel cadmium ("NiCd"), nickel metal hydride ("NiMH") and lithium-ion ("Li-ion"). While each battery chemistry is used in varying degrees to power batteries for portable electronic devices, the evidence shows that portable NiMH batteries are a relevant antitrust market. First of all, there are a number of products, most notably two-way radios, that have a large installed base of customers that cannot switch to another type of rechargeable battery because the products were designed specifically to accommodate portable NiMH batteries. Second, even for customers who use NiMH batteries but are not locked in to purchasing them, there is a strong preference for portable NiMH batteries for performance and cost reasons. Both sets of customers would not switch to a different battery technology in response to a five to ten percent increase in the price of portable NiMH batteries.

The relevant geographic market for portable NiMH batteries is worldwide. Manufacturing of portable NiMH batteries is concentrated in Asia, and orders are shipped to customers located throughout the world.

Panasonic and Sanyo produce the highest quality portable NiMH batteries, and consequently the two firms are uniquely close competitors. The remaining suppliers of portable NiMH batteries produce lower quality batteries and are therefore more distant competitors to Panasonic and Sanyo. As the only suppliers of high quality portable NiMH batteries, Panasonic and Sanyo control the vast majority of the market. The lower quality suppliers have fringe positions and do not affect competition between Panasonic and Sanyo.

As each other's most significant competitors for portable NiMH batteries, Panasonic and Sanyo respond directly to competition from each other with lower prices, better services and improved products, to the benefit of consumers. By eliminating this direct and substantial competition, the proposed acquisition would allow Panasonic to exercise market power unilaterally, thereby increasing the likelihood that purchasers of portable NiMH batteries would be forced to pay higher prices and restraining the direct competition that promoted innovation and high quality service. The proposed acquisition eliminates a competitor to which customers otherwise could have diverted their sales – in a market where the alternative sources of supply are usually not viable options.

Neither new entry nor repositioning and expansion sufficient to deter or counteract the anticompetitive effects of the proposed acquisition in the portable NiMH market is likely to occur within two years. Existing competitors would have to significantly improve their portable NiMH production facilities, improve the quality of their portable NiMH batteries, and overcome the resistance of customers to switch to a portable NiMH battery supplier that lacks the track record of effectively meeting the needs of those customers served by Panasonic and Sanyo. Also, because NiMH is an older battery technology, it has a relatively small growth potential for the sale of portable NiMH batteries, so it is unlikely that a potential competitor would be able to justify the investments necessary to enter the market for portable NiMH batteries.

IV. The Consent Agreement

The proposed Order eliminates the competitive concerns raised by Panasonic's proposed acquisition of Sanyo by requiring the divestiture of Sanyo's assets relating to the manufacture and sale of portable NiMH batteries to FDK Corporation ("FDK"), a subsidiary of Fujitsu, Ltd. This divestiture must occur with fifteen days after the Acquisition but may be extended an additional thirty days, if necessary, to allow European Commission approval of the divestiture to FDK.

FDK has the industry experience, reputation, and resources to replace Sanyo as an effective competitor in the portable NiMH battery market. Headquartered in Tokyo, Japan, FDK manufactures and sells electronic components and batteries worldwide, and is a subsidiary of Fujitsu, a multinational computing, telecommunications and electronics company. FDK does not currently compete against Panasonic and Sanyo in the sale of portable NiMH batteries, but it does manufacture and sell alkaline batteries. FDK also sources and resells a broad range of batteries, including carbon-zinc, lithium primary, and manganese batteries.

Pursuant to the Order, FDK would receive all the assets necessary to operate Sanyo's current portable NiMH battery business, including most importantly, the NiMH battery manufacturing facility in Takasaki, Japan ("Takasaki plant"). The Takasaki plant is a premier manufacturing facility for portable NiMH batteries, producing approximately 30 percent of the

portable NiMH batteries worldwide. The Order also requires Sanyo to supply to FDK sizes Sub C/D portable NiMH batteries, which are the only sizes of Sanyo's portable NiMH batteries not produced at the Takasaki plant and account for a tiny fraction of Sanyo's overall portable NiMH sales. In addition to the employees of the Takasaki plant, who would automatically transfer to FDK, the Order requires Sanyo to provide FDK access to certain other key Sanyo employees needed to successfully operate the business. The Order also requires Sanyo to transfer all intellectual property necessary to make and sell portable NiMH batteries, including Sanyo patents and licenses related to portable NiMH batteries. A divestiture of Sanyo's portable NiMH assets will ensure that FDK has a full line of high-quality portable NiMH batteries, enabling it to compete immediately with the merged entity.

The Commission has appointed Philip Comerford, Jr., Managing Director of ING Capital LLC and Head of the Mergers & Acquisitions Group, as the interim monitor to oversee the divestiture of the NiMH battery business. In order to ensure that the Commission remains informed about the status of the proposed divestitures, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the divestiture is accomplished.

If the Commission determines that FDK is not an acceptable purchaser, or the manner of the divestiture is not acceptable, the parties must unwind the sale to FDK and divest the portable NiMH battery assets within six months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six months, the Commission may appoint a trustee to divest the portable NiMH battery assets.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order To Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. E9–28745 Filed 11–30–09: 8:45 am]

BILLING CODE 6750–01–S

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Unmodified Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is publishing this second round notice and requesting comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms for extension of approval (up to three years) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OGE is proposing no changes to these forms at this time. As in the past, OGE will notify filers of an update to the privacy information contained in the existing forms, and will post a notification thereof on its Web site.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by December 31, 2009.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Office of Government Ethics, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

FAX: 202–395–6974, Attn: Ms. Sharon Mar, OMB Desk Officer for the Office of Government Ethics;

E-mail: smar@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Paul D. Ledvina, Records Officer, Office of Government Ethics; Telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; E-mail: *pdledvin@oge.gov*. The model certificates of independence and compliance for qualified trusts are codified in appendixes A, B, and C to 5 CFR part 2634. Copies of the model trust documents are available as one set of OGE publications through the Ethics Documents section of OGE's Web site at *http://www.usoge.gov*. Copies of the qualified trust model certificates and the model trust documents may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics intends to submit, shortly after this second round notice, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). OGE is proposing no changes to the twelve qualified trust certificates and model trust documents at this time.

Privacy Act Statement

In 2003, OGE updated the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records), including the addition of the three new routine uses and the modification of one of the existing routine uses. See 68 FR 3097–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003). As a result, the Privacy Act Statement on each of the qualified trust model certificates and documents, which includes paraphrases of the routine uses, is affected. OGE has not incorporated this update into the qualified trust model certificates and documents at this time, since a more thorough revision of these information collections is planned within the next three years. Upon distribution of the trust model certificates and documents, OGE will continue to inform users of the update to the Privacy Act Statement. OGE will also post a notification thereof on its Web site to accompany the model certificates and documents.

Model Trust Form Users

OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (Ethics Act). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for Ethics Act qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

Model Trust Forms and Documents

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model trust certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. *Qualified trust certifications*—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) and (b), 2634.408, 2634.409 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. *Qualified trust communications and model provisions and agreements*—5 CFR 2634.401(c)(1)(i) and (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities). As noted above, blank copies of each of these model documents are posted on OGE's Web site.

The communications formats and the confidentiality agreements (items ii. (A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper Ethics Act request (by filling out an OGE Form 201 access form) until the periods of retention of all other reports (usually the SF 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR 2634.603(g)(2) of OGE's executive branch disclosure regulation.

Reporting Burden

The Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents, in part reflecting the routine departure of high-level filers from the previous Administration. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2010–2012. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms in 2007 (72 FR 27132–27134 (May 14, 2007) and 72 FR 46489–46490 (August 20, 2007)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. *Trust Certificates:*

A. *Certificate of Independence:* total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. *Certificate of Compliance:* total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. *Model Qualified Trust Documents:*

A. *Blind Trust Communications:* total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. *Model Qualified Blind Trust:* total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model); 200.

C. *Model Qualified Diversified Trust:* total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. *Of the five remaining model qualified trust documents:* total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. *Of the two model confidentiality agreements:* total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is $1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The $1,000,000 annual cost figure is based on OGE's estimate of an average of five active trusts anticipated to be under administration for each of the next two years with combined total assets of $100,000,000. However, OGE notes that the $1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full $1,000,000 estimate for paperwork clearance purposes.

Consideration of Comments

On September 17, 2009, OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified qualified trust certificates and model trust documents. See 74 FR 47799–47801. OGE received only one response to that notice, which was critical of the Government, and provided no specific

comment about the proposed renewal of these documents.

In this second notice, public comment is again invited on the qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: November 20, 2009.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E9–28782 Filed 11–30–09; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0101]

Federal Acquisition Regulation; Submission for OMB Review; Drug-Free Workplace

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning drug-free workplace. A request for public comments was published in the **Federal Register** at 74 FR 27024 on June 5, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 31, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, Contract Policy Branch, GSA (202) 219–1813 or e-mail *William.clark@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at FAR 52.223–6, Drug-Free Workplace, requires (1) contract employees to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, to notify the contracting officer.

The information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Respondents: 600.
Responses per Respondent: 1.
Annual Responses: 600.
Hours per Response: .17.
Total Burden Hours: 102.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: November 21, 2009.

Al Matera,

Director, Contract Policy Division.

[FR Doc. E9–28709 Filed 11–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Information Collection; Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 1, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Procurement Analyst, Contract Policy Branch, GSA (202) 501–1448 or e-mail *Beverly.cromer@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address. A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.

Responses per Respondent: 2.

Annual Responses: 140.

Hours per Response: .5.

Total Burden Hours: 70.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: November 20, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–28711 Filed 11–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Federal Acquisition Regulation; Submission for OMB Review; Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for reinstatement of an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat (MVPR) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Price Redetermination. A notice published in the **Federal Register** at 74 FR 27023, on June 5, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 31, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Division, GSA, (202) 501–1900 or e-mail *warren.blankenship@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 16.205, Fixed-price contracts with prospective price redetermination, provides for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. FAR 16.206, Fixed price contracts with retroactive price redetermination, provides for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

Respondents: 3,500.

Responses per Respondent: 2.

Annual Responses: 7,000.

Hours per Response: 1.

Total Burden Hours: 7,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: November 18, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–28713 Filed 11–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0082]

Federal Acquisition Regulation; Submission for OMB Review; Economic Purchase Quantity—Supplies

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for public comments regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to reinstate a previously approved information collection requirement concerning Economic Purchase Quantity—Supplies. A request for public comments was published in the **Federal Register** at 74 FR 28497, on June 16, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 31, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Lori Sakalos, Procurement Analyst, Contract Policy Branch, (202) 208–0498 or e-mail *lori.sakalos@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The provision at 52.207–4, Economic Purchase Quantity—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

B. Annual Reporting Burden

Respondents: 1,524.
Responses per Respondent: 25.
Annual Responses: 38,100.
Hours per Response: .83.
Total Burden Hours: 31,623.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantity—Supplies, in all correspondence.

Dated: November 18, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–28712 Filed 11–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meetings.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold six teleconference meetings. The meetings are open to the public. Pre-registration is NOT required, however, individuals who wish to participate in the public comment sessions should either e-mail *nvpo@hhs.gov* or call 202–690–5566 to RSVP.

DATES: The meetings will be held on December 16, 2009, from 3 a.m. to 5 p.m. EDT, January 20, 2010 from 3 p.m. to 5 p.m. EDT, February 26, 2010 from 3 p.m. to 5 p.m., EDT, March 23, 2010 from 3 p.m. to 5 p.m. EDT, April 21, 2010 3 p.m. to 5 p.m. EDT, and May 19, 2010 3 p.m. to 5 p.m. EDT. If there is a change in meeting dates this information will be posted on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/*) as soon as the pertinent information becomes available.

ADDRESSES: The meetings will occur by teleconference. The pertinent information for public attendees, *i.e.*, call in number and passcode will be posted on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/*) no later than 15 days prior to each of the designated meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Fortineau, National Vaccine Program Office, Department of Health and Human Services, Room 443–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone: (202) 690–5566; Fax: (202) 260–1165; e-mail: *nvpo@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. Section 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program, on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

These are special meetings of the NVAC. Discussions will focus on the work of the Vaccine Safety Risk Assessment Working Group (VSRAWG) and the draft reports that it generates. The report will summarize the work to date of the H1N1 VSRAWG reviewing H1N1 safety monitoring data. These NVAC meetings may also include topics beyond the VSRAWG such as the National Vaccine Plan and updates from other Working Groups. More detailed information may be found on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/pmtgs.html*) prior to the scheduled meeting date.

For these special meetings, members of the public are invited to attend by teleconference via a toll-free call-in phone number. The call-in number will be operator assisted to provide members of the public the opportunity to provide comments to the Committee. Public participation and ability to comment will be limited to space and time available. Public comment will be limited to no more than three minutes per speaker. Pre-registration is required for public comment only. Individuals who plan to attend and need special assistance, such as accommodation for hearing impairment or other reasonable accommodations, should notify the designated contact person at least one week prior to the meeting.

Any members of the public who wish to have printed material distributed to NVAC should submit materials to the

Executive Secretary, NVAC, through the contact person listed above prior to close of business one week before each meeting (conference call). A draft agenda and any additional materials will be posted on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/*) prior to the meeting.

Dated: November 24, 2009.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office, Executive Secretary, NVAC.

[FR Doc. E9–28647 Filed 11–30–09; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Organization, Functions, and Delegations of Authority; Office of the National Coordinator for Health Information Technology

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Statement of Organization, Functions, and Delegations of Authority The Office of the National Coordinator for Health Information Technology has reorganized its substructure components in order to more effectively meet the mission outlined by The Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA). The reorganization affects all four of the original Director-level offices: the Office of Health Information Technology Adoption (OHITA); the Office of Interoperability and Standards (OIS); Office of Programs and Coordination (OPC); and the Office of Policy and Research (OPR). The new organizational structure is composed of five offices with direct reporting capability to the National Coordinator for Health Information Technology (National Coordinator): the Office of Economic Modeling and Analysis; the Office of the Chief Scientist; the Office of the Deputy National Coordinator for Programs & Policy; the Office of the Deputy National Coordinator for Operations, and the Office of the Chief Privacy Officer.

FOR FURTHER INFORMATION CONTACT: Marc Weisman, Office of the National Coordinator, Office of the Secretary, 200 Independence Ave., NW., Washington, DC 20201, 202–690–6285.

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Part A, as last amended at 70 FR 48718–48720, dated August 19, 2005, is amended to reflect the restructuring of the Office of the National Coordinator for Health Information Technology (ONC) as follows:

I. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology delete, "Section AR.10 Organization," in its entirety and replace with the following:

Section AR.10 Organization. The Office of the National Coordinator for Health Information Technology (ONC) is under the direction of the National Coordinator for Health Information Technology who reports directly to the Secretary. The office consists of the following components:

A. Immediate Office of the National Coordinator (ARA)

B. Office of Economic Modeling and Analysis (ARB)

C. Office of the Chief Scientist (ARC)

D. Office of the Deputy National Coordinator For Programs & Policy (ARD)

E. Office of the Deputy National Coordinator For Operations (ARE)

F. Office of the Chief Privacy Officer (ARF)

II. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.20 Functions, Chapter B, delete, "Office of the Health Information Technology Adoption (ARB)," in its entirety and replace with the following:

B. *Office of Economic Modeling and Analysis (ARB):* The Office of Economic Modeling and Analysis works with and reports directly to the National Coordinator. The Office: (1) Applies advanced mathematical or quantitative modeling to the U.S. health care system for simulating the microeconomic and macroeconomic effects of investing in health information technology and (2) provides advanced policy analysis of health information technology strategies and policies to the National Coordinator. Such modeling will be used with varying public policy scenarios to perform advanced health care policy analysis for requirements of the Recovery Act, such as reductions in health care costs resulting from adoption and use of health information technology. The results of these analyses provided to the National Coordinator will inform strategies to enhance the use of health information technology in improving the quality and efficiency of health care and improving public health.

III. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.20 Functions, Chapter C, delete, "Office of Interoperability and Standards (ARC)," in its entirety and replace with the following:

C. *Office of the Chief Scientist (ARC):* The Office of the Chief Scientist is headed by the Chief Scientist. The Office of the Chief Scientist is responsible for: (1) Applying research methodologies to perform evaluation studies of health information technology grant programs; (2) identifying, tracking and supporting innovations in health information technology; (3) leading research activities mandated under the HITECH Act provisions of ARRA; (4) promoting applications of health information technology that support basic and clinical research; (5) collecting and communicating knowledge of health care informatics from and to international audiences; (6) collaborating with other agencies and departments on assessments of new health information technology programs; and (7) developing and maintaining educational programs for staff of the Office of the National Coordinator and advising the National Coordinator concerning the educational needs of the field of HIT. The Office of the Chief Scientist possesses and utilizes specialized knowledge of medical bioinformatics, which involves the study and application of advanced information methods and technologies in support of health care and population health.

IV. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.20 Functions, Chapter D, delete, "Office of Programs and Coordination (ARE)," in its entirety and replace with the following:

D. *Office of the Deputy National Coordinator for Programs & Policy (ARD):* The Office of the Deputy National Coordinator for Programs & Policy is headed by the Deputy National Coordinator for Programs & Policy. The Office of the Deputy National Coordinator for Programs & Policy is responsible for: (1) Implementing and overseeing grant programs that advance the nation toward universal meaningful use of interoperable health information technology in support of health care and population health; (2) coordinating among HHS agencies and offices and among relevant executive branch agencies and the public health information technology programs and policies to avoid duplication of efforts and inconsistent activities; (3) developing the mechanisms for establishing and implementing standards necessary for nationwide health information exchange; (4)

formulating policy for the privacy and security of health information; (5) developing policies as may be otherwise necessary for implementing its mission; and (6) maintaining a Federal Health IT Strategic Plan.

V. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.20 Functions, Chapter E, delete, "Office of Policy and Research (ARF)," in its entirety and replace with the following:

E. *Office of the Deputy National Coordinator for Operations (ARE):* The Office of the Deputy National Coordinator for Operations is headed by the Deputy National Coordinator for Operations. The Office of the Deputy National Coordinator for Operations is responsible for performing the activities that support the Office of the National Coordinator for Health Information Technology's numerous programs. These include: (1) Budget formulation and execution; (2) contracts and grants management; (3) facilities management; (4) human resources; (5) stakeholder communications; and (6) financial and human capital strategic planning.

VI. Under Part A, Chapter AR, Office of the National Coordinator for Health Information Technology, Section AR.20 Functions, immediately following Chapter E, insert the following:

F. *Office of the Chief Privacy Officer (ARF):* The Office of the Chief Privacy Officer is headed by the Chief Privacy Officer, who advises the National Coordinator as directed by the ARRA. The Chief Privacy Officer may also report to other individuals, as necessary. The Chief Privacy Officer of the Office of the National Coordinator for Health Information Technology will be appointed by the Secretary. The Office of the Chief Privacy Officer is responsible for: (1) advising the National Coordinator on privacy, security, and data stewardship of electronic health information and (2) coordinating the Office of the National Coordinator for Health Information Technology's efforts with similar privacy officers in other Federal agencies, State and regional agencies, and foreign countries with regard to the privacy, security, and data stewardship of electronic, individually identifiable health information.

VII. *Delegation of Authority.* Pending further delegation, directives or orders by the Secretary or by the National Coordinator for Health Information Technology, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Authority: 44 U.S.C. 3101.

Dated: November 20, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–28755 Filed 11–30–09; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0220]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Studies of Nutrition Symbols on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Fax written comments on the collection of information by December 31, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title "Experimental Studies of Nutrition Symbols on Food Packages." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794, *Jonna.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

I. Experimental Studies of Nutrition Symbols on Food Packages

With the increased interest in healthier foods, U.S. food processors and retailers have been adding nutrition information, particularly nutrition quality icons (e.g., Smart Choices Program) and selected nutrient level disclosures (e.g., Guideline Daily Amounts), in addition to other labeling statements (e.g., nutrient content claims), to the front of the package (FOP). This type of nutrition labeling scheme is seen in other countries (e.g., United Kingdom, Sweden, and Australia) as well. FDA believes the proliferation of these nutrition labeling schemes in the domestic market and the various nutrition criteria they use make it necessary for the agency to exercise the responsibility that Congress gave it to, among other things, carefully examine consumer understanding and use of the various schemes to evaluate how well they impart useful nutrition information to U.S. consumers and which schemes or types of schemes are better to impart the information. The agency held a public hearing in September 2007 and completed a focus group study in April 2008 to obtain comments and information about many consumer issues related to FOP nutrition labeling schemes. We are also aware of recent consumer research conducted by foreign governments, non-governmental organizations, and academics (e.g., Refs. 1 to 4). The existing information, however, does not fill many of the gaps in our understanding of the impacts of FOP nutrition labeling schemes on U.S. consumers. Most importantly, there is a lack of publicly available quantitative consumer research on the relative effectiveness of existing and alternative labeling schemes in helping U.S. consumers make better dietary decisions. Therefore, the agency is proposing to conduct two experimental studies to assess quantitatively consumer reactions to various FOP nutrition labeling schemes. The studies will provide critical input to ensure the usefulness of FOP nutrition information provided to U.S. consumers.

FDA conducts research and educational and public information programs relating to food safety under its broad statutory authority, set forth in section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)), to protect the public health by ensuring that foods are "safe, wholesome, sanitary, and properly labeled," and in section 903(d)(2)(C) (21 U.S.C. 393(d)(2)(C)), to conduct research

relating to foods, drugs, cosmetics and devices in carrying out the act.

The purpose of the studies is to help enhance FDA's understanding of consumer understanding and use of a selected sample of nutrition labeling schemes currently in use in the domestic market, and to examine whether certain schemes are better ways to impart useful nutrition information to U.S. consumers. The studies are part of the agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets.

The experimental studies will be conducted by two different contractors using two different Web-based surveys to collect information. Study participants will come from two independent convenience samples of adult members recruited from two separate online consumer panels; the demographic characteristics of each sample will be matched to that of the respective consumer panel.

A. Study 1

Study 1 will examine five labeling conditions: (1) a Smart Choices Program scheme (currently used in the U.S. market); (2) a Guideline Daily Amounts scheme (currently used in the U.S. market); (3) a scheme similar to the Multiple Traffic Light, which is currently used in the United Kingdom; (4) a control that shows only the Nutrition Facts label; and (5) a control that shows no FOP nutrition information. The study will randomly assign each of its 2,400 participants to view four labels from a set of 40 FOP food labels that vary in the presence and type of labeling information, the type of food product, and the nutritional qualities of the product. The study will make the Nutrition Facts (NF) label for each of these food labels available to all participants. The study will focus on the following types of consumer reaction: (1) Identification of the healthier product in a pair of products; (2) judgments about a food product in terms of its nutritional qualities, overall healthfulness, health benefits, and other characteristics such as taste; (3) judgments about a nutrition information scheme in terms of its credibility and helpfulness in conveying the product's nutritional qualities and in assisting intake decisions; (4) impact of the labeling conditions (1) to (3) on the use of the Nutrition Facts label; and (5) time spent on product identification and judgment. To help understand consumer reaction, the study will also collect information on participants' background, including but not limited to consumption and perceptions of food products, nutrition attitudes and practice, food label use, and health status.

In addition, Study 1 will include a separate face-to-face eye-tracking research using a separate sample of 30 adult consumers to examine their label viewing patterns when they are asked to judge product attributes and to compare products. This research is included in Study 1 to explore the usefulness of the methodology of eye-tracking for future consumer research. Eye-tracking participants will be recruited by a contractor from members of a commercial database of consumers who express interest in participation and meet the selection criteria.

Study 1 will help the agency primarily in understanding how U.S. consumers would choose and perceive products in response to the five labeling conditions. The study will also enhance the agency's understanding of the relationships between consumer background and reaction to FOP information. This information will help the agency in its future deliberation of FOP related labeling actions, such as regulations and consumer education, to provide better information to consumers to assist their dietary choices. Because this is an experimental study, its results will not be used to develop population estimates.

In the **Federal Register** of June 1, 2009 (74 FR 26244), FDA published a 60-day notice requesting public comment on the Experimental Study of Nutrition Symbols on Food Packages (Study 1). The agency received seven responses, some of them containing multiple comments. Two comments raised issues that were outside the scope of the comment request on the information collection provisions and will not be discussed here. Among the relevant comments, all supported the proposed research. The following is a summary of the relevant comments and the agency's response to the comments:

(Comment 1) One comment questioned the inclusion in the study of questions about perceived taste and health benefits of products, dietary supplement use, and functional health literacy, stating that these questions do not seem to focus on the study objective of discerning consumer use and understanding of nutrition symbols on food packages. Another comment stated that "diabetes or high blood sugar" and "obesity or overweight" should be removed from perceived health benefits because FDA has not approved health claims for these conditions.

(Response 1) First, we disagree that questions about perceived health benefits and, perceived taste are outside the scope of the study. The purpose of the study is to understand consumer response to a sample of existing FOP nutrition labeling schemes. The study will help the agency evaluate the current situation and will provide information that will be important to any future deliberations of the agency's response to the various nutrition information schemes. Product perceptions (including nutrient levels, health benefits, and taste) are inferences consumers often make from labeling information. It is well known that some consumers perceive a tradeoff between nutrition and taste. Hence, it is within the scope of the study to collect such information to obtain a more complete understanding of consumer response to nutrition information schemes and to use it to tease out the effects of these schemes on product choices and perceptions. In addition, such information will enhance our understanding of consumer response to food labeling in general. We note that we have decided to remove the questions on use of dietary supplements and functional health literacy due to the length of the questionnaire.

Second, we disagree that "diabetes or high blood sugar" and "obesity or overweight" should be removed from the list of possible perceived health benefits because the agency has not approved health claims for these conditions. Diabetes and obesity are health conditions that have been linked to dietary quality, which is influenced by consumer choices and perceptions of food products. Furthermore, perception of the relationships between a food product and the risk of these two health conditions are part of inferences consumers often make from labeling information. Whether there exist health claims for these conditions is irrelevant.

(Comment 2) One comment noted that the questions seem to be testing specific symbols, rather than the concept of FOP nutrition information schemes. The comment also noted along the same lines that the it was not clear how FDA decided which symbols to test but noted that the symbols to be tested include symbols that are used in labeling (e.g., store shelf), rather than on the FOP. Another comment suggested that the Guiding Stars symbol would be an important element in the proposed study.

(Response 2) The comment is correct that the questions in this study are designed to test specific symbols used on packages, rather than the concept of FOP symbols. Smart Choices Program and Guideline Daily Amounts symbols have been selected because they are among the most widely used FOP symbols in the United States. The

Traffic Light type symbol has been selected because it is one of the FOP symbols used in the United Kingdom. The other two symbol schemes, NF only and no FOP scheme, have been selected to examine how product choice and perceptions would differ if consumers ignore the front package and turn to the NF label for product information or are not provided any nutrition information on the FOP. We have decided to focus at the present time exclusively on FOP symbols rather than on FOP and shelf tag symbols because consumers are more likely to see FOP symbols on nationally distributed products than shelf-tag symbols that can only be found in limited locations. Therefore, we have omitted the Guiding Stars and NuVal symbols from the study.

(Comment 3) One comment suggested that a question series could be developed to compare consumer response to three versions of labeling approaches: With no nutrition symbol, with a nutrition symbol, and with an FDA authorized health claim appropriate to the food.

(Response 3) We appreciate the suggestion to compare consumer responses to different versions of labeling approaches: With no nutrition symbol, with a nutrition symbol, and with claims that can be used under current regulatory framework, e.g., authorized health claims and nutrient content claims. Such research may be useful in the future. Nevertheless, due to the scarcity of information regarding consumer understanding and use of existing nutrition symbols in the domestic market, we consider it most useful at this time to conduct the planned research, which does include a comparison between no nutrition symbol and the presence of a nutrition symbol.

(Comment 4) A comment recommended that the study focus more broadly on consumer research issues that have not yet been fully answered by the limited research conducted to date. These issues include: Consumers' focus on nutrition symbols; the nutrition symbols that are most helpful to consumers; the nutritional elements that a symbol should reflect; the ideal placement of a symbol on the package; the effects of multiple symbols on consumer decision-making; the effects of the presence of a health claim on consumer use of nutrition symbols or the NF label; whether public or private sector oversight has any impact on the effect on consumers of a nutrition symbol program; use of symbols and behavioral changes; and consumer interpretation of symbols.

(Response 4) We agree that these issues are important for understanding the impacts of nutrition symbols on consumers. In fact, the proposed study has been designed to help provide information on several of the recommended issues, such as whether consumers focus in on nutrition symbols (using the eye-tracking study) and how consumers interpret symbols (using the experimental study). In addition, we note that we have added Study 2 to examine which of a wide range of symbol schemes may be most helpful to consumers. We agree, however, that further research will be needed.

(Comment 5) A comment questioned whether a comparison between a pair of products of the same product category and same type of symbol, but with different nutritional profiles, can be used to assess the various symbol systems and front-of-package v. shelf-tag systems. The comment stated that different systems present different information on the label or tag.

(Response 5) We appreciate the comment. One of the objectives of the study is to examine identification of the more nutritious product in a pair of products. It is precisely because different systems present different information on the front of package that we want to use this comparison to examine whether and how much respondents can discern two nutritionally different products when they see FOP symbols of different content/design. We hope to reject the hypothesis that there is no difference between different systems, e.g., product choices and perceptions are the same regardless of the type of symbol that shows on a product package. We also note that we have decided to omit shelf-tag symbols in this study.

(Comment 6) A comment questioned whether a comparison between a pair of products of different product categories but with the same type of symbol and different nutritional profiles, can be used to assess the symbol systems to be examined in this study. The comment stated that these symbol systems are designed to allow comparisons between products within a category rather than comparisons of products between categories.

(Response 6) We disagree that the comparison in question cannot be used to assess the target symbol systems. Though these systems are designed for within-category product comparisons, it is unknown whether consumers are aware of the intent. If consumers see the same type of symbol on various products, e.g., yogurt and cereal, some of them may infer these products possess the same or similar nutritional characteristics. In addition, the pair of products that will be compared have been selected because they are possible substitutes for each other for an eating occasion, e.g., yogurt and cereal. Unless these possibilities can be ruled out, it is within the scope of this study to include the comparison in question because it will provide information about consumer understanding of these symbols.

(Comment 7) One comment raised the issue of the representativeness of the study. It stated that the online sample should be balanced to reflect U.S. population demographics and controlled for grocery shopper status, category purchase and use status; that each test cell should be balanced accordingly; and that the study should be conducted in both English and Spanish so not to underrepresent non-English speaking demographics of the U.S. population.

(Response 7) We disagree that the study sample as well as each test cell should be balanced to reflect the U.S. population. The study is an experimental study aimed at establishing valid comparisons of respondents' reactions to different symbols and foods, rather than generating reliable population estimates. Furthermore, balancing a non-probability sample (such as the sample used in this study and most other online samples) or each test cell generated from the sample, does not necessarily make the study results representative. Because the study is not intended to generate population estimates, we also disagree that the study should control for grocery shopper status, category purchase, and use status. We recognize the usefulness in and importance of understanding non-English speaking consumers' response to food labeling and will consider addressing this need in future studies.

(Comment 8) A comment recommended that the study consider asking about perceived levels of nutrients-to-encourage separately from perceived levels of nutrients-to-limit, and about how symbols reinforce basic information such as food groups and servings.

(Response 8) We agree that it is useful to examine consumer perceptions of nutrients-to-encourage in addition to nutrients-to-limit, and have included four nutrients-to encourage (calcium, fiber, Vitamin A, and Vitamin C) in the revised questionnaire. We also agree that it would be useful to examine in future research how symbols reinforce basic information such as food groups and servings.

(Comment 9) A comment stated that FDA should apply science and transparency in its research intentions and study design.

(Response 9) We appreciate the comment that FDA should apply science and transparency in its research intentions and study design. We hope Responses 1 to 6 in this document will help clarify some of the critical elements in the agency's rationale behind the purpose of the study and the study design.

(Comment 10) A comment suggested that the word "nutritious" rather than "healthy" should be used because the latter could be associated by respondents with considerations other than nutrition and has a regulatory meaning.

(Response 10) We disagree that the word "healthy" should not be used because it has a regulatory meaning. We are not aware of any research that suggests consumers are aware that the word "healthy" has a specific regulatory definition when used in food labeling. We agree that "healthy" may be less precise than "nutritious" for what the study intends to measure. Existing consumer research, however, indicates that consumers associate "healthy" more with nutritional qualities of a food product than with other considerations such as freshness. Therefore, we will retain the word "healthy" in this study.

(Comment 11) A comment stated that the study plan of "showing front panels which are full-color, three-dimensional, and patterned after existing labels in the market" would not remove the effects of brands on responses but would confound the analysis.

(Response 11) We disagree with this comment. We have taken a great deal of care in developing the mock front panels by (1) Omitting any pictures or words that may provide clues to the brand name of a product; (2) mixing graphic components from different existing labels or creating original graphics in an attempt to disassociate the mock label with any existing brands; and (3) using fictitious names and addresses of the manufacturer. We believe these actions will minimize potential confounding effects, if any, caused by brands.

(Comment 12) A comment suggested that the test symbols should be accurately represented and have NF declarations that support the symbol-product combinations; if a symbol is used on a product for study purposes, but not necessarily in the market, the comment states that the difference should be explained in the analysis.

(Response 12) We understand the concern. In designing the symbols for this study, the agency has used available information from symbol schemes' Web sites, created certain label information, and omitted symbols in some experimental conditions for the purpose the study. The agency will inform respondents that the labels they see in this study may or may not be the same as the ones they see in the marketplace and mention this in the analysis.

(Comment 13) A comment stated that some questions could be answered not because of one's understanding of the nutrition symbol but because of the respondent's previous knowledge or perception of the product or product category, and that some of the prior knowledge questions may prime symbol responses and should be moved to later in the questionnaire to minimize potential bias.

(Response 13) We agree that there is a possibility that some respondents may be able to answer some questions by drawing on their own previous knowledge or perception of the product or product category, rather than on their perception and understanding of the nutrition symbol on a test product. The study asks questions about respondents' previous knowledge or perception of the product or product category precisely because we want to minimize the risk for confounding as a result of previous knowledge.

We disagree that some of the prior knowledge questions should be moved to later in the questionnaire. Moving prior knowledge questions to follow symbol response questions can cause respondents to choose knowledge responses considered consistent with their symbol responses, thus increasing potential measurement errors in knowledge response. To minimize potential biases caused by asking prior knowledge before symbols response, we will have the two phases of the study (Phase 1 on prior knowledge and Phase 2 on label response and other topics) administered separately and a week apart from each other to the same respondents. The agency has implemented this strategy in one of its previous experimental studies.

(Comment 14) A comment questioned whether forced exposure to test symbols would make the study results not representative of in-market realities.

(Response 14) We recognize that forced exposure sometimes can restrict the applicability of the results to actual consumer responses in the store. Nonetheless, the objective of the study is to understand consumer reactions to one specific piece of labeling information, the nutrition symbol, rather than to all or other pieces of labeling information. We think that using forced exposure in a controlled environment increases the likelihood that observed outcomes are caused by symbols rather than prior knowledge and individual characteristics. Otherwise, it would be difficult to ascertain whether respondents have noticed the test symbols, which in turn would raise questions about the validity of the results. On the other hand, if the objective of the study was to gather market-representative results, then alternative methodologies such as modeling sales data may be more appropriate.

(Comment 15) A comment stated that the proposed product categories (cereal, savory snack, and frozen meal) would not be appropriate for product comparison tasks because they are not substitutes for each other in the diet.

(Response 15) We disagree that these product categories are not appropriate. We will use two similar products in a given category, e.g., chips and crackers in the savory snack category, for within-category product comparison; we will use two substitute products, e.g., cereal and yogurt, for between-category product comparison.

(Comment 16) A comment recommended that product consumption and purchase questions be moved from the beginning to a later section of the questionnaire and that these questions focus on at-home practices only.

(Response 16) We disagree that these questions need to be moved from the beginning of the questionnaire. They are relatively easy to answer and can serve as a warm-up to focus respondents' attention on the food products in question. We have revised the questionnaire to help respondents understand that the questions ask about grocery shopping rather than food purchases at away-from-home eating establishments.

(Comment 17) A comment stated that it would be important to record label reading practices for the food categories included in the study.

(Response 17) We agree that it would be important to record label reading practices for the food categories included in the study. We have added two questions to collect this information.

(Comment 18) A comment offered suggestions on simplifying questions, improving response types, scales and response formats, and ways to distinguish responses to the front and back of a label.

(Response 18) We appreciate the comment and suggestions. We have incorporated many of the helpful suggestions in the revised questionnaire

and will make other necessary and appropriate revisions to the questionnaire based on cognitive interviews and pretests.

(Comment 19) A comment stated that the proposed study is more likely to require close to 30 minutes, rather than the proposed 15 minutes, to complete. Another comment stated that the commenter's experience with a 20-minute online survey similar to the proposed study suggested there was no negative feedback on the burden of data collection.

(Response 19) We agree that the original estimate (15 minutes) was relatively low and has adjusted the content of the study so it will be completed in 20 minutes.

(Comment 20) One comment asked the agency to publish the revised questionnaire for public comment prior to initiating the study.

(Response 20) We appreciate the suggestion for the agency to publish the revised questionnaire for public comment prior to initiating the study. Per the PRA, a copy of the revised questionnaire is attached to the supporting statement for public comment.

(Comment 21) A comment suggested that the agency should increase the sample size of the eye tracking study from 30 individuals to 100 to 200 individuals to provide results that are more reliable.

(Response 21) We appreciate the suggestion to increase the sample size of the eye tracking study from 30 individuals to 100 to 200 individuals to provide results that are more reliable. As stated previously, the purpose of the eye-tracking component in this study is exploratory. We do not intend to use the information from this study to generate any reliable estimates of consumer labeling viewing behaviors. We will consider a larger eye-tracking study when resources become available and we have the need to collect reliable estimates of the behaviors.

(Comment 22) Another comment recommended that the study consider using conjoint analysis to determine how consumers value different features of a given symbol.

(Response 22) We appreciate the suggestion to use conjoint analysis for this study. The purpose of the proposed study is to investigate how consumers understand various FOP labeling schemes. In contrast, conjoint analyses are employed in most studies to examine consumer preferences toward different objects, which may include FOP labeling schemes. Therefore, despite the wide use of conjoint analysis in academic and industry research, the agency will need to establish the appropriateness and feasibility of conjoint analysis for research with similar objectives as the proposed study before it adopts the methodology.

B. Study 2

Study 2 will examine nine FOP nutrition labeling schemes in addition to two controls: (1) The presence of a "Nutrition Tips" scheme on the FOP that shows: (a) Per-serving amounts of calories, total fat, saturated fat, sugar, sodium; and (b) interpretive words and colors of the amounts (high-red, medium-yellow, and low-green), with each word wrapped in a colored rectangle; (2) same as (1) but in black and white; (3) the presence of a "Nutrition Tips" scheme on the FOP that shows: (a) Per-serving amount of calories and % Daily Values (DV) of calories, total fat, saturated fat, sugar, sodium; (b) interpretive words of the % DV (high, medium, and low); and (c) is in black and white; (4) the presence of a "Nutrition Tips" scheme on the FOP, patterned after one variant of the U.K. Multiple Traffic Light scheme, that shows: (a) per-serving amounts of calories, total fat, saturated fat, sugar, sodium; (b) interpretive words and colors of the amounts (high-red, medium-yellow, and low-green) with each word wrapped in a colored circle; and (c) the measure of a serving (e.g., 1 cup); (5) same as (4) except that a different set of colors is used (high-pastel red, medium-pastel green, and low-pastel blue); (6) the presence of a "Calorie Count" scheme on the FOP that shows the amount of calories per serving and total amount of calories in the package; (7) the presence of a "Calorie Count" scheme on the FOP that shows the amount of calories per serving and the number of servings per package; (8) the presence of a "Nutrition Rating" scheme on the FOP that shows: (a) The numerical value and number of stars (out of five stars) representing the overall nutritional quality of the product; and (b) the amount of calories per serving; (9) the presence of a green "Healthy Check" scheme on the FOP that includes the word "healthy" and a separate box showing the amount of calories per serving and the number of servings per package; (10) a control that shows only the Nutrition Facts label; and (11) a control that shows no FOP nutrition information.

Study 2 will randomly assign each of its 4,800 participants to the 88 experimental conditions (11 labeling conditions x 4 product categories x 2 levels of choice difficulty). The study will focus on the following types of consumer reaction: (1) Accuracy and speed in a two product choice task that requires selection of the healthier product; (2) relevancy given for choice based on thematic coding of open-ended responses; (3) perceptions of long term consequences of regularly including the chosen product in one's diet; (4) perceptions of selected nutrient levels in the chosen product; (5) likelihood of truncated information search when answering product perception questions; and (6) perceptions of credibility and helpfulness of the labeling scheme. To help understand consumer reaction, the study will also collect information on participants' nutrition consciousness.

The purpose of Study 2 is to help the agency compare the relative effectiveness of a wide range of nutrition labeling schemes along with certain specific design features (e.g., color, presentation of calorie and serving size information) in helping consumers make healthier food choices. The results of the study will not be used to develop population estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
(Study 1 and Study 2) Cognitive interview screener	288	1	288	0.083	24	0	0
(Study 1 and Study 2) Cognitive interview	36	1	36	1	36	0	0
(Study 1 and Study 2) Pretest invitation	3,200	1	3,200	0.033	106	0	0
(Study 1) Pretest	200	1	200	0.33	66	0	0
(Study 2) Pretest	200	1	200	0.25	50	0	0
(Study 1 and Study 2) Survey invitation	38,400	1	38,400	0.033	1,267	0	0
(Study 1) Survey	2,400	1	2,400	.33	792	0	0
(Study 2) Survey	4,800	1	4,800	0.25	1,200	0	0
(Study 1) Eye-tracking screener	240	1	240	0.083	20	0	0
(Study 1) Eye-tracking	30	1	30	1	30	0	0
Total					3,591	0	0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the 60-day notice that published on June 1, 2009, we estimated a total burden of 1,417 hours for Study 1. In this document, table 1 has been modified to add the estimated burden hours associated with new Study 2 and to reflect our re-evaluation of the time it takes to complete the questionnaire in Study 1. The new total estimated burden is 3,591 hours.

To help design and refine the questionnaires to be used for the experimental studies, we will conduct cognitive interviews by screening 288 adult consumers in order to obtain 36 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hours) and each cognitive interview is expected to take 1 hour. The total for cognitive interview activities is 60 hours (24 hours + 36 hours). Subsequently, we will conduct pretests of the survey questionnaires before they are administered. We expect that 3,200 invitations, each taking 2 minutes (0.033 hours), will need to be sent to adult members of two online consumer panels to have 400 of them complete a 20-minute (0.33 hours) and a 15-minute (0.25 hours) pretest, respectively. The total for the pretest activities is 223 hours (106 hours + 66 hours + 50 hours). For the survey, we estimate that 38,400 invitations, each taking 2 minutes (0.033 hours), will need to be sent to adult members of two online consumer panels to have 2,400 of them complete a 20-minute (0.33 hours) questionnaire for Study 1 and 4,800 of them complete a 15-minute (0.25 hours) questionnaire for Study 2, respectively. The total for the survey activities is 3,259 hours (1,267 hours + 792 hours + 1,200 hours). To conduct the eye-tracking study, we expect to screen 240 adult consumers, each taking 5 minutes (0.083 hours), to have 30 of them participate in a 1-hour interview. The total for the eye-tracking activities is 50 hours (20 hours + 30 hours). Thus, the total estimated burden is 3,591 hours. FDA's burden estimate is based on prior experience with research that is similar to this proposed study.

II. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified all Web site addresses, but FDA is not responsible for any subsequent changes

to the Web sites after this document publishes in the **Federal Register**.)

1. Malam, S., S. Clegg, S. Kirwan, and S. McGinigal, "Comprehension and Use of UK Nutrition Signpost Labelling Schemes," report prepared for Food Standards Agency, May 2009.

2. Borgmeier, I, and J. Westenhoefer, "Impact of Different Food Label Formats on Healthiness Evaluation and Food Choice of Consumers: a Randomized-Controlled Study," *BMC Public Health*, 9: 184, 2009, accessed online at *http://www.biomedcentral.com/content/pdf/1471-2458-9-184.pdf*.

3. Kelly, B, C. Hughes, K. Chapman, J.C.-Y. Louie, H. Dixon, J. Crawford, L. King, M. Daube, T. Slevin, "Consumer Testing of the Acceptability and Effectiveness of Front-of-Pack Food Labelling Systems for the Australian Grocery Market," Health Promotion International 24(2):120–9, 2009.

4. Feunekes, G.I.J., I.A. Gortemaker, A.A. Willems, R. Lion, and M. van den Kommer, "Front-of-pack Nutrition Labelling: Testing Effectiveness of Different Nutrition Labelling Formats Front-of-pack in Four European Countries," *Appetite*, 50:57–70, 2008.

Dated: November 24, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28699 Filed 11–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps Travel Request Worksheet (OMB No. 0915–0278)—Extension

Clinicians participating in the HRSA National Health Service Corps (NHSC) Scholarship Program use the online Travel Request Worksheet to receive travel funds from the Federal Government to perform pre-employment interviews at sites on the NHSC's Opportunities List.

The travel approval process is initiated when a scholar notifies the NHSC of an impending interview at one or more NHSC approved practice sites. The Travel Request Worksheet is also used to initiate the relocation process after a NHSC scholar has successfully been matched to an approved practice site. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the scholar and the NHSC logistics contractor regarding travel arrangements and authorization of the funding for the site visit or relocation.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Travel Request Worksheet	140	2	280	.06	16.8

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: November 24, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–28698 Filed 11–30–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0043 Extension)

The Health Education Assistance Loan (HEAL) program continues to administer and monitor outstanding loans which were provided to eligible students to pay for educational costs in a number of health professions. HEAL forms collect information that is required for responsible program management. The HEAL Repayment Schedule, Fixed and Variable, provides the borrower with the cost of a HEAL loan, the number and amount of payments, and the Truth-in-Lending disclosures. The Lender's Report on HEAL Student Loans Outstanding (Call Report), provides information on the status of loans outstanding by the number of borrowers and total number of loans whose loan payments are in various stages of the loan cycle, such as student education and repayment, and the corresponding dollar amounts. These forms are needed to provide borrowers with information on the cost of their loan(s) and to determine which

lenders may have excessive delinquencies and defaulted loans.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Disclosure: Repayment Schedule HRSA 502–1,2	8	396	3,168	0.50	1,584
Reporting: Call Report HRSA 512	13	4	52	0.75	39
Total Reporting and Disclosure	21		3,220		1,623

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: November 24, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–28696 Filed 11–30–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369] (formerly Docket No. 2007D–0168)

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of May 31, 2007, FDA announced the availability of a draft guidance for industry entitled "Bioequivalence Recommendations for Specific Products," explaining the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Submit written or electronic comments on the draft and revised draft product-specific BE recommendations listed in this notice by February 1, 2010.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft product-specific BE recommendations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9314.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 31, 2007 (72 FR 30388), FDA announced the availability of a draft guidance for industry entitled "Bioequivalence Recommendations for Specific Products," that explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/CDER/GUIDANCE/bioequivalence/default.htm*. As described in that draft guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final recommendations, or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of June 8, 2009 (74 FR 27146). This notice announces draft product-specific recommendations, either new or revised, that have been posted on FDA's Web site in the period from November 1, 2008, through December 1, 2009.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing draft BE product-specific recommendations for drug products containing the following active ingredients:

A

Adapalene (multiple reference listed drugs (RLDs))
Adapalene; Benzoyl Peroxide
Alendronate Sodium; Cholecalciferol
Aliskiren Hemifumarate
Aliskiren Hemifumarate; Hydrochlorothiazide
Allopurinol
Ambrisentan
Amlodipine Besylate; Atorvastatin Calcium
Atenolol

B

Bromfenac Sodium
Bromocriptine
Budesonide

C

Calcium Acetate
Cephalexin
Chlorpheniramine Polistirex; Hydrocodone Polistirex
Ciprofloxacin
Clonidine
Clotrimazole (multiple RLDs)

D

Desmopressin Acetate
Desogestrel; Ethinyl Estradiol (multiple RLDs)
Desvenlafaxine Succinate
Dextroamphetamine Sulfate
Dextromethorphan Hydrobromide; Guaifenesin
Diclofenac Sodium (multiple RLDs)
Doxycycline Hyclate
Drospirenone; Ethinyl Estradiol

E

Eletriptan Hydrobromide

Estradiol (multiple RLDs)
Ethinyl Estradiol; Levonorgestrel (multiple RLDs)
Ethinyl Estradiol; Norelgestromin
Ethinyl Estradiol; Norethindrone Acetate (multiple RLDs)
Ethinyl Estradiol; Norgestrel (multiple RLDs)

F
Famotidine
Felodipine
Fenoprofen Calcium
Fentanyl
Fexofenadine HCl
Fexofenadine; Pseudoephedrine (multiple RLDs)
Fludrocortisone Acetate

G
Glimepiride; Pioglitazone HCl
Glycopyrrolate
Guaifenesin; Pseudoephedrine HCl

H
Haloperidol
Hydrocodone Bitartrate; Acetaminophen
Hydroxyzine Pamoate (multiple RLDs)

I
Imatinib Mesylate

L
Lansoprazole
Levetiracetam
Linezolid
Loratadine

M
Meprobamate
Metformin HCl (multiple RLDs)
Metformin HCl; Repaglinide
Methotrexate Sodium (multiple RLDs)
Metoclopramide HCl
Miconazole Nitrate (multiple RLDs)
Mycophenolic Acid

N
Nadolol
Naltrexone
Niacin
Nifedipine
Nilutamide
Nisoldipine
Nitazoxanide
Nitrofurantoin
Nitrofurantoin Macrocrystalline
Norethindrone
Norethindrone Acetate

O
Oxybutynin Chloride

P
Phendimetrazine Tartrate (multiple RLDs)
Phentermine HCl (multiple RLDs)
Phytonadione
Pramipexole Dihydrochloride
Prednisolone
Pregabalin
Propafenone HCl
Pyridostigmine Bromide

R
Raltegravir Potassium
Ramelteon
Raniditine (multiple RLDs)
Rasagiline Mesylate
Rivastigmine Tartrate

S
Scopolamine
Selegiline
Sodium Phenylbutyrate (multiple RLDs)
Sorafenib Tosylate

T
Tamoxifen Citrate
Telbivudine
Temazepam
Terbinafine HCl
Toremifene Citrate
Trandolapril; Verapamil HCl
Triamcinolone Acetonide (multiple RLDs)

V
Voriconazole

Z
Zolpidem

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing revised draft BE product-specific recommendations for drug products containing the following active ingredients. These recommendations were previously posted on FDA's Web site:

A
Azacitidine

B
Busulfan

C
Carbidopa; Entacapone; Levodopa

D
Darunavir Ethanolate
Desogestrel; Ethinyl Estradiol
Doxercalciferol

E
Ethinyl Estradiol; Norethindrone (multiple RLDs)

F
Fluoxetine HCl; Olanzapine

H
Hydrochlorothiazide; Lisinopril

I
Ibuprofen

L
Lansoprazole
Lovastatin; Niacin

M
Methylprednisolone Acetate
Melphalan

N
Nabilone

O
Omeprazole; Sodium Bicarbonate

Q
Quetiapine Fumarate

R
Risedronate Sodium

S
Sevelamer Carbonate
Sevelamer HCl
Sildenafil Citrate

T
Temozolomide
Topiramate
Tacrolimus

For a complete history of previously published **Federal Register** notices, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on any of the specific BE recommendations posted on FDA's Web site. Submit a single copy of electronic comments or two paper copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 20, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28593 Filed 11–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0466]

Draft Compliance Policy Guide Sec. 527.300 Dairy Products—Microbial Contaminants and Alkaline Phosphatase Activity (Compliance Policy Guide 7106.08); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft Compliance Policy Guide Sec. 527.300 Dairy Products—Microbial Contaminants and Alkaline Phosphatase Activity (CPG 7106.08) (the draft CPG). The draft CPG, when finalized, will provide guidance for FDA staff on its enforcement policies for pathogens and other indicators of inadequate pasteurization or post-pasteurization contamination of dairy products.

DATES: Although you can comment on any CPG at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on the draft CPG before it begins work on the final version of the CPG, submit written or electronic comments on the draft CPG by February 1, 2010.

ADDRESSES: Submit written comments on the draft CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft CPG to *http://www.regulations.gov*. Submit written requests for single copies of the draft CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft CPG.

FOR FURTHER INFORMATION CONTACT: Monica Metz, Center for Food Safety and Applied Nutrition (HFS–316), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The draft CPG is intended to provide guidance for FDA staff regarding pathogens and indicators of inadequate pasteurization or post-pasteurization contamination of dairy products. The draft CPG outlines regulatory enforcement policies for FDA staff to use to initiate legal action recommendations based on analytical determinations that a dairy product contains a pathogenic micro-organism (i.e., *Salmonella* species, enterohemorrhagic *Escherichia coli* (EHEC) O157:H7, *Campylobacter jejuni*, *Yersinia enterocolitica*, or *Clostridium botulinum*); toxins produced by *Clostridium botulinum*, enterotoxigenic *Staphylococcus*, or *Bacillus cereus*; *Staphylococcus aureus*; *Bacillus cereus*, nontoxigenic *Escherichia coli*; or alkaline phosphatase. The draft CPG also contains information that may be useful to the regulated industry and to the public.

FDA is issuing the draft CPG as level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft CPG, when finalized, will represent the agency's current thinking on pathogens and indicators of inadequate pasteurization or post-pasteurization contamination of dairy products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft CPG at *http://www.fda.gov/ora/compliance_ref/cpg/default.htm* or *http://www.regulations.gov*.

Dated: November 24, 2009.

Michael A. Chappell,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. E9–28756 Filed 11–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0524]

Guidance for Industry on Listing of Ingredients in Tobacco Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Listing of Ingredients in Tobacco Products." The guidance document is intended to assist persons making tobacco product ingredient submissions to FDA under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Listing of Ingredients in Tobacco Products" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Michele Mital, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 301–796–4800, *Michele.Mital@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 3, 2009 (74 FR 56842), FDA announced the availability of a draft guidance document entitled "Listing of Ingredients in Tobacco Products." The agency considered received comments as it finalized this guidance. This guidance document is designed to assist tobacco product manufacturers and importers with making tobacco product ingredient submissions to FDA. Under section 904(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387d(a)(1)), as amended by the Tobacco Control Act, each tobacco product manufacturer or importer, or agent thereof, is required to submit "a listing of all ingredients, including tobacco, substances, compounds, and additives that are * * * added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand." For tobacco products on the market as of June 22, 2009, information must be submitted to FDA by December 22, 2009, and include the ingredients added as of the date of submission. FDA does not, however, intend to enforce the statutory deadline of this subsection provided the ingredient list is submitted on or before June 22, 2010. For tobacco products not on the market as of June 22, 2009, section 904(c)(1) requires that the list of ingredients be submitted at least 90 days prior to delivery for introduction into interstate commerce. Section 904(c) of the act also requires submission of information whenever additives, or the quantities of additives, are changed. FDA does not, however, intend to enforce the statutory deadlines for ingredient reporting under section 904(c) of the act for additive changes or the initial introduction of products into interstate commerce occurring between June 22, 2009, and 90 days after the section 904(a)(1) ingredient list is submitted, provided that these report(s) are submitted at the time of the section 904(a)(1) submission and the report(s) include the date, or planned date, of making the change to the additive or introducing the product into interstate commerce.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on "Listing of Ingredients in Tobacco Products." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0650.

V. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: November 25, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28747 Filed 11–27–09; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Targeting.

Date: December 15, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, OBT Review Panel Member Applications.

Date: January 7–8, 2010.

Time: 9 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28732 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 24, 2009, 3 p.m. to November 24, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 18, 2009, 74 FR 59569.

The meeting will be held December 9, 2009, from 12 p.m. to 2 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28734 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 7, 2009, 1 p.m. to December 7, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 10, 2009, 74 FR 58027.

The meeting will be held December 16, 2009, from 10:30 a.m. to 12:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28736 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 16, 2009, 1 p.m. to December 18, 2009, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 2, 2009, 74 FR 56652–56653.

The meeting will be two days only December 16, 2009 to December 17, 2009, from 1 p.m. to 11 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28730 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special, Emphasis Panel.

Date: January 20, 2010.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ruixia Zhou, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: November 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28724 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 4, 2009.

Open: 8 a.m. to 11:30 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Closed: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance; and competence of individual investigators.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Contact Person: Constantine A. Stratakis, MD, Acting Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, 301–496–2133, *stratakc@cc1.nichd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28720 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Web-based meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services on December 14, 2009 from 3 p.m. to 5 p.m. The meeting is open to the public and will include an update on the committee's priorities and activities.

ACWS members, invited presenters, and members of the public will participate in this meeting through audio/internet-based connection. On-site attendance by the public will be limited to space available. To obtain call-in numbers and access codes, to make arrangements to attend on-site, or to request special accommodations for persons with disabilities, please communicate with Ms. Nevine Gahed, Designated Federal Official (see contact information below) or register at the SAMHSA Committee's Web site at *https://nac.samhsa.gov/Registration/meetingsRegistration.aspx.*

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committee's Web site at *https://nac.samhsa.gov/WomenServices/index.aspx,* or by contacting Ms. Gahed. The transcript for the meeting will also be available on the SAMHSA Committee's Web site within three weeks after the meeting.

Committee Name: SAMHSA's Advisory Committee for Women's Services.

Date/Time/Type: Monday, December 14, 2009, from 3 p.m. to 5 p.m.: Open.

Place: 1 Choke Cherry Road, Room 8–1070, Rockville, Maryland 20857.

Contact: Nevine Gahed, Designated Federal Official, SAMHSA Advisory Committee for Women's Services, 1 Choke Cherry Road, Room 8–1112, Rockville, Maryland 20857, Telephone: (240) 276–2331; FAX: (240) 276–2220 and E-mail: *nevine.gahed@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E9–28653 Filed 11–30–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Inflammation; Hypersensitivity; Autoimmunity; Tolerance; and Transplantation & Tumor Immunity.

Date: December 15, 2009.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Tumor Progression.

Date: December 17, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28731 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Dissertation Research Grant to Increase Diversity.

Date: December 11, 2009.

Time: 1 p.m. to 2 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Conte Center Review Part 1.

Date: February 25, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: David W. Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28728 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Multi-Center Clinical Study Implementation Planning Grant Review.

Date: December 17, 2009.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Dysfunctional Endothelium in Diabetes.

Date: February 11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28725 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AOIC and AIP Member Conflict Applications.

Date: December 7, 2009.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AOIC Member Conflict Applications.

Date: December 9, 2009.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28737 Filed 11–30–09; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Friday, December 4, 2009. The meeting will be held in Room MO9 of the Old Post Office Building, 1100 Pennsylvania Ave., NW., Washington, DC at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture,

Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call To Order—9 a.m.
I. Chairman's Welcome
II. Preserve America and Chairman's Award Presentation
III. Native American Activities
  A. Native American Program Report
  B. Native American Advisory Group
IV. National Parks Second Century Commission Report and the ACHP
V. Preserve America Program Implementation
VI. Sustainability and Historic Preservation: The Role of the ACHP
VII. Preservation Initiatives Committee
  A. Administration Livable Communities Initiative
  B. Legislative Update
VIII. Federal Agency Programs Committee
  A. Recovery Act Update.
  B. BLM Nationwide Programmatic Agreement Update
  C. Energy Initiative and Section 106
  D. Section 106 Case Updates
IX. Communications, Education, and Outreach Committee
  A. Engaging Youth in Historic Preservation
  B. New ACHP Informational Material
X. Chairman's Report
XI. Executive Director's Report
XII. New Business
XIII. Adjourn

Note: The meetings of the ACHP are open to the public.

If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: November 20, 2009.

John M. Fowler,

Executive Director.

[FR Doc. E9–28375 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; 1660–0082

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without revision, of a currently approved collection; OMB No. 1660–0082; FEMA Form 90–5, Application for Loan Cancellation.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 31, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oira.submission@omb.eop.gov or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Application for Community Disaster Loan Application.

Type of information collection: Extension, without revision, of a currently approved collection.

OMB Number: 1660–0082.

Form Titles and Numbers: FEMA Form 90–5, Application for Loan Cancellation.

Abstract: Local governments may submit an Application for Loan Cancellation through the Governor's Authorized Representative to the FEMA Regional Administrator prior to the expiration date of the loan. FEMA has the authority to cancel repayment of all or part of a Community Disaster Loan to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses. Operating budget means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Frequency of Response: Once Annually.

Estimated Average Hour Burden per Respondent: 1 Hour.

Estimated Total Annual Burden Hours: 1.

Estimated Cost: There is no annual reporting and recordkeeping cost burden associated with this collection.

Alisa Turner,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–28627 Filed 11–30–09; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0937]

Merchant Mariner Credential Medical Evaluation Report (CG–719 K) and the Merchant Mariner Evaluation of Fitness for Entry Level Ratings (CG–719 K/E)

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to announce the availability of the final version of the Merchant Mariner Credential Medical Evaluation Report (CG–719 K) and the Merchant Mariner Evaluation of Fitness for Entry Level Ratings (CG–719 K/E) forms. These forms will be used to facilitate obtaining objective medical information, which will assist the Coast Guard in making

accurate and timely fit-for-duty determinations in order to reduce maritime safety risks.

DATES: The forms became available for use by November 15, 2009.

ADDRESSES: Coast Guard Forms CG–719 K and CG–719 K/E are available on the internet at *http://www.regulations.gov,* under this docket number [USCG–2009–0937]. They will also be made permanently available on the Coast Guard National Maritime Center's (NMC) internet Web site at: *http://www.uscg.mil/nmc.*

The Department of Transportation Docket Management Facility maintains the public docket for this notice. All forms mentioned in this Notice are part of this docket and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting "USCG–2009–0937" in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: For questions on this notice of availability, e-mail or call LT(jg) Dylan McCall (CG–5434) at U.S. Coast Guard Headquarters, 202–372–1128, e-mail: *Dylan.k.mccall@uscg.mil.*

For questions on the use of these forms, please contact the NMC by e-mail at *iasknmc@uscg.mil* or by phone at 1–888–IASKNMC [427–5662].

For questions on viewing the docket, contact Renee V. Wright, Program Manager, Docket Operations, Office of Information Services, Office of the Assistant Secretary for Administration, Office of the Secretary, at M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: 202–366–9826; e-mail: *renee.wright@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard has revised the Merchant Mariner Credential Medical Evaluation Report (CG–719 K) and the Merchant Mariner Evaluation of Fitness for Entry Level Ratings (CG–719 K/E) forms and announces their availability to the public. These forms are used to facilitate obtaining objective medical information, which will assist the Coast Guard in making accurate and timely fit-for-duty determinations in order to reduce maritime safety risks. Please note that these versions of the forms have been approved for use by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 1625–0040.

The CG–719 K/E form should be used only by mariners seeking an entry level merchant mariner credential. This form is limited to applicants for the following rating endorsements: Ordinary Seaman, Wiper, or Steward's Department (food handler). The CG–719K form should be used for all other endorsement applications.

These forms more clearly align the merchant mariner credentialing process with the policies set forth by Navigation and Vessel Inspection Circular (NVIC) 04–08, *Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials.* (The NVIC is available for viewing at *http://www.uscg.mil/hq/cg5/nvic/2000s.asp#2008.*) Enclosure (3) to the NVIC provides guidance on use of the forms, which assist the Coast Guard in obtaining objective medical evidence of an applicant's physical condition as it relates to their ability to perform duties as a merchant mariner. Proper use of these forms as guided by NVIC 04–08 should lead to reduced processing times for mariners' applications.

Implementation Timeline

These forms are available at the NMC Web site (see **ADDRESSES** above). The Coast Guard is working to create both a printable user guide and to embed instructions in the electronic version of the form in order to assist both the mariner and physicians in completing the forms.

The forms are now available for use. Physical exams completed on or after January 1, 2010 must be on the new forms, Rev (01/09). Physical exams completed and signed prior to January 1, 2010, will continue to be accepted with applications submitted after that date; however, they must be dated within one year of application.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: November 24, 2009.

K. S. Cook,

Rear Admiral, United States Coast Guard, Director of Prevention Policy.

[FR Doc. E9–28718 Filed 11–30–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5367–D–01]

Consolidated Delegation of Authority To the General Counsel

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: On November 18, 2008, HUD published a consolidated notice of delegation of authority from the Secretary to the General Counsel. Today's **Federal Register** notice updates the November 18, 2008, consolidated delegation of authority and supersedes all previous delegations of authority from the Secretary to the General Counsel.

DATES: *Effective Date:* November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Linda M. Cruciani, Deputy General Counsel for Operations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10240, Washington, DC 20410–0500, telephone number 202–402–5108. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 18, 2008 (73 FR 68439), HUD published a consolidated notice of delegation of authority from the Secretary to the General Counsel. Today's **Federal Register** notice updates the November 18, 2008, consolidated delegation of authority and supersedes all previous delegations of authority from the Secretary to the General Counsel. Published elsewhere in today's **Federal Register** is a redelegation of authority from the General Counsel to subordinate employees within the Office of General Counsel.

In addition to the authority published in today's consolidated delegation of authority, the Secretary has delegated other authorities to the General Counsel by regulation. These delegations include:

1. Naming the General Counsel as HUD's Designated Agency Ethics Official; 5 CFR 7501.

2. Authorizing the General Counsel, and in some instances, the appropriate Associate General Counsel or Regional Counsel, to respond to subpoenas and/or other demands from the courts or other authorities; 24 CFR part 15.

3. Designating the General Counsel as the source selection authority for the procurement of outside legal services through either the lowest price technically acceptable or tradeoff process; 48 CFR 2415.303(a)(3).

4. Designating the General Counsel as a responsible official to ensure the implementation of the policies of the National Environmental Policy Act (NEPA) and other environmental

requirements of the Department, including the performance of the responsibilities of a Program Environmental Clearance Officer pursuant to 24 CFR 50.10(a), 50.16.

5. Authorizing the General Counsel, as set forth in 24 CFR parts 103 and 180, to exercise authority pertaining to civil rights statutes, including the Fair Housing Act, 42 U.S.C. 3601 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; and Section 109 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*

6. Authorizing the General Counsel to initiate a civil money penalty action pursuant to Sections 102 and 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a(c), 3545); 24 CFR part 4 in accordance with the provisions of 24 CFR part 30.

7. Authorizing the General Counsel to appoint, and fix the compensation of a foreclosure commissioner or commissioners and alternate commissioners, in accordance with the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701 *et seq.*); 24 CFR 27.10.

HUD's Program Assistant Secretaries have also delegated authority to the General Counsel. The Assistant Secretary for Housing—Federal Housing Commissioner has delegated authority to the General Counsel to issue a notice of violation under the terms of a regulatory agreement; to issue a notice of default under the terms of housing assistance payments contracts (HAPs); to impose civil money penalties; and to take all actions permitted under 24 CFR 30.36, 30.45, and 30.68. (71 FR 60168, October 12, 2006.)

Section 30.36 of HUD's regulations (24 CFR 30.36) authorizes the Assistant Secretary for Housing—Federal Housing Commissioner, or designee, to initiate civil money penalty action against any principal, officer, or employee of a mortgagee or lender, or other participant or any provider of assistance to a borrower in connection with any such mortgage or loan, including: sellers, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, dealers, consultants, contractors, subcontractors, and inspectors.

Section 30.45 of HUD's regulations (24 CFR 30.45) authorizes the Assistant Secretary for Housing—Federal Housing Commissioner, or designee, to initiate civil money penalty action against any mortgagor of a multifamily property with a mortgage insured, co-insured, or held by the Secretary, pursuant to Title II of the National Housing Act or to Section 202 of the Housing Act of 1959.

Section 30.68 of HUD's regulations (24 CFR 30.68) authorizes the Assistant Secretary for Housing—Federal Housing Commissioner, or designee, to initiate civil money penalty action against any owner, general partner of a partnership, or agent employed to manage the property that has an identity of interest with the owner or general partner receiving project-based assistance under Section 8 of the United States Housing Act of 1937 for a knowing and material breach of housing assistance payment (HAP) contracts.

Section A. Authority

The Secretary of Housing and Urban Development hereby delegates the following authorities to the General Counsel:

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by HUD is consistent with that authority.

2. To direct all litigation affecting HUD and to sign, acknowledge, and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which the Secretary is a named party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or HUD rules and regulations. Excepted from this authority, however, are those referrals and transmittals that the Inspector General is authorized to make by law or by delegation of authority.

4. To accept, on behalf of the Secretary, service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD in an official capacity, and to execute affidavits asserting HUD's deliberative process privilege.

5. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise, allow, deny, or otherwise dispose of claims under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.* and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 3721 *et seq.*

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974, except appeals regarding records maintained by the Office of Inspector General (Pub. L. 93–579), 5 U.S.C. 552(c).

8. To make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)).

9. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

10. To appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner, to replace a previously designated foreclosure commissioner under:

(a) Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under Section 812 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3761; and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act of 1994; and

(b) Section 365 of the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.;* the power to fix compensation for the foreclosure commissioner under Section 369(c) of the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.;* and to promulgate regulations necessary to carry out the provisions of the Multifamily Mortgage Foreclosure Act of 1981.

11. To make determinations and certifications required under Section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

12. To designate authorized officials to exercise the powers or perform the duties of the General Counsel, through an order of succession (subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d), during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for HUD is not available.

13. To serve as an Attesting Officer and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or

other document is a true copy of that in the files of HUD.

14. To act as the designated official under Section 5(a) of Executive Order 12630, *Governmental Actions and Interference With Constitutionally Protected Property Rights,* issued March 15, 1987, (53 FR 8859, March 18, 1988) consistent with Executive Order 13406, *Protecting the Property Rights of the American People,* issued June 23, 2006 (71 FR 36973, June 28, 2006).

15. To make determinations of federalism implications, preemption, or the need for consultations with state and local officials as required by Executive Order 13131, Federalism, issued August 4, 1999 (64 FR 43255, August 10, 1999).

Section B. Authority to Redelegate

The General Counsel is authorized to redelegate to employees of HUD any of the authority delegated under Section A above.

Section C. Authority Superseded

This delegation supersedes all previous delegations of authority from the Secretary to the General Counsel.

Authority: Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: *November 23, 2009.*

Shaun Donovan,

Secretary.

[FR Doc. E9–28787 Filed 11–30–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5367–D–02]

Consolidated Redelegation of Authority to the Office of General Counsel

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of Redelegation of Authority.

SUMMARY: This redelegation of authority consolidates and updates past redelegations of authority from the General Counsel to subordinate employees.

DATES: *Effective Date:* November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Linda M. Cruciani, Deputy General Counsel for Operations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10240, Washington, DC 20410–0500, telephone number 202–402–5108. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register** is a notice of a consolidated delegation of authority from the Secretary of HUD to the General Counsel. In that notice, the General Counsel was given the authority to redelegate to employees of HUD any authority delegated by the Secretary in that notice to the General Counsel. Through this notice, the General Counsel is redelegating certain authority to other employees of the Office of General Counsel.

Section A contains concurrent redelegations from the General Counsel to the Principal Deputy General Counsel (or General Deputy General Counsel), the Deputy General Counsel for Operations, the Deputy General Counsel for Housing Programs and the Deputy General Counsel for Enforcement and Fair Housing. Section B contains redelegations from the General Counsel to specific positions within the Office of General Counsel. Section C contains redelegations to the Departmental Enforcement Center within the Office of General Counsel. These redelegations revoke and supersede all previous delegations of authority from the General Counsel to subordinate employees, but specifically do not revoke the divisions of responsibility set forth in the Office of General Counsel Litigation Handbook and its appendices.

Section A. Authority Delegated to the Principal Deputy General Counsel and Deputy General Counsels

The General Counsel retains and redelegates the following authority concurrently to the Principal Deputy General Counsel, the Deputy General Counsel for Operations, the Deputy General Counsel for Housing Programs and the Deputy General Counsel for Enforcement and Fair Housing.

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by HUD is consistent with that authority.

2. To direct all litigation affecting HUD and to sign, acknowledge and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which he/she is a named party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or HUD rules and regulations. There are excepted from this authority, however, those referrals and transmittals that the Inspector General is authorized to make by law or by delegation of authority.

4. To accept, on behalf of the Secretary, service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD in an official capacity and to execute affidavits asserting HUD's deliberative process privilege.

5. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise, allow, deny or otherwise dispose of claims under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.* and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 3721 *et seq.*

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974, except appeals regarding records maintained by the Office of Inspector General (Pub. L. 93–579), 5 U.S.C. 552(c).

8. To make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)) ("Privacy Act").

9. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

10. To appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner under:

(a) Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under Section 812 of the Single Family Mortgage Foreclosure Act of 1994; 12 U.S.C. 3761, and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act of 1994; and

(b) Section 365 of the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.;* the power to fix compensation for the foreclosure

commissioner under Section 369(c) of the Multifamily Mortgage Foreclosure Act of 1981; 12 U.S.C. 3701, *et seq.*, and to promulgate regulations necessary to carry out the provisions of the Multifamily Mortgage Foreclosure Act of 1981.

11. To make determinations and certifications required under Section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

12. To designate authorized officials to exercise the powers or perform the duties of the General Counsel, through an order of succession (subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d), during any period when by reason of absence, disability, or vacancy in office, the General Counsel for HUD is not available.

13. To serve as an Attesting Officer and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of HUD.

14. To act as the designated official under Section 5(a) of Executive Order 12630, *Governmental Actions and Interference With Constitutionally Protected Property Rights*, issued March 15, 1987 (53 FR 8859, March 18, 1988) consistent with Executive Order 13406, *Protecting the Property Rights of the American People*, issued June 23, 2006 (71 FR 36973, June 28, 2006).

15. To make determinations of federalism implications, preemptions, or the need for consultation with state and local officials as required by Executive Order 13131, Federalism, issued August 4, 1999 (64 FR 43255, August 10, 1999).

Section B. Authority Redelegated to Specific Positions Within the Office of General Counsel

The General Counsel hereby retains and redelegates the following authority to the Principal Deputy General Counsel, the Deputy General Counsels and to specific positions within the Office of General Counsel. This authority may not be further redelegated unless expressly stated in the redelegation.

1. To the Associate General Counsel for Litigation and to Regional Counsel, the authority to accept, on behalf of the Secretary, service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD Headquarters in an official capacity. The Associate General Counsel for Litigation may redelegate this authority within the Office of Litigation and the Regional Counsel may redelegate this authority to Chief Counsels within their operating jurisdiction.

2. To the Associate General Counsel for Finance and Administrative Law, or designee, the authority to implement the policies of the National Environmental Policy Act (NEPA) and other environmental requirements of HUD, including the performance of the responsibilities of the Program Environmental Clearance Officer for the Office of General Counsel; 24 CFR 50.10(a), 50.16. The Associate General Counsel retains and redelegates this authority to the Assistant General Counsel, Administrative Law Division, and to the Senior Environmental Attorney.

3. To the Associate General Counsel for Fair Housing and to Regional Counsel, the authority to process cases arising under the Fair Housing Act and other Civil Rights statutes, as set forth in 24 CFR parts 103 and 180 (with the exception of 24 CFR 180.675). The Associate General Counsel for Fair Housing retains this authority and further redelegates it to the Assistant General Counsel for Fair Housing Enforcement, and to the Assistant General Counsel for Fair Housing Compliance.

4. To the Associate General Counsel for Fair Housing, the authority under 24 CFR 180.675(b), (c), (d) and (e) concerning petitions for review. The Associate General Counsel for Fair Housing retains and redelegates this authority to the Assistant General Counsel for Fair Housing Enforcement.

5. To the Associate General Counsel for Program Enforcement, the Associate General Counsel for Finance and Administrative Law, the Associate General Counsel for Ethics and Personnel Law, the Associate General Counsel for Litigation, the Associate General Counsel for Fair Housing and each Regional Counsel, the authority to make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)) ("Privacy Act"), except appeals involving records maintained by the Office of Inspector General.

6. To the Associate General Counsel for Ethics and Personnel Law, the authority to make determinations and certifications required under section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

7. To the Associate General Counsel for the Office of Assisted Housing and Community Development, the authority to make legal determinations on behalf of the Department of Housing and Urban Development on matters involving the financing of obligations guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5308.

8. To the Senior Counsel, the authority to act upon appeals emanating from Headquarters or Regional Offices under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General. To the Regional Counsels, the authority to act upon appeals emanating from Field Offices under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

9. To the Associate General Counsel for Ethics and Personnel Law and the Assistant General Counsel, Ethics Law Division, the authority to serve as Deputy Agency Ethics Officials in Headquarters responsible for undertaking Standards of Conduct program duties as directed by the General Counsel. The Associate General Counsel for Ethics and Personnel Law or the Assistant General Counsel, Ethics Law Division, may redelegate these duties to the Deputy Assistant General Counsel, Ethics Law Division. To the Regional Counsel, the authority to serve as Deputy Agency Ethics Officials responsible for undertaking Standards of Conduct program duties for the Regional and Field Offices as directed by the General Counsel. The Regional Counsel may redelegate their duties to Deputy Regional Counsel.

10. To Regional Counsel, the authority to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner under Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under Section 812 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3761; and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act of 1994. This authority may be redelegated to the Deputy Regional Counsel with the approval of the General Counsel.

11. To Regional Counsel, the authority to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, under Section 365 of the Multifamily Mortgage Foreclosure Act of 1981 and the power to fix compensation for the foreclosure

commissioner under Section 369C of the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701, *et seq.*). This authority may be redelegated to the Deputy Regional Counsel.

12. To Regional Counsel for Region I (Boston, MA), through the Federal Tort Claims Center, the power and authority to consider, ascertain, adjust, determine, compromise, allow, deny or otherwise dispose of claims under the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act of 1964.

13. To Regional Counsel, the authority to concur on the issuance and settlement of limited denials of participation (LDPs) issued by HUD Field Offices pursuant to 2 CFR part 2424.

14. To the positions listed below, the authority to serve as Attesting Officers and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of HUD:

(a) Each Associate General Counsel;
(b) Each Assistant General Counsel;
(c) Each Regional Counsel;
(d) Each Deputy Regional Counsel; and
(e) Each Chief Counsel.

This authority may be redelegated.

Section C. Authority Redelegated to the Departmental Enforcement Center

The General Counsel retains and redelegates the following authority to the Principal Deputy General Counsel, the Deputy General Counsel for Enforcement and Fair Housing, Director of the Departmental Enforcement Center, the Deputy Director of the Departmental Enforcement Center, and the Directors of the satellite Departmental Enforcement Centers. This authority may not be further redelegated unless expressly stated in the redelegation.

1. The authority to take all actions permitted under 24 CFR 30.36, not to include the authority to waive any regulations issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

2. The authority to take all actions permitted under 24 CFR 30.45, not to include the authority to waive any regulations issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

3. The authority to take all actions permitted under 24 CFR 30.68, not to include the authority to waive any regulations issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner or the Assistant Secretary for Public and Indian Housing.

4. The authority to issue notice of default under the terms of a section 8 housing assistance payments contract issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

5. The authority to issue notice of violation under the terms of a regulatory agreement and notice of default under contract issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

6. The authority to initiate a civil money penalty action against:

(a) employees who improperly disclose information pursuant to section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a(c)) and 24 CFR part 4, subpart B in accordance with the provisions of 24 CFR part 30.

(b) applicants for assistance, as defined in 24 CFR part 4, subpart A, who knowingly and materially violate the provisions of subsections (b) or (c) of Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) in accordance with the provisions of 24 CFR part 30.

Section D. Authority Superseded

This delegation supersedes all previous delegations of authority from the General Counsel to subordinate positions within the Office of General Counsel.

Authority: Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 23, 2009.

Helen R. Kanovsky,

General Counsel.

[FR Doc. E9–28785 Filed 11–30–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5365–D–01]

Office of General Counsel; Order of Succession

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the General Counsel for the Department of Housing and Urban Development designates the Order of Succession for the Office of General Counsel. This Order of Succession supersedes the Order of Succession for the General Counsel published on March 28, 2007.

DATES: *Effective Date:* November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500, (202) 402–3502. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of General Counsel when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice of March 28, 2007 (72 FR 14608).

Accordingly, the General Counsel designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the General Counsel, the following officials within the Office of General Counsel are hereby designated to exercise the powers and perform the duties of the Office:

(1) Principal Deputy General Counsel or General Deputy General Counsel;
(2) Deputy General Counsel for Enforcement and Fair Housing;
(3) Deputy General Counsel for Operations;
(4) Deputy General Counsel for Housing Programs;
(5) Associate General Counsel for Insured Housing;
(6) Associate General Counsel for Assisted Housing and Community Development;
(7) Associate General Counsel for Legislation and Regulations;
(8) Associate General Counsel for Finance and Administrative Law;
(9) Associate General Counsel for Litigation;
(10) Associate General Counsel for Ethics and Personnel Law;

(11) Associate General Counsel for Program Enforcement;

(12) Associate General Counsel for Fair Housing.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the General Counsel published on March 28, 2007 (72 FR 14608).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 10, 2009.

Helen R. Kanovsky,

General Counsel.

[FR Doc. E9–28786 Filed 11–30–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5370–N–01)]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Ron Sims as Chairperson, Janie L. Payne as Vice Chairperson, and Jerry E. Williams, Carol J. Galante, and Deborah A. Hernandez as members of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708–1381. (This is not a toll-free number)

Dated: November 24, 2009.

Ron Sims,

Deputy Secretary.

[FR Doc. E9–28784 Filed 11–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–95621; LLAK964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Arctic Slope Regional Corporation. The lands are in the vicinity of the Colville River, Alaska, and Point Lay, Alaska, and are located in:

Umiat Meridian, Alaska

T. 2 S., R. 1 W.,
Secs. 1 to 18, inclusive.
Containing 11,152.90 acres.
T. 2 S., R. 1 E.,
Secs. 1 to 18, inclusive.
Containing 11,371.12 acres.
T. 1 N., R. 4 E.,
Secs. 7, 8, and 9;
Secs. 16 to 21, inclusive;
Secs. 28, 29, and 30.
Containing 7,265.48 acres.
T. 1 N., R. 42 W.,
Secs. 1 to 18, inclusive.
Containing 11,134.10 acres.
T. 1 N., R. 43 W.,
Secs. 1 to 18, inclusive.
Containing 11,485.32 acres.
Aggregating 52,408.92 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I Branch.

[FR Doc. E9–28723 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–52323; LLAK965 000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate in certain lands for conveyance pursuant to the Alaska National Interest Lands Conservation Act will be issued to Afognak Joint Venture. The lands are located on Afognak Island, Alaska, and are located in:

Seward Meridian, Alaska

T. 23 S., R. 21 W.,
Secs. 1 and 6.
Containing 942.16 acres.

The subsurface estate in these lands will be conveyed to Koniag, Inc., when the surface estate is conveyed to Afognak Joint Venture. Notice of the decision will also be published four times in the Kodiak Daily Mirror.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Tronsfer Resolution Specialist, Land Tronsfer Adjudication II Branch.

[FR Doc. E9–28726 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–95618; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Arctic Slope Regional Corporation. The lands are in the vicinity of Point Lay, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 33 N., R. 18 W.,
Secs. 17 to 36, inclusive.
Containing approximately 11,296 acres.
T. 33 N., R. 19 W.,
Secs. 25 to 28, inclusive;
Secs. 33 to 36, inclusive.
Containing approximately 5,080 acres.
Aggregating approximately 16,376 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudicotion I Bronch.

[FR Doc. E9–28727 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22828; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited for 5.39 acres located southeasterly of the Native village of Nenana, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Speciolist, Resolution Branch.

[FR Doc. E9–28722 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Equus Beds Aquifer Storage Recharge and Recovery Project, Equus Beds Division, Wichita Project, Kansas

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (Final EIS).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), the Bureau of Reclamation (Reclamation) has completed the Final EIS for the Equus Beds Aquifer Storage Recharge and Recovery Project. The City of Wichita, Kansas designed the water project to restore and conserve the Equus Beds aquifer while developing water supplies for its future needs. Federal funding assistance for this project has been authorized by the U.S. Congress under the Wichita Project Equus Beds Division Authorization Act of 2005 (Pub. L. 109–299). The Federal action under NEPA involves Reclamation, acting through the Secretary of the Interior, reimbursing the City of Wichita for construction costs through a cost-share agreement. The Final EIS addresses the environmental consequences of two Federal cost-share alternatives previously evaluated in the Draft EIS published on July 10, 2009 (74 FR 33274).

The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and Kansas Water Office were cooperating agencies providing assistance in the preparation of the Environmental Impact Statement (EIS) under the guidance of NEPA.

DATES: Reclamation expects to conclude the NEPA process with a Record of Decision (ROD) after 30 days from the time the Final EIS is officially filed and made available to the public. The ROD will identify the alternative selected for implementation, provide discussion of factors and rationale used in making the

decision, and address the environmentally preferred alternative.

ADDRESSES: Charles Webster, Bureau of Reclamation, 5924 NW 2nd Street, Suite 200, Oklahoma City, OK 73127–6514. The Final EIS is available online from Reclamation's Web site at *http://www.usbr.gov/gp/nepa/quarterly.cfm.* Paper copies or compacts discs (CDs) of the Final EIS may be obtained by calling Charles Webster at 405–470–4831. Refer to the **SUPPLEMENTARY INFORMATION** section for locations of libraries and offices where the published Final EIS is available for review.

FOR FURTHER INFORMATION CONTACT: Charles Webster at 405–470–4831 or *cwebster@usbr.gov.* Mail requests should be addressed to the Bureau of Reclamation at the address indicated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Background: The Wichita Project Equus Beds Division Authorization Act of 2005 authorizes the Secretary of the Interior to help the City of Wichita, Kansas, complete the Aquifer Recharge (Storage), and Recovery component (ASR is the acronym for this specific component or project) of Wichita's Integrated Local Water Supply Plan (ILWSP). The broader ILWSP was developed in 1993 to provide municipal and industrial water to Wichita and surrounding region through the year 2050. The ASR component would collect water from the Little Arkansas River basin and pipe it into the local Equus Beds aquifer for recharge and storage. An inter-connecting system of wells, pipes, and ponds would be constructed to move the water. Some facilities of the ASR project are already in place to treat collected water before recharging the aquifer. Water would later be recovered from wells in the aquifer and used for regional needs. The ASR component would become the "Equus Beds Division" of Reclamation's Wichita Project after completion. Operation, maintenance, replacement, and liability of the new division would be the responsibility of the City of Wichita.

Public Law 109–299 requires Reclamation to use, to the extent possible, the City's plans, designs, and analyses. The Federal funding cap is 25% of total costs, or $30 million (indexed to January 2003), whichever is less. The full scale ASR component is estimated to cost about $500 million and is designed to recharge the Equus Beds aquifer with up to 100 million gallons of water per day (MGD).

Alternatives: The Final EIS addresses the effects of one action alternative and a no action alternative. The alternatives for Federal action evaluated in the Final EIS include:

(1) Proposed Action—Reclamation would reimburse the City of Wichita for eligible facility and infrastructure costs to implement the 100 MGD ASR Plan with 60/40 Option.

(2) No Action Alternative—Under "No Action," there would be no reimbursement to the City of Wichita for ASR project costs.

The Final EIS describes how the alternatives were focused on two cost-share options. The decision to be made essentially involves administration of Federal funds for reimbursement of project costs. The cost-share agreement would be used to regulate Federal funds and reimbursement.

Locations where the Final EIS may be reviewed:

- Halstead Public Library, 264 Main, Halstead, KS 67056
- Hutchinson Public Library, 901 North Main, Hutchinson, KS 67501
- Newton Public Library, 720 North Oak, Newton, KS 67114
- Valley Center Public Library, 321 West First Street, Valley Center, KS 67147
- Wichita Public Library, 223 South Main, Wichita, KS 67202
- City of Wichita Water and Sewer Department, 455 North Main Street, 8th Floor, Wichita, KS 67202
- Bureau of Reclamation, 5924 NW 2nd Street, Suite 200, Oklahoma City, OK 73127

Dated: November 24, 2009.

Michael J. Ryan,

Regional Director, Great Plains Region.

[FR Doc. E9–28649 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from September 21 to September 25, 2009. This notice also contains cumulative Federal Determinations of Eligibility for FY 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: November 24, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program./

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARKANSAS

Crawford County

Old School Presbyterian Church, 421 Webster St., Van Buren, 09000740, LISTED, 9/23/09

ARKANSAS

Lonoke County

Carver Gymnasium, 400 Ferguson St., Lonoke, 09000741, LISTED, 9/23/09

ARKANSAS

Nevada County

Emmet Methodist Church, 209 S. Walnut, Emmet, 09000742, LISTED, 9/23/09

ARKANSAS

Poinsett County

Lepanto Commercial Historic District, Roughly bounded by Holmes St., Little R., Dewey St. & Alexander Ave., Lepanto, 09000743, LISTED, 9/21/09

ARKANSAS

Prairie County

St. Elizabeth's Catholic Church, NE corner of Sycamore and Mason Sts., DeValls Bluff, 09000744, LISTED, 9/23/09

ARKANSAS

Pulaski County

Bailey, Carl, Company Building, 3100 E. Broadway, North Little Rock, 09000737, LISTED, 9/23/09

ARKANSAS

Sebastian County

Old US 71—Jenny Lind Segment, Doraul Acres Ln. & part of Mt. Nebo Rd. W. of US 71., Jenny Lind vicinity, 09000738, LISTED, 9/23/09 (Arkansas Highway History and Architecture MPS)

ARKANSAS

Washington County

University of Arkansas Campus Historic District, Roughly bounded by Garland Ave., Maple St. Arkansas Ave. & Dickson St., Fayetteville, 09000745, LISTED, 9/23/09

COLORADO

Denver County

White Spot Restaurant, 601 E. Colfax Ave., Denver, 09000776, DETERMINED ELIGIBLE (Owner Objection), 9/24/09 (Commercial Resources of the East Colfax Avenue Corridor)

CONNECTICUT

Fairfield County

Five Mile River Landing Historic District, Rowayton Ave. to Jo's Barn Way, Norwalk, 08001189, LISTED, 9/23/09

CONNECTICUT,

Fairfield County

Wall Street Historic District, Roughly bounded by Commerce, Knight, and Wall Sts., W. and Mott Aves., Norwalk, 09000342, LISTED, 9/23/09

CONNECTICUT,

Hartford County

South Glastonbury Historic District Boundary Increase, 999–1417 and 1032–1420 Main St.; 6,7 Chestnut Hill Rd., Glastonbury, 09000343, LISTED, 9/24/09

FLORIDA

Orange County

Holden—Parramore Historic District, Bounded by W. Church St., S. Division Ave., Long St., McFall Ave., & S. Parramore Av., Orlando, 09000746, LISTED, 9/23/09

FLORIDA

Pinellas County

Blatchley, Willis S., House, 232 Lee St., Dunedin, 09000747, LISTED, 9/23/09

GEORGIA

Clarke County

Milledge Avenue Historic District (Boundary Increase), 295 W. Rutherford St., Athens, 09000748,LISTED, 9/24/09

GEORGIA

De Kalb County

Kirkwood Historic District, Roughly bounded by Memorial Dr., Montgomery St., Hosea Williams Dr., Rogers St., CSX RR., & city limits, Atlanta, 09000749, LISTED, 9/24/09

GEORGIA

Elbert County

Building at 6 and 7 Public Square, 6 & 7 Public Sq., Bowman, 09000750, LISTED, 9/24/09

GEORGIA

Murray County

Pleasant Valley Historic District, Roughly bounded by CSX RR., city limits, & land lot lines., Crandall, 09000751, LISTED, 9/24/09

GEORGIA

Webster County

Boyd Mill Place, 580 Mill Pond Rd., Weston vicinity, 09000752, LISTED, 9/24/09

INDIANA

Boone County.

Howard School, 4555 E. Co. Rd. 750 S., Brownsburg vicinity, 09000754, LISTED, 9/24/09 (Indiana's Public Common and High Schools MPS)

INDIANA

Elkhart County

Bridge Street Bridge, Bridge St. aver St. Joseph R., Elkhart, 09000755, LISTED, 9/24/09

INDIANA

Grant County

Thompson—Ray House, 407 E. Main St., Gas City, 09000756, LISTED, 9/24/09

INDIANA

Kosciusko County

DIXIE (sternwheeler), 400 Blk. of S. Dixie Dr., North Webster, 09000757, LISTED, 9/24/09

INDIANA

La Porte County

Pinhook Methodist Church and Cemetery, 8001 IN 2, LaPorte, 09000759, LISTED, 9/24/09

INDIANA

Lake County

Morningside Historic District, Roughl bounded by E. side of Washington, W. side of Jefferson, 47th & 48th Sts., Gary, 09000758, LISTED, 9/24/09 (Historic Residential Suburbs in the United States, 1830–1960 MPS)

INDIANA

Madison County

Thawley, Joseph & Lucinda, House, 300 E. North Main St., Summitville, 09000760, LISTED, 9/24/09

INDIANA

Orange County

Orleans Historic District, Roughly bounded by Wilson, Franklin, Harrison & 4th Sts., Orleans, 09000761, LISTED, 9/24/09

INDIANA

Ripley County

Ripley County Courthouse, 115 N. Main St., Versailles, 09000762, LISTED, 9/24/09

IOWA

Clayton County

Bloedel, Christian, Wagon Works, 524–526 Main St., McGregor, 09000765, LISTED, 9/23/09

IOWA

Scott County

Linograph Company Building, The, 420 W. River Dr., Davenport, 09000764, LISTED, 9/23/09

MARYLAND

Baltimore County

Rodgers Forge Historic District, Roughly bounded by Stanmore Rd., Stevenson La., York Rd., Regester Ave., and Bellona Ave., Baltimore, 09000783, LISTED, 9/24/09

MASSACHUSETTS

Middlesex County

Franklin School, 7 Stedman Rd., Lexington, 09000437, LISTED, 9/25/09

MASSACHUSETTS

Suffolk County

Mount Hope Cemetery, 355 Walk Hill St., Boston, 09000767, LISTED, 9/24/09

OREGON

Clackamas County

Willamette Falls Neighborhood Historic District, Roughly bound by Knapps Alley, 12th St., 4th Ave., & 15th St., West Linn, 09000768, LISTED, 9/24/09

SOUTH CAROLINA

Orangeburg County

Providence Methodist Church, 4833 Old State Rd., Holly Hill, 08001395, LISTED, 9/25/09

SOUTH CAROLINA

Richland County

Columbia Central Fire Station, 1001 Senate St., Columbia, 08001396, LISTED, 9/25/09

FEDERAL DETERMINATIONS OF ELIGIBILITY: October 1, 2008—September 30, 2009

INDIANA

Putnam County

Putnam County Bridge 137, Co. Rd. 100 E. over Big Walnut Creek, Greencastle, 65009969 DETERMINED ELIGIBLE, 5/27/09

LOUISIANA

Orleans County

USS Castine Shipwreck Site, Address Restricted, New Orleans, 6500968 DETERMINED ELIGIBLE, 3/4/09

MARYLAND

Cecil County

Perry Point Village, A, B, C, D Aves., 2nd, 3rd, 4th, 5th Sts., Perry Point VA Center, Perry Point, 65009962 DETERMINED ELIGIBLE, 10/31/08

MICHIGAN

Ottawa County

Grand Haven South Pierhead Inner and Entrance Lighthouses, Grand Haven, Grand Haven, 6500974 DETERMINED ELIGIBLE, 6/3/09

MISSISSIPPI

Harrison County

Gulfport Public Library, 21st Ave., Gulfort, 65009961 DETERMINED ELIGIBLE, 10/14/08

NEVADA

Clark County,

Nellis Air Force Base, Nellis Air Force Base, Nellis Air Force Base, 65009979 DETERMINED ELIGIBLE, 9/11/09

NEW YORK

Chautauqua County

Dunkirk Schooner Site, Address Restricted, Dunkirk, 65009967 DETERMINED ELIGIBLE, 2/18/09

Queens County

Fort Tilden Historic District, Gateway National Recreation Area, Gateway National Recreation Area, 65009972 DETERMINED ELIGIBLE, 5/12/09

WISCONSIN

Kenaunee County

Kenaunee Pierhead Lighthouse, In Lake Michigan at E. end of S. pier at Kenosha River mouth, .5 mi. E. of Rte. 42, Kewaunee, 65009973 DETERMINED ELIGIBLE, 6/3/09

Manitowoc County

Manitowoc Breakwater Lighthouse, In Lake Michigan at Manitowoc River mouth, N. breakwater offshore end, .7 mi. E. of US 10, Manitowoc, 65009975 DETERMINED ELIGIBLE, 6/3/09

WASHINGTON

Benton County

Columbia Point South, Columbia Point, Columbia Point, 65009976 DETERMINED ELIGIBLE, 6/15/09

[FR Doc. E9–28635 Filed 11–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 14, 2009. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 16, 2009 .

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Maricopa County

Palm Lane Gardens, 101–115 E. Palm La., Phoenix, 09001112

Villa del Coronado, 100–190 E. Coronado Rd., Phoenix, 09001113

Pima County

Villa Catalina, 3000–3034 E. 6th St. & 521–525 N. Country Club Rd., Tucson, 09001114

ARKANSAS

Cross County

Wynne Commercial Historic District, Roughly bounded by Front St., Commercial Ave., Terry St., Wilson St., and Pecan Ave., Wynne, 09001115

CALIFORNIA

San Bernardino County

California Theatre, The, 562 W. 4th St., San Bernardino, 09001116

San Francisco County

Armour & Co. Building, 1050 Battery St., San Francisco, 09001117

Four Fifty Sutter Building, 450 Sutter St., San Francisco, 09001118

COLORADO

Baca County

Two Buttes Gymnasium, (New Deal Resources on Colorado's Eastern Plains MPS) 5th and C Sts., Two Buttes, 09001119

Las Animas County

7–D School, (New Deal Resources on Colorado's Eastern Plains MPS) Co. Rd. 171 N. of Co. Rd. 50.6, Branson, 09001120

Prowers County

Prowers Country Welfare Housing, (New Deal Resources on Colorado's Eastern Plains MPS) 800 E. Maple St., Lamar, 09001121

ILLINOIS

Lake County

Mandel, Mr. Fred L., Jr., House, 2479 Woodbridge La., Highland Park, 09001122

Winnebago County

Valencia Court Apartments, 500–518 Fisher Ave., Rockford, 09001123

INDIANA

Adams County

Dugan, Charles, House, 420 W. Monroe St., Decatur, 09001124

Allen County

Indian Village Historic District, (Park and Boulevard System of Fort Wayne, Indiana MPS) Roughly bounded by Nuttman Ave on the N., Bluffton Rd. on E., Eagle Rd. on S., Norfold Southern ROW on W., Fort Wayne, 09001125

Southwood Park Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by W. Pettit Ave., Stratford Rd., W. Sherwood Terrace, Hartman Rd., Lexington Ave., Indiana Ave., Fort Wayne, 09001126

Elkhart County

Koerting, William and Helen, House, 2625 Greenleaf Blvd., Elkhart, 09001128

Gibson County

Trippett-Glaze-Duncan Farm, IN 65 E. of Patoka, Patoka, 09001129

Hamilton County

Taylor Ten, Address Restricted, Noblesville, 09001130

Knox County

Simonson, Alfred, House, 207 Shipping St., Edwardsport, 09001131

Porter County

Chesterton Residential Historic District, Roughly a two block area between Lincoln & W. Indiana Aves., Chesterton, 09001134

Collier Lodge Site, Address Restricted, Kouts, 09001133

Ripley County

Champ's Ford Bridge, Co. Rd. 100S over Clifty Creek, 2 mi. W. of Burney, Burney, 09001127

Straber Ford Bridge, Co. Rd. 550 N. over Otter Creek, Osgood, 09001132

Shelby County

Middletown Bridge, Co. Rd. 450 S. over Conn's Creek, Middletown, 09001135

Pearson, Lora B., School, (Indiana's Public Common and High Schools MPS) 115 W. Colescott St., Shelbyville, 09001136

KENTUCKY

Bell County

Brooks House, 210 Arthur Heights, Middlesboro, 09001137

Cumberland County

Coe House, 433 N. Main St., Burkesville, 09001138

Hardin County

Hills, Jonathan, House, 202 N. Main St., Elizabethtown, 09001139

Larue County

Hodgenville Commercial Historic District (Boundary Increase), Water St. on N., High St. on the S., Greensburg St. on the E., and Walters St. on the W., Hodgenville, 09001140

Marion County

Bradfordsville Christian Church, 101 E. Main St., Bradfordsville, 09001141

St. Joseph Church, 3300 St. Joe Rd., Raywick, 09001142

Taylor County

Caldwell, John, Home, 105 Colonial Dr., Campbellsville, 09001143

Collins Residence, 4639 New Columbia Rd., Campbellsville, 09001144

Emerald Hill, 5025 New Columbia Rd., Campbellsville, 09001145

MAINE

Aroostook County

Martin, Isaie and Scholastique, House, 137 Saint Catherine St., Madawaska, 09001147

York County

Biddeford Main Street Historic District, 29 to 316 Main St., and portions of Elm, Jefferson, Adams, Washington, Franklin, Alfred and Water Sts., Biddeford, 09001146

MARYLAND

Caroline County

Linchester Mill, 3395 Linchester Rd., Preston, 09001148

Kent County

Gobbler Hill, 10121 Fairlee Rd., Chestertown, 09001149

Talbot County

Paw Paw Cove Site, Address Restricted, Tilghman, 09001150

MASSACHUSETTS

Plymouth County

Pinewoods Camp, 80 Cornish Field Rd., Plymouth, 09001151

MINNESOTA

Watonwan County

Grand Opera House, 502 First Ave. S., St. James, 09001152

NEW JERSEY

Bergen County

Arnault, Fridolin, House, 111 First St., Wood-Ridge Borough, 09001153

Edgewater Public Library, 49 Hudson Ave., Edgewater, 09001154

Burlington County

Chesterford School, 415 W. Main St., Maple Shade, 09001155

VIRGINIA

Charlottesville Independent city

McGuffey, William H., Primary School, 201 2nd St. N.W., Charlottesville, 09001156

Petersburg Independent city

Virginia Trunk & Bag Company, 600 W. Wythe St., Petersburg, 09001157

Richmond Independent city

First Battalion Virginia Volunteers Armory, 122 W. Leigh St., Richmond, 09001158

Russell County

Honaker Commercial Historic District, US Hwy 80, Honaker, 09001159

[FR Doc. E9–28634 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC03300. L58740000. EU0000. LXSS060F0000; N–82710; 9–08807; TAS14X5260]

Notice of Realty Action: Competitive Sale of Public Land near Fernley in Lyon County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer one parcel of public land of approximately 628.2 acres in northern Lyon County by competitive sale at not less than the fair market value (FMV). The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), and the BLM land sale and mineral conveyance regulations.

DATES: Interested parties may submit written comments regarding the proposed sale of public land until January 15, 2010. The proposed sale date is to be announced and it will not be before February 1, 2010.

ADDRESSES: Mail written comments to BLM Field Manager, Sierra Front Field Office, Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: J. Fred Slagle at (775) 885–6115.

SUPPLEMENTARY INFORMATION: The sale parcel is approximately two miles southwest from downtown Fernley, Nevada and is legally described as:

Mount Diablo Meridian

T. 20 N., R. 24 E.,
Sec. 22, lots 1 to 6, inclusive, NE¼, E½NW¼, E½SW¼, and W½SE¼.

The area described contains 628.2 acres, more or less, in Lyon County.

An appraisal report will be prepared by a State certified appraiser for the purposes of establishing FMV. Other terms and conditions specific to the competitive sale process, this parcel, and the FMV will be published in the marketing brochure and in advertisements when the land is offered for sale.

The public land is not required for any Federal purpose. This public sale is in conformance with the 2001 BLM Carson City Consolidated Resource Management Plan approved May 9, 2001. The parcel meets the disposal qualification of Section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000 (FLTFA), (43 U.S.C. 2304). The proceeds from the sale of the land will be deposited into the Federal Land Disposal Account for Nevada pursuant to FLTFA. Under FLTFA, four percent of the land sale proceeds go to the State of Nevada for education, 80 percent of the remaining proceeds are used to acquire environmentally-sensitive land, and 20 percent of the remaining proceeds are reserved for land disposal administration costs.

The land meets the criteria for sale under 43 CFR 2710.0–3(a)(3), as the sale of the parcel, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The land is intermingled with private land, which makes it difficult to manage for any Federal purpose. This land contains no other known public values. The subject parcel has not been identified for transfer to the State or any other local government or nonprofit organization. The parcel will be offered through competitive sale procedures pursuant to 43 CFR 2711.3–1.

Terms and Conditions: A mineral potential evaluation was completed for public land within the sale area and no known mineral values were identified. All mineral rights will be conveyed and no minerals will be reserved. Agreement to purchase the land will constitute an application for conveyance of the mineral estate in accordance with Section 209 of the Federal Land Policy Management Act (FLPMA). The designated buyer must include with their purchase payment a nonrefundable $50 filing fee for the conveyance of the mineral estate. Payment must be submitted in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management."

The following terms and conditions will appear in the conveyance document for this parcel:

A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

The parcel is subject to:

1. Valid existing rights;

2. Right-of-Way N–08162 for power line purposes granted to Sierra Pacific Power Company, its successors or assigns, pursuant to the Act of March 4, 1911 (43 U.S.C. 961);

3. Right-of-Way N–39957 for road purposes granted to Lyon County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

4. Right-of-Way N–51242 for water storage tanks, road, water pipeline, and ancillary facility purposes granted to the City of Fernley, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Right-of-Way N–58193 for road and buried utility purposes granted to DB Fernley Investments, Ltd, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Rights-of-Way N–63393 and Nev-060169 for gas pipeline purposes granted to Paiute Pipeline Company, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185);

7. Right-of-Way N–73706 for communication purposes granted to Nevada Bell, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

8. Right-of-Way N–75056 for gas pipeline purposes granted to Southwest Gas Corporation, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185);

9. Right-of-Way N–84710 for gas pipeline purposes granted to DB Fernley Investments, Ltd, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185). Holders of rights-of-way N–51242, N–58193, N–63393, and N–84710 have submitted applications to exercise term extension and conversion to easement opportunities. The land conveyance will be subject to these modifications.

10. The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or a third party arising out of, or in connection with, the patentee's use and/or occupancy of the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in:

(a) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to the real property;

(b) Judgments, claims, or demands of any kind assessed against the United States;

(c) Costs, expenses, or damages of any kind incurred by the United States;

(d) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States;

(e) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or

(f) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

11. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9620 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

Encumbrances of record, appearing in the BLM public files for the parcel proposed for sale, are available during normal business hours at the BLM Carson City District Office.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition, or potential uses of the parcel of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State, or local government laws, regulations, or policies that may affect the subject lands or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road and highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Federal law requires that bidders must be

(1) United States citizens 18 years of age or older;

(2) A corporation subject to the laws of any State or of the United States;

(3) An entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or

(4) A State, State instrumentality, or political subdivision authorized to acquire and own real property.

U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Certification of bidder qualification must accompany the deposit.

Only written comments submitted by postal service or overnight mail will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered as properly filed.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711)

Linda J. Kelly,

Field Manager, Sierra Front Field Office.

[FR Doc. E9–28721 Filed 11–30–09; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 332–509]

Small and Medium-Sized Enterprises: U.S. and EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request on October 6, 2009, from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–509, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms,* for the purpose of preparing the

second in a series of three reports requested by the USTR relating to small and medium-sized enterprises.

DATES:

January 26, 2010: Deadline for filing requests to appear at the public hearing.

January 28, 2010: Deadline for filing pre-hearing briefs and statements.

February 9, 2010: Public hearing (Washington, DC).

February 23, 2010: Deadline for filing post-hearing briefs and statements.

March 26, 2010: Deadline for filing written submissions.

July 6, 2010: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm*.

FOR FURTHER INFORMATION CONTACT: Project Leaders Laura Bloodgood (202–708–4726 or *laura.bloodgood@usitc.gov*) or Justino De La Cruz (202–205–3252 or *justino.delacruz@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In his letter the USTR requested that the Commission provide three reports during the next 12 months relating to small and medium-sized enterprises (SMEs). In this notice the Commission is instituting the second of three investigations under section 332(g) for the purpose of preparing the second report, which is to be transmitted to the USTR by July 6, 2010. The Commission published notice of institution of the first investigation, investigation No. 332–508, in the **Federal Register** of October 28, 2009 (74 FR 55581). As requested, in the second report (investigation No. 332–509) the Commission will:

(1) Assist in analyzing the performance of U.S. SME firms in exporting compared to SMEs exporting in other leading economies. As one way of comparing the performance of U.S. SMEs to those in other countries, the Commission will compare the exporting activity of SMEs in the United States and the European Union (EU), and analyze the distinctions between U.S. and EU firms in terms of sectoral composition, firm characteristics, and exporting behavior.

(2) Identify barriers to exporting noted by U.S. SMEs and strategies used by SMEs to overcome special constraints and reduce trade costs.

(3) Identify the benefits to SMEs from increased export opportunities, including free trade agreements and other trading arrangements.

To best aid the Commission in gathering information for the report, the Commission is seeking information in response to the following questions:

- What are the most significant constraints that U.S. SMEs face in their efforts to export?
- If SMEs have been successful in overcoming those constraints, what strategies have they adopted?
- What particular benefits do SMEs believe they have received from increased export opportunities including those from free trade agreements and other trading arrangements; which trade agreements or other arrangements have been most beneficial?

The USTR requested that the Commission deliver the second report by July 6, 2010. The Commission shortly expects to institute a third investigation, investigation No. 332–510, *Small and Medium-Sized Enterprises: Characteristics and Performance*, for the purpose of preparing the third report. In that report the Commission will, among other things, examine U.S. SMEs engaged in providing services, including the characteristics of firms that produce tradable services, growth in services exports, and the differences between SME and large services exporters. It will also examine U.S. goods and services exports by SMEs and identify trade barriers that may disproportionately affect SME export performance, as well as possible linkages between exporting and SME performance. In addition, the report will identify how data gaps might be overcome to enhance our understanding of SMEs in service sector exports. The USTR requested that the Commission transmit this third report by October 6, 2010.

Public Hearing: The Commission will hold a joint public hearing in connection with this investigation and investigation No. 332–510 at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on Wednesday, February 9, 2010 (and continuing on February 10, 2010, if needed). Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., January 26, 2010, in accordance with the requirements in the "Submissions" section below. Persons wishing to appear should indicate in their request to appear whether they plan to provide testimony with respect to investigation No. 332–509, investigation No. 332–510, or both investigations. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., January 28, 2010; and all post-hearing briefs and statements responding to matters raised at the hearing should be filed not later than 5:15 p.m., February 23, 2010. In the event that, as of the close of business on January 26, 2010, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Office of the Secretary (202–205–2000) after January 26, 2010, for information concerning whether the hearing will be held. The Commission is also considering holding additional hearings in Portland, Oregon and St. Louis, Missouri. Notice of the time, date, and place of those hearings would be published at a later date.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and all such submissions (other than pre- and post-hearing briefs and statements) should be received not later than 5:15 p.m., March 26, 2010. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules

authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Office of the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In his request letter, the USTR stated that his office intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission transmits to his office. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: November 25, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28764 Filed 11–30–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–644]

In the Matter of Certain Composite Wear Components and Products Containing Same; Notice of Issuance of Limited Exclusion Order and Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission hereby provides notice that it has determined to issue a limited exclusion order and cease and desist order and terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 25, 2008, based on a complaint filed by Magotteaux International S/A and Magotteaux, Inc. (collectively, "Magotteaux"). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite wear components and products containing the same that infringe claims 12–13 and 16–21 of U.S. Patent No. RE 39,998 ("the '998 patent"). The complaint named Fonderie Acciaierie Rioale S.P.A. ("FAR"), AIA Engineering Ltd., and Vega Industries (collectively, "AIAE Respondents") as respondents. FAR was subsequently terminated from the investigation on the basis of a settlement agreement, leaving the AIAE Respondents as the only remaining respondents.

On May 8, 2009, the ALJ issued an ID finding the AIAE Respondents in default pursuant to Commission Rules 210.16(a)(2) and 210.17, 19 CFR 210.16(a)(2) and 210.17. On July 7, 2009, the Commission determined not to review the ID and indicated that, in addition to the ALJ's finding of violation pursuant to Rule 210.17, the Commission presumes the facts alleged in the complaint to be true with respect to the AIAE Respondents. The Commission also determined to waive Commission Rule 210.42(a)(ii), which, unless the Commission orders otherwise, requires that the ALJ issue a recommended determination on remedy and bonding in conjunction with any final initial determination concerning violation of section 337. The Commission encouraged the parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. The parties to the investigation and the IA filed submissions and response submissions concerning remedy, the public interest, and bonding on July 22, 2009, and July 30; 2009, respectively. No other parties filed submissions.

Having examined the record in this investigation, including the submissions on remedy, the public interest, and bonding and responses thereto, the Commission has determined that the appropriate form of relief is a limited exclusion order and a cease and desist order.

The limited exclusion order prohibits the unlicensed entry for consumption of composite wear components and products containing same that are covered by one or more of claims 12–13 and 16–21 of the '998 patent and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, AIA Engineering Limited or Vega Industries or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The cease and desist order covers products that infringe claims 12–13 and 16–21 of the '998 patent and is directed to defaulting domestic respondent Vega Industries and any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. 1337(d) and (f) do not preclude issuance of the aforementioned remedial orders, and that the bond during the Presidential period of review shall be set at 100 percent of the entered value for any covered composite wear components and products containing same.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.49—210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.49–210.50).

By order of the Commission.

Issued: November 24, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28628 Filed 11–30–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070A (Review)]

Crepe Paper Products From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on crepe paper products from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on crepe paper products from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 31, 2009. Comments on the adequacy of responses may be filed with the Commission by February 16, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*), The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On January 25, 2005, the Department of Commerce issued an antidumping duty order on imports of certain crepe paper products from China (70 FR 3509). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as crepe paper, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers (whether integrated or converters) of crepe paper.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is January 25, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–207, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 31, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject*

Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 24, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28643 Filed 11–30–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Review)]

Wooden Bedroom Furniture From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on wooden bedroom furniture from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on wooden bedroom furniture from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 31, 2009. Comments on the adequacy of responses may be filed with the Commission by February 16, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On January 4, 2005, the Department of Commerce issued an antidumping duty order on imports of wooden bedroom furniture from China (70 FR 329). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–208, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission found one *Domestic Like Product* consisting of all wooden bedroom furniture, including both joinery and non-joinery forms. Wooden bedroom furniture is wooden furniture designed and manufactured for use in the bedroom. It includes such items of wooden furniture as beds, nightstands, chests, armoires, and dressers with mirrors.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of wooden bedroom furniture.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is January 4, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 31, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms. Quantity data requested in this notice of institution are in terms of both pieces [2] and pounds and value data are in terms of U.S. dollars.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party

[2] Note that a bed, which is defined as a headboard, with or without any combination of related pieces such as a footboard, side rails, and canopy, is considered a single piece whether it contains one or more separate pieces. Bunk beds are considered two beds and therefore are considered two pieces.

(including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in terms of both pieces and pounds and report value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity in terms of both pieces and pounds) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production (on the basis of both pieces and pounds);

(b) Capacity (quantity in terms of both pieces and pounds) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity (in terms of both pieces and pounds) and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s) and, if known, an estimate of the percentage of total U.S. commercial shipments of the *Domestic Like Product* accounted for by your firm's(s') U.S. commercial shipments (on the basis of pieces, pounds, and value);

(d) the quantity (in terms of both pieces and pounds) and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in terms of both pieces and pounds and report value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity (in terms of both pieces and pounds) and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports (on the basis of pieces, pounds, and value);

(b) the quantity (in terms of both pieces and pounds) and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity (in terms of both pieces and pounds) and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/ company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in terms of both pieces and pounds and report value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/ business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity in terms of both pieces and pounds) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production (on the basis of both pieces and pounds);

(b) Capacity (quantity in terms of both pieces and pounds) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity (in terms of both pieces and pounds) and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports (on the basis of pieces, pounds, and value).

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other

products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 2009.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28641 Filed 11–30–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–432 and 731–TA–1024–1028 (Review) and AA1921–188 (Third Review)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Korea, Mexico, and Thailand

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty order on prestressed concrete steel wire strand ("PC strand") from India and antidumping duty orders on PC strand from Brazil, India, Korea, Mexico, and Thailand, as well as the antidumping duty finding on PC strand from Japan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted these reviews on December 1, 2008 (73 FR 72834) and determined on March 6, 2009 that it would conduct full reviews (74 FR 11967, March 20, 2009). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 2, 2009 (74 FR 15000). The hearing was held in Washington, DC, on September 30, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on November 25, 2009. The views of the Commission are contained in USITC Publication 4114 (November 2009), entitled *Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Korea, Mexico, and Thailand: Investigation Nos. 701–TA–432 and 731–TA–1024–1028 (Review) and AA1921–188 (Third Review).*

By order of the Commission.

Issued: November 25, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28668 Filed 11–30–09; 8:45 am]

BILLING CODE P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 15–16, 2010.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Northwestern University School of Law, 375 East Chicago Avenue, Chicago, IL 60611.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 23, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–28521 Filed 11–30–09; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 7–8, 2010.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Royal Palms Hotel, 5200 East Camelback Road, Phoenix, AZ 85018.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 23, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–28498 Filed 11–30–09; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day conference. The conference will be open to public observation but not participation.

DATES: May 10–11, 2010.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Duke Law School, Science Drive & Towerview Road, Durham, NC 27708.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 23, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–28522 Filed 11–30–09; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Committees on Bankruptcy, and Criminal Rules, and the Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committees on Bankruptcy, and Criminal Procedure, and the Rules of Evidence.

ACTION: Notice of Proposed Amendments and Open Hearings.

SUMMARY: The Advisory Committees on Bankruptcy, and Criminal Rules, and the Rules of Evidence have proposed amendments to the following rules:

Bankruptcy Rules: 2003, 2019, 3001, 4004, and 6003, and new Rules 1004.2 and 3002.1, and Official Forms 22A, 22B, and 22C.

Criminal Rules 1, 3, 4, 6, 9, 32.1, 40, 41, 43, and 49, and new Rule 4.1.

Evidence Rule Restyled Evidence Rules 101–1103.

The text of the proposed rules amendments and new rules and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules.*

Notice of Proposed Amendments and Open Hearings

The Judicial Conference Committee on Rules of Practice and Procedure submits these proposed rules amendments and new rules for public comment. All comments and suggestions with respect to them must be place in the hands of the Secretary as soon as convenient and, in any event, not later than February 16, 2010. All written comments on the proposed rule amendments can be sent by one of the following three ways: By overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail at *http://www.uscourts.gov/rules;* or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

Public hearings are scheduled to be held on the amendments to:

- Bankruptcy Rules in Phoenix, AZ, on January 6, 2010, and in New York, NY, on February 5, 2010;
- Criminal Rules in Phoenix, AZ, on January 8, 2010, and in Atlanta, GA, on January 11, 2010;
- Evidence Rules in San Francisco, CA, on January 29, 2010, and in New York, NY, on February 4, 2010.

Notice of Proposed Amendments and Open Hearings

Those wishing to testify should contact the Committee Secretary at the above address in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: James N. Ishida, Senior Attorney Advisor, Rules Committee Support Office, Administrative Office of the United State Courts, Washington, DC 20544, Telephone (202) 502–1820.

Dated: November 23, 2009.

James N. Ishida,

Senior Attorney Advisor Rules Committee Support Office.

[FR Doc. E9–28378 Filed 11–30–09; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 29–30, 2010.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: The Windsor Court Hotel, 300 Gravier Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 23, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–28530 Filed 11–30–09; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1507]

Office of Juvenile Justice and Delinquency Prevention Proposed Plan for Fiscal Year 2010

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

ACTION: Notice of Proposed Plan for Fiscal Year 2010.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Plan for fiscal year (FY) 2010.

DATES: Comments must be received on or before January 15, 2010.

ADDRESSES: You may submit comments electronically or view an electronic version of this proposed plan at *http://www.regulations.gov.* You may also mail comments to Jeff Slowikowski, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. To ensure proper handling, in the lower left hand corner of the envelope and in your correspondence clearly reference "Proposed OJJDP Program Plan Comments" or "OJP Docket No. 1507."

FOR FURTHER INFORMATION CONTACT: The Office of Juvenile Justice and Delinquency Prevention at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not wish to be posted online in the first paragraph of your comment and identify what information you would like redacted.

If you wish to submit confidential business information as part of your comment but do not wish for it to be

posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Preamble

OVERVIEW: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Provisions within Section 204 (b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. Sec. 5601 *et seq.* (JJDP Act) direct the OJJDP Administrator to publish for public comment a Proposed Plan describing the program activities that OJJDP proposes to carry out during FY 2010 under Parts D and E of Title II of the JJDP Act, codified at 42 U.S.C. Sec. 5651–5665a, 5667, 5667a. Because the Office's discretionary activities extend beyond Parts D and E, OJJDP is seeking comments on a more comprehensive listing of the Office's proposed programs. Taking into consideration comments received on this Proposed Plan, the Administrator will develop and publish in the **Federal Register** OJJDP's Final Plan describing the particular program activities that OJJDP intends to fund during FY 2010.

OJJDP acknowledges that at this time its FY 2010 appropriation is not yet final. Depending on the final appropriation, OJJDP may alter how its programs are structured and modify this Proposed Plan when it is published in final form following the public comment period.

OJJDP will post on its Web site solicitations of grant or cooperative agreement applications for competitive programs to be funded under the Final Plan. OJJDP will notify the public that these solicitations have been posted through issuance of JUVJUSTs (listserv) announcements and other methods of electronic notification. No proposals, concept papers, or other forms of application should be submitted at this time.

Department Priorities: OJJDP has structured this plan to reflect the high priority that the Administration and the Department have placed on addressing youth violence and victimization and improving protections for youth involved with the juvenile justice system. The proposals presented here represent OJJDP's current thinking on how to advance the Department's priorities during this fiscal year. These proposals also incorporate feedback from OJJDP's ongoing outreach to the field seeking ideas on program areas and the most promising approaches for those types of areas. The first section of programs in this proposed plan contains programs that address priority areas as identified by the Attorney General.

OJJDP's Purpose: Congress established OJJDP through the JJDP Act of 1974 to help states and communities prevent and control delinquency and strengthen their juvenile justice systems and to coordinate and administer national policy in this area.

Although states, American Indian/Alaska Native (AI/AN) communities,[1] and other localities retain primary responsibility for administering juvenile justice and preventing juvenile delinquency, OJJDP supports and supplements the efforts of public and private organizations at all levels through program funding via formula, block, and discretionary grants; administration of Congressional earmark programs; research; training and technical assistance; funding of demonstration projects; and dissemination of information. OJJDP also helps administer federal policy related to juvenile justice and delinquency prevention through its leadership role in the Coordinating Council on Juvenile Justice and Delinquency Prevention.

OJJDP's Vision: OJJDP strives to be the recognized authority and national leader dedicated to the future, safety, and well-being of children and youth in, or at risk of entering, the juvenile justice system.

OJJDP's Mission: OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization by supporting states, tribal jurisdictions, and communities in their efforts to develop and implement effective coordinated prevention and intervention programs and improve the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitation services tailored to the needs of juveniles and their families.

Guiding Principles For OJJDP's National Leadership: OJJDP provides targeted funding, sponsors research and demonstration programs, offers training and technical assistance, disseminates information, and uses technology to enhance programs and collaboration in exercising its national leadership. In all of these efforts, the following four principles guide OJJDP:

(1) Empower communities and engage youth and families.

(2) Promote evidence-based practices.

(3) Require accountability.

(4) Enhance collaboration.

1. Empower communities and engage youth and families. Families and communities play an essential role in any effort to prevent delinquency and protect children from victimization. Communities must reach beyond the formal systems of justice, social services, and law enforcement to tap into the wisdom and energies of many others—including business leaders, the media, neighborhood associations, block leaders, elected officials, tribal leaders, clergy, faith-based organizations, and especially families and young people themselves—who have a stake in helping local youth become productive, law-abiding citizens. In particular, OJJDP must engage families and youth in developing solutions to delinquency and victimization. Their strengths, experiences, and aspirations provide an important perspective in developing those solutions.

To be effective, collaboration among community stakeholders must be grounded in up-to-date information. With federal assistance that OJJDP provides, community members can partner to gather data, assess local conditions, and make decisions to ensure resources are targeted for maximum impact.

2. Promote evidence-based practices. To make the best use of public resources, OJJDP must identify "what works" in delinquency prevention and juvenile justice. OJJDP is the only federal agency with a specific mission to develop and disseminate knowledge about what works in this field. Drawing on this knowledge, OJJDP helps communities replicate proven programs and improve their existing programs. OJJDP helps communities match program models to their specific needs and supports interventions that respond to the developmental, cultural, and gender needs of the youth and families they will serve.

3. Require accountability. OJJDP requires the national, state, tribal, and

[1] In this plan, the terms "tribes" and "tribal jurisdictions" refer to both American Indian and Alaska Native communities.

local entities whose programs are supported by OJJDP to explain how they use program resources, determine and report on how effective the programs are in alleviating the problems they are intended to address, and propose plans for remediation of performance that does not meet standards. OJJDP has established mandatory performance measures for all its programs and reports on those measures to the Office of Management and Budget. OJJDP requires its grantees and applicants to report on these performance measures, set up systems to gather the data necessary to monitor those performance measures, and use this information to continuously assess progress and fine-tune the programs.

4. Enhance collaboration. Juvenile justice agencies and programs are just one part of a larger set of systems that encompasses the many agencies and programs that work with at-risk youth and their families. For delinquency prevention and child protection efforts to be effective, they must be coordinated at the local, tribal, state, and federal levels with law enforcement, social services, child welfare, public health, mental health, school, and other systems that address family strengthening and youth development. One way to achieve this coordination is to establish broad-based coalitions to create consensus on service priorities and to build support for a coordinated approach. With this consensus as a foundation, participating agencies and departments can then build mechanisms to link service providers at the program level—including procedures for sharing information across systems.

OJJDP took its guidance in the development of this proposed plan from the priorities that the Attorney General has set forth for the Department. At the same time, OJJDP drew upon its Strategic Plan for 2009–2011. The four primary goals at the heart of OJJDP's Strategic Plan echo the Attorney General's priorities. Those goals are: prevent and respond to delinquency, strengthen the juvenile justice system, prevent and reduce the victimization of children, and create safer neighborhoods by preventing and reducing youth violence.

III. OJJDP Proposed Program Plan for Fiscal Year 2010

Each year OJJDP receives formula and block grant funding as well as discretionary funds for certain program areas. Based on the 2009 appropriation and the 2010 presidential budget, OJJDP offers the following 2010 Proposed Plan for consideration and comment. Programs are organized according to the Department priorities and traditional OJJDP focus areas.

Department and OJJDP Priorities

Programs To Address and Treat Children Exposed to Violence

OJJDP intends to issue competitive solicitations and provide continuation funding for Safe Start projects to enhance the accessibility, delivery, and quality of services provided young children who have been exposed to violence or who are at high risk. These programs will focus on practice innovation, research and evaluation, training and technical assistance, and resource development and public awareness.

Additionally, OJJDP intends to support a competitive solicitation in Indian Country to implement a tribal component to the Safe Start initiative. The tribal component will engage tribal leaders, law enforcement, courts, and service providers to increase capacity to protect and respond to the needs of children exposed to violence and their families.

Connected with this children's exposure to violence initiative, OJJDP plans to fund a 12-month, full-time fellow position located at OJJDP to focus on children's exposure to violence programming. OJJDP will develop a solicitation to invite individuals interested in working with the Office for a year to apply for consideration. The position is funded via a grant to the fellow's home institution in the amount of their salary and benefit costs for the duration of the fellowship.

Second Chance Reentry Program

OJJDP proposes to fund additional demonstration projects under the Second Chance Act Youth Offender Reentry Initiative, which supports a comprehensive response to the increasing number of people who are released from prison, jail, and juvenile facilities each year and are returning to their communities. The goal of this initiative is to increase public safety and reduce the rate of recidivism for offenders released from a juvenile residential facility. Demonstration projects would provide necessary services to youth while in confinement and following their release into the community. The initiative would provide a particular focus to address the unique needs of girls reentering their communities.

Improving Indigent Juvenile Defense Program

OJJDP proposes funding the development and implementation of a model national technical assistance and training program for juvenile defense attorneys. Forty years ago, the U.S. Supreme Court, in the landmark *In Re Gault* decision, found that children in the juvenile justice system have the right to an attorney. Today, many young people in the court system, particularly low-income and minority children, lack representation by well-trained and well-resourced lawyers and many juvenile defendants receive no counsel at all. The goal of this proposed initiative is to develop competent juvenile defense attorneys who can work in the best interests of youth facing charges in juvenile court and to improve the judicial system's response.

Community-Based Violence Prevention Programs

OJJDP proposes funding for programs to reduce the risk that youth will be affected by community violence. This program will be closely coordinated with a broader administration initiative. The Reducing Community Violence program will be modeled after the successful Operation CEASEFIRE intervention that is widely credited with significantly reducing homicides in targeted Chicago communities. Operation CEASEFIRE focused on both deterrence strategies, as well as an increase on focused law enforcement activities. This demonstration program will include separate solicitations focusing on research, technical assistance, and evaluation. These programs would be coordinated with the Bureau of Justice Assistance.

Disproportionate Minority Contact

Section 223(a)(22) of the JJDP Act of 2002 requires states to address juvenile delinquency prevention efforts and system improvement efforts to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system. States primarily fund delinquency prevention and systems improvements activities through their Title II Formula and Title V Delinquency Prevention Grant funds. OJJDP provides training and technical assistance to the states to support their development of direct services (diversion, alternatives to secure confinement, advocacy, cultural competency training, etc.); legislative reforms; administrative, policy, and procedural changes; structured decisionmaking (detention screening, risk assessment, needs assessment instruments, etc.), and other activities.

Youth Violence and Gang Prevention

Gang Community and Family Support Program

OJJDP expects to fund programs to support multistrategy, multidisciplinary approaches to reducing gang activity. These programs would enhance coordination of local resources in support of community partnerships that address risk factors to gang involvement, including a lack of social and economic opportunities; family disorganization, including broken homes and parental drug/alcohol abuse; and strong commitment to delinquent peers, but low commitment to positive peers. These programs would be coordinated with the Bureau of Justice Assistance.

School-Related Prevention Programs

In FY 2010, OJJDP will seek opportunities to coordinate and collaborate with the U.S. Department of Education on school safety issues and school- and community-wide programs to reduce truancy and keep students in school. In the past, OJJDP has supported comprehensive community-wide initiatives to reduce and prevent school and community violence and foster safe schools. Proposed areas of collaboration may include programs to reduce truancy; prevent bullying, including cyberbullying, which is prevalent among girls; and promote conflict resolution. OJJDP also proposes to collaborate with the Departments of Education and Health and Human Services on the Safe Schools/Healthy Students (SS/HS) Initiative through competitive funding to SS/HS sites to support mentoring programs and strategies aimed at reducing truancy.

Youth Violence Prevention Programs

OJJDP proposes funding a program to foster innovations and advancements in youth violence prevention practices at the community level. The goal of this program is to demonstrate the implications for policy and practice and to enhance juvenile justice, child protection, and delinquency prevention. OJJDP is interested in reducing risk factors and enhancing protective factors to prevent youth from becoming victims of violence. This program would focus on supporting communities in their efforts to develop and implement effective and coordinated violence prevention and intervention initiatives by building protective factors to combat juvenile delinquency, reducing child victimization, and improving the juvenile justice system.

Teen Dating Violence Awareness and Prevention Program

OJJDP proposes funding a program to implement evidence-based strategies, public education and awareness campaigns, and research on teen dating violence. OJJDP may fund a number of competitively selected sites to implement evidence-based teen dating violence programs and coordinate those demonstration programs with the development of public service announcements and other media tools to inform youth and parents about the signs and consequences of such violence. This effort would be coordinated with the Office on Violence Against Women and private funders.

Tribal Youth

Comprehensive Tribal Youth Reentry Initiative

OJJDP proposes funding a program to address the lack of programming within many tribal juvenile detention facilities and to support the development of services to facilitate the successful reentry of youth into their tribal communities. Components of the Comprehensive Tribal Youth Reentry Initiative would include:

- Training of tribal and Bureau of Indian Affairs detention facility personnel in best practices for juvenile detention.
- An array of support services for youth (both while in custody and during the reentry period), including substance abuse and mental health treatment, educational/vocational training, family strengthening, and reunification programming.
- Transitional step-down housing to help tribal youth transition from incarceration back into the community by providing culturally appropriate wrap-around services.

Tribal Youth Reconnection Program

OJJDP proposes an initiative that would fund federally recognized tribes and/or colleges and universities to engage at-risk tribal youth in activities centered on cultural preservation, land reclamation, or green/sustainable tribal traditions. This experiential learning program would focus on tribal youth who are chronically truant or who are at risk of dropping out of school. Youth would learn from tribal elders, anthropologists, historians, forestry experts, and others with the appropriate expertise. The focus of the activity would differ depending on the tribal community and youth population. Examples of activities may include identifying and documenting tribal artifacts, recording tribal histories and stories, taking part in reforestation efforts, and building and installing wind turbines.

Tribal Enforcing Underage Drinking Laws Program

OJJDP proposes funding a Tribal EUDL Program to support participating federally recognized tribes' development of a long-term strategic plan to address underage drinking among tribal youth. Research indicates that many Native American youth begin drinking at a very early age. The program would support planning and training that balances an appropriate cultural approach, health education, and enforcement that holds adults and youth accountable for their behavior.

Tribal Field-Initiated Research and Evaluation Program

OJJDP proposes funding field-initiated studies to further understanding regarding the experiences, strengths, and needs of tribal youth, their families, and communities and what works to reduce their risks for delinquency and victimization. This initiative is especially interested in evaluations that identify effective and promising delinquency prevention, intervention, and treatment programs for tribal youth, including those that assist tribal youth in enhancing their own cultural knowledge and awareness.

Tribal Youth Program

OJJDP expects to fund the Tribal Youth Program, which supports and enhances tribal efforts to prevent and control delinquency and improve their juvenile justice systems. Grantees will develop and implement efficient and effective delinquency prevention programs, interventions for court-involved youth, improvements to the juvenile justice system, alcohol and substance abuse prevention programs, and emotional/behavioral program services.

Preventing Violence Against Native American Girls

OJJDP proposes using Tribal Youth Program funds to support communities in developing effective strategies to reduce the abuse and exploitation of Native American girls. This program would engage girls, tribal leaders, law enforcement, courts, and service providers to better protect and respond to the needs of Native American girls at risk of victimization by family members, adults who exploit children, and dating partners. This program would be coordinated with the work of the Office on Violence Against Women and agency

experts in tribal issues and child victimization.

Strengthening Initiative for Native Girls (SING)

OJJDP proposes funding an initiative to strengthen the skills and resilience of American Indian girls to resist substance abuse, prevent teen pregnancy, foster positive relationships with peers and adults, learn self-advocacy, and build pro-social skills, with the goal of preventing victimization and delinquency. Examples of components would include:

- Culturally appropriate implementation of existing evidence-based girls programs, such as Girls Circle, Girls, Inc., etc.
- A Girls Leadership Institute, a year-long immersion program for girls that exposes them to different careers and ways to take an active role in their community.
- A mentoring program for college age tribal girls.
- Mental health and substance abuse services.
- Implementation of the Nurse-Family Partnership in tribal communities.

This initiative would include an evaluation component to test whether programs that have been proven to work in other communities can be replicated successfully in Indian Country.

Girls' Delinquency

Evaluations of Girls' Delinquency Programs

OJJDP proposes funding programs to document and measure the effectiveness of delinquency prevention, intervention, and/or treatment programs to prevent and reduce girls' risk behavior and offending. Over the past 2 decades, the number of girls entering the juvenile justice system has dramatically increased. This trend raised a number of questions for OJJDP, including whether this reflected an increase in girls' delinquency or changes in society's responses to girls' behavior. OJJDP's Girls Study Group recently completed a review of evaluations of girls' delinquency programs and found that most programs have not been evaluated, thereby limiting knowledge regarding the most appropriate and effective programs for girls.

National Girls Institute

OJJDP proposes funding a National Girls Institute to evaluate promising and innovative prevention, intervention, treatment, education, detention, and aftercare services for delinquent and at-risk girls. The Institute would promote integrated and innovative programs that use a comprehensive service delivery system to meet the unique developmental and cultural needs of girls and their families. The Institute would provide training, technical assistance, research, information dissemination, collaboration, policy development, and other leadership functions.

Research, Evaluation, and Data Collection

The National Children's Study

OJJDP proposes contributing funds to a new longitudinal study that will examine the effects of environmental influences on the health and development of 100,000 children across the United States, following them from before birth until age 21. The National Institute of Child Health and Development is the lead agency for this study, and other federal agencies that have joined in planning and conducting this study include the National Institute of Environmental Health Sciences, Centers for Disease Control and Prevention, and U.S. Environmental Protection Agency. OJJDP expects to expand what is known regarding delinquency prevention, intervention, and treatment.

Field-Initiated Research and Evaluation Program

OJJDP proposes providing flexible funding for creative yet rigorous research and evaluation that advances OJJDP's mission to prevent and respond to juvenile delinquency and victimization. OJJDP will seek applications addressing a broad range of research and evaluation topics and methodologies in the fields of delinquency prevention, intervention, and treatment. This includes studies that address issues around child victimization.

Juvenile Justice Evaluation Center

OJJDP proposes funding a program that would provide training and technical assistance to state, tribal, local, and non-profit entities that work in the juvenile justice and victimization field on how to prepare for and carry out an evaluation of their activities. The Juvenile Justice Evaluation Center would develop easily accessible tools and resources for the field and would assist these agencies in developing evidence-based strategies and programs.

National Juvenile Justice Data Collection Program

OJJDP intends to continue support for several key national juvenile data collection programs, some of which have existed for several years, and others which are new. These include:

- Census of Juveniles in Residential Placement, which collects information about all youth residing in facilities who are awaiting or have been adjudicated for a status or delinquent offense.
- Juvenile Residential Facility Census, which collects information about the security and services of facilities that hold youth for delinquent offenses, pre- and post- adjudication.
- Census of Juveniles on Probation, which collects a 1-day count of all youth on formal probation, including demographic characteristics and the offense for which they are being supervised.
- Census of Juvenile Probation Supervision Offices, which collects information about the offices that oversee the youth who are on probation in the United States.

Substance Abuse and Treatment

Family and Juvenile Drug Court Programs

OJJDP anticipates providing funding to support the implementation of family drug courts that serve substance-abusing adults who are involved in the family dependency court system, as a result of child abuse or neglect. The Center for Children and Family Futures will provide training and technical assistance to family drug courts.

OJJDP expects to continue funding jointly with the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT) to enhance the capacity of existing juvenile drug courts to serve substance-abusing juvenile offenders through the integration and implementation of the juvenile drug court and the Reclaiming Futures program models. The National Council of Juvenile and Family Court Judges provides training and technical assistance for OJJDP's juvenile drug court initiatives.

Enforcing Underage Drinking Laws Program

OJJDP expects to continue funding the Enforcing Underage Drinking Laws Program through its four components: block grants to the 50 states, the 5 territories, and the District of Columbia; discretionary grants; technical assistance; and research and evaluation. Under the block grant component, each state, the District of Columbia, and the territories receive approximately $360,000 annually to support law enforcement activities, media campaigns, and coalition building. The EUDL discretionary grant component

supports several initiatives to help communities develop a comprehensive approach to address underage drinking. EUDL training and technical assistance supports communities and states in their efforts to enforce underage drinking laws. EUDL funds also support evaluations of several EUDL community initiatives.

Enforcing Underage Drinking Laws Assessment, Strategic Planning, and Implementation Initiative

OJJDP proposes the establishment of a discretionary component of the Enforcing Underage Drinking Laws (EUDL) program that enables states to implement an assessment, strategic planning, and implementation process. Applicants will explain how they will assess local conditions and design a long-term strategic plan; implement selected and approved actions of that plan; collect, analyze, and report data; and have an expert panel assess how the state responded to the recommendations, crafted its strategic plan, and implemented portions of the plan with the remaining funds.

Mentoring

Mentoring and Community Engagement

OJJDP seeks to support mentoring programs that utilize a strengths-based, community engagement approach. Research suggests that programs in which the mentor and mentee work together to address a social issue, participate in community service, or become involved in other local civic activities have resulted in reduced delinquency among the mentees and future involvement with their communities. The theoretical framework for this initiative is Positive Youth Development, which focuses on building the strengths of youth to promote the likelihood of positive outcomes.

Mentoring and Juvenile Drug Courts

OJJDP proposes funding to support a mentoring component to the Juvenile Drug Court/Reclaiming Futures Program. A structured mentoring component would provide youth participating in a drug court with a caring and supportive adult mentor who would share information and insight, listen to the youth, and provide encouragement. Incorporating a mentoring component would build upon the existing partnership with Reclaiming Futures/Robert Wood Johnson Foundation and CSAT.

National and Local Youth Mentoring Programs and Training and Technical Assistance

OJJDP anticipates providing funding to support national organizations that have mentoring programs ready for implementation that will strengthen and expand existing mentoring activities. OJJDP provides training and technical assistance to advance the capacity of state and local jurisdictions and Indian tribal governments to develop, implement, expand, evaluate, and sustain youth mentoring efforts that incorporate research-based findings of best practices and principles.

OJJDP also anticipates funding local faith- and community-based organizations and schools to develop, implement, and expand neighborhood mentoring programs and to increase communities' capacity to develop and implement mentoring programs and provide mentoring services, particularly to populations of at-risk youth who are underserved due to location, shortage of mentors, special physical or mental challenges, or other situations identified by the community in need of mentoring services.

Child Victimization

Children's Advocacy Centers

OJJDP intends to provide continuation funding to programs that improve the coordinated investigation and prosecution of child abuse cases. These programs include funding for a national subgrant program for local children's advocacy centers, a membership and accreditation program, regional children's advocacy centers, and specialized technical assistance and training programs for child abuse professionals and prosecutors. Local Children's Advocacy Centers utilize multidisciplinary teams of professionals to coordinate the investigation, treatment, and prosecution of child abuse cases.

Court Appointed Special Advocate Programs

OJJDP expects to provide continuation funding to support Court Appointed Special Advocates (CASA) programs across the country. CASA programs provide children in the foster care system or at risk of entering the dependency system with high-quality, timely, effective, and sensitive representation before the court. CASA programs train and support volunteers who advocate for the best interests of the child in dependency proceedings. OJJDP funds a national CASA training and technical assistance provider and a national membership and accreditation organization to support state and local CASA organizations' efforts to recruit volunteer advocates, including minority volunteers, and to provide training and technical assistance to these organizations and to stakeholders in the child welfare system.

Missing Children

Missing Children Programs and Services

OJJDP intends to provide continuation funding to a national membership organization for nonprofit organizations serving the families of missing children and to assist in identifying and promulgating best practices in serving these children and families.

In FY 2010, OJJDP also expects to award funding to programs that:

- Provide training and technical assistance to local, state, and tribal law enforcement agencies and other organizations charged with responding to missing children cases.
- Design and implement the 2010 AMBER Alert National Conference.
- Improve responses to child abductions across borders.
- Conduct research on children characterized as lost, injured, or missing to improve community responses to these cases.
- Conduct a national study of the incidence of missing children.

Missing and Exploited Children Training and Technical Assistance Program

OJJDP expects to fund a program to design and implement training in areas such as child abuse investigations, child fatality investigations, and child sexual exploitation investigations. Authorized by the Missing Children's Assistance Act, this program will help state and local law enforcement, child protection, prosecutors, medical providers, and child advocacy center professionals develop an effective response to child victimization cases.

Child Exploitation

Internet Crimes Against Children Program

OJJDP intends to make continuation awards to support the operations of the 61 Internet Crimes Against Children (ICAC) task forces. The ICAC Task Force Program helps state and local law enforcement agencies develop an effective response to sexual predators who prey upon juveniles via the Internet and other electronic devices, and child pornography cases. This program encompasses forensic and investigative components, training and technical assistance, victim services, and community education.

In addition, OJJDP intends to issue competitive solicitations for related ICAC activities and programs, including:

- Designing and implementing the 2011 ICAC National Training Conference.
- Research on Internet and other technology-facilitated crimes against children.
- Training for ICAC officers, prosecutors, judges, and other stakeholders.
- Technical assistance to support implementation of the ICAC program.

Project Safe Childhood Community-Based Programs

OJJDP proposes to issue one or more competitive solicitations to support the goals of Project Safe Childhood. This program will solicit proposals to implement community-based strategies and public awareness efforts to protect children from online sexual exploitation. OJJDP will focus 2010 projects on emergent topics, such as sexting, cyber bullying, and self-production of child pornography. OJJDP may solicit competitive proposals from communities working in conjunction with U.S. Attorneys' Offices to create or disseminate public education and awareness strategies within their respective jurisdictions.

Project Safe Childhood National Training Conference

OJJDP proposes funding to support the design and implementation of the 2010 National Project Safe Childhood Conference. The conference will provide law enforcement, prosecutors, youth-serving organizations, and state and local agencies training on Project Safe Childhood. Conference content will include training on investigative techniques, reviews of research on the scope and prevalence of child exploitation, successful community awareness/education strategies, and examples of multidisciplinary coordination to reduce youth risk and hold offenders accountable.

High-Risk Runaway Program

OJJDP proposes to fund strategies to address the problem of chronic runaway juveniles who are exploited sexually for commercial gain or who are at risk of such exploitation. OJJDP intends to identify best practices for dealing with high-risk victims that support a victim centered approach. This program provides an opportunity for communities to replicate successful strategies to protect these youth. Children and youth who leave and remain away from home without parental permission are at risk of developing and have a disproportionate share of serious health, behavioral, and emotional problems.

Young Sexual Offenders Program

OJJDP proposes to fund a program to assist localities in responding to instances of child sexual victimization by perpetrators who are younger than 18 years old, with a specific emphasis placed on interfamilial child victims and offenders. The program will develop communities' capacity to utilize a multidisciplinary approach when working with children who have been sexually abused by other children and adolescents. The program will also build communities' capacity to provide treatment and supervision resources to youthful perpetrators of sexual abuse against children. This program would be coordinated with OJP's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office.

Juvenile Justice System Improvement

National Juvenile Delinquency Court Improvement Program

OJJDP proposes funding grants to judicial administrative authorities to implement the "Sixteen Key Principles of a Juvenile Delinquency Court of Excellence." The National Council of Juvenile and Family Court Judges developed these principles in close consultation with OJJDP and approximately 100 experts. The initiative would be modeled on the U.S. Department of Health and Human Services' State Court Improvement Program, which has been instrumental in the nationwide implementation of comprehensive systemic improvements to courts' handling of child abuse and neglect or dependency cases.

National Training and Technical Assistance Center for Youth in Custody

OJJDP proposes funding an organization or partnership of organizations to provide an array of technical assistance and training services for state, tribal, local, non-profit, and other youth serving organizations that handle youth in custody and youth being released from custody. This initiative would also cover organizations that provide reentry services (pre-release planning, transitional placement, community services).

Programs To Address the Mental and Physical Needs of Youth in the Juvenile Justice System

OJJDP proposes to work with states to explore innovative approaches to address the mental and physical needs of youth in the juvenile justice system. These programs would focus on providing mental health and physical health services for incarcerated juveniles who may need mental and physical assessments, development of individualized treatment and discharge plans, and the identification and provision of aftercare services.

Programs To Improve Dependency Courts' Handling of Child Abuse and Neglect Cases

OJJDP expects to provide continuation funding to programs that provide training and technical assistance to judicial and court personnel who work within the dependency system. The purpose of this initiative is to improve the juvenile and family courts' handling of child abuse and neglect cases and ensure timely decisionmaking in permanency planning for abused and neglected children. The initiative also aims to reduce and eventually eliminate racial disproportionality and disparate treatment in the dependency system.

General

Field-Initiated Demonstration Programs

OJJDP proposes awarding grants to programs that foster innovations and advancements in juvenile justice-related practice at the local, state, and tribal government levels. This program would be part of the Office's comprehensive effort to support programs that demonstrate the practical implications for policy, practice innovative approaches, and enhance juvenile justice and delinquency prevention. This program would address a broad range of juvenile justice-related issues that support the mission of OJJDP.

Support for Conferences on Juvenile Justice Issues

OJJDP intends to support conferences that address juvenile justice and the prevention of delinquency. This support would provide community prevention leaders, treatment professionals, juvenile justice officials, researchers, and practitioners with information on best practices and research-based models to support state, local government, and community efforts to prevent juvenile delinquency.

Dated: November 24, 2009.

Melodee Hanes,

Acting Deputy Administrator for Policy, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. E9–28743 Filed 11–30–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 24, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (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). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Notice of Special Enrollment Rights under Group Health Plans.

OMB Control Number: 1210–0101.

Affected Public: Private sector.

Estimated Number of Respondents: 2,757,800.

Total Estimated Annual Burden Hours: 0.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $94,917.

Description: Under 29 CFR 2590.701–6(c), a group health plan must provide an individual who is offered coverage under the plan a notice describing the plan's special enrollment rights at or before the time coverage is offered. The Departments of Labor and Health and Human Services believe that the special enrollment notice is necessary to ensure that employees understand their enrollment options and will be able to exercise their rights during any 30-day enrollment period following a special enrollment event. The final regulations provide detailed sample language describing special enrollment rights for use in the notice. The sample language is expected to reduce costs for group health plans since it eliminates the need for plans to develop their own language. For additional information, see related notice published in the **Federal Register** on September 25, 2009 (Vol. 74, page 49021).

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Notice of Pre-Existing Condition Exclusion Under Group Health Plans.

OMB Control Number: 1210–0102.

Affected Public: Private sector.

Estimated Number of Respondents: 827,330.

Total Estimated Annual Burden Hours: 6,661.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $1,319,664.

Description: Plans and issuers that impose preexisting condition exclusion periods must give employees eligible for coverage, as part of any enrollment application, a general notice that describes the plan's preexisting condition exclusion, including that the plan will reduce the maximum exclusion period by the length of an employee's prior creditable coverage. If there are no such enrollment materials, the notice must be provided as soon after a request for enrollment as is reasonably possible. The final regulation includes sample language for the general notice. See 29 CFR 2590.701–3(c).

Plans that use the alternative method of crediting coverage provided in the regulations must disclose their use of that method at the time of enrollment and describe how it operates. They must also explain that a participant has a right to establish prior creditable coverage through a certificate or other means and to request a certificate of prior coverage from a prior plan or issuer. Finally, plans or issuers must offer to assist the participant in obtaining a certificate from prior plans or issuers, if necessary. See 29 CFR 2590.701–4(c)(4). For additional information, see related notice published in the **Federal Register** on September 25, 2009 (Vol. 74, page 49024).

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Establishing Creditable Coverage under Group Health Plans.

OMB Control Number: 1210–0103.

Affected Public: Private sector.

Estimated Number of Respondents: 2,757,768.

Total Estimated Annual Burden Hours: 88,066.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $13,830,615.

Description: This ICR covers an information collection requirement imposed under the regulations in connection with the alternative method of crediting coverage established by the regulations. The regulations permit a plan to adopt, as its method of crediting prior health coverage, provisions that impose different preexisting condition exclusion periods with respect to different categories of benefits, depending on prior coverage in that category. In such a case, the regulations require former plans to provide additional information upon request to new plans in order to establish an individual's length of prior creditable coverage within that category of benefits. For additional information, see related notice published in the **Federal Register** on September 25, 2009 (Vol. 74, page 49024).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–28629 Filed 11–30–09; 8:45 am]

BILLING CODE 4510–29–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 12 p.m., Wednesday, December 2 2009.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order.
II. Approval of the Minutes.
III. Summary Report of the Audit Committee.
IV. Summary Report of the Finance, Budget and Program Committee.
V. Summary Report of the Audit Committee.
VI. Action Item.
VII. Financial Report.
VIII. Corporate Scorecard.
IX. Chief Executive Officer's Quarterly Management Report.
X. Adjournment.

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. E9–28490 Filed 11–30–09; 8:45 am]

BILLING CODE 7570–02–M

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0402; Docket No. 50–250]

Florida Power & Light; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power & Light (the licensee) to withdraw its September 1, 2009, application for proposed amendment to Facility Operating License No. DPR–31 for the Turkey Point Nuclear Generating Unit No. 3, located in Florida City, Florida.

The proposed amendment would have revised Licenses DPR–31 and DPR–41 of the dates specified in License Amendments 234 and 229 for the implementation of the Boraflex Remedy in the Turkey Point Units 3 and 4 spent fuel pools.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 15, 2009 (74 FR 47278). However, by letter dated November 9, 2009, the licensee withdrew the proposed change for Unit 3. The requested amendment for Unit 4 was issued on November 13, 2009. The licensee will submit a separate application to update the licensing basis for the Unit 3 spent fuel pool.

For further details with respect to this action, see the application for amendment dated September 1, 2009, and the licensee's letter dated November 9, 2009, which withdrew the application for license amendment for Unit 3. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *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 PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of November 2009.

For the Nuclear Regulatory Commission.

Jason C. Paige,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28655 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–001; NRC–2009–0523]

South Texas Project Nuclear Operating Company Acceptance for Docketing of an Application for U. S. Advanced Boiling Water Reactor Design Certification; Rule Amendment

On June 30, 2009, the U.S. Nuclear Regulatory Commission (NRC, the Commission) received an application from South Texas Project Nuclear Operating Company (STPNOC), filed pursuant to Section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR), part 52, for the approval of the application to amend the U.S. Advanced Boiling Water Reactor (ABWR) design certification rule (DCR). This amendment is to meet the aircraft impact assessment requirements in 10 CFR 50.150. The application is considered sufficiently complete to be accepted formally as a docketed application. The docket number established for this application is 52–001. A notice related to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The NRC staff will perform a detailed technical review of this DCR amendment application. Docketing this application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at: One White Flint North, Room O1 F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852.

Documents will also be accessible electronically through the Agencywide Documents Access System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.*

Dated at Rockville, Maryland this 23rd day of November.

For The U. S. Nuclear Regulatory Commission.

Frank Akstulewicz,

Deputy Director, Licensing Operations, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–28657 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft License Renewal Interim Staff Guidance LR–ISG–2009–01

[NRC–2009–0521]

Staff Guidance Regarding Plant-Specific Aging Management Review and Aging Management Program for the Neutron-Absorber Material in the Spent Fuel Pool Associated With License Renewal Applications; Solicitation of Public Comment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Solicitation of Public Comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests public comment on a proposed draft License Renewal Interim Staff Guidance, (LR–ISG) LR–ISG–2009–01, "Staff Guidance Regarding Plant-Specific Aging Management Review and Aging Management Program for Neutron-Absorbing Material in Spent Fuel Pools." This LR–ISG provides guidance to address the potential loss of material and loss of neutron-absorbing capability in spent fuel pools during the period of extended operation. This draft LR–ISG contains a proposed aging management program that can address this issue. The draft LR–ISG is located in the Agencywide Documents Access and Management System (ADAMS) ML091590539.

DATES: Comments may be submitted by December 31, 2009. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0521 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website 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.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0521. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

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

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

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–2009–0521.

FOR FURTHER INFORMATION CONTACT: Mr. Ian Spivack, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2564 or by e-mail at *ian.spivack@nrc.gov.*

The NRC staff is issuing this notice to solicit public comments on the proposed LR–ISG–2009–01. After the NRC staff considers any public comments, it will make a determination regarding issuance of the proposed LR–ISG.

Dated at Rockville, Maryland this 23rd day of November, 2009.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28659 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9083; ASLBP No. 10–895–01–ML–BD01]

Army Installation Command; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.105, 2.300, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

U.S. Army Installation Command

(Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii)

This proceeding concerns four requests for hearing from petitioners Cory Martha Harden, Amelia Gora, Luwella Leonardi, and Barbara Moore. Additionally, e-mails in support of Ms. Harden's hearing request were submitted by Jim Albertini on behalf of the Malu 'Aina Center for Non-Violent Education and Action, by Isaac D. Harp, and by Angela Rosa. The hearing requests and supporting filings were submitted in response to an August 13, 2009 Notice of License Application Request of U.S. Army Installation Command for Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii, and Notice of Opportunity To Request a Hearing (74 FR 40,855). The license application requests authority for the U.S. Army Installation Command to possess depleted uranium (DU) at the Schofield Barracks and Pohakuloa Training Area sites due to the existence of residual DU resulting from the use of M101 Spotting Rounds.

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials ordinarily are filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139). Several petitioners have requested to be exempted from complying with that rule. Those requests shall be resolved by the Board.

*Issued at Rockville, Maryland, this 24th day of November 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–28660 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0518]

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. 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 November 5, 2009, to November 18, 2009. The last biweekly notice was published on November 17, 2009 (74 FR 59259).

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), Section 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; or (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.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

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 Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *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 petitioner/requestor 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 petitioner/requestor 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 petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor 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 petitioner/requestor to relief. A petitioner/requestor 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, 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, which the NRC promulgated in August 28, 2007 (72 FR 49139). 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 petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (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/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. 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*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it 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 filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE 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 e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail 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 through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a 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 submissions.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *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 PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: September 28, 2009.

Description of amendment request: The amendments would revise Required Action A.1 of Technical Specification (TS) 3.8.7, "Inverters—Operating," for the Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, by extending the Completion Time for restoration of an inoperable vital alternating current (AC) inverter from 24 hours to 7 days.

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 an accident previously evaluated?

Response: No.

The proposed TS amendment does not affect the design of the vital AC inverters, the operational characteristics or function of the inverters, the interfaces between the inverters and other plant systems, or the reliability of the inverters. An inoperable vital AC inverter is not considered an initiator of an analyzed event. In addition, Required Actions and the associated Completion Times are not initiators of previously evaluated accidents. Extending the Completion Time for an inoperable vital AC inverter would not have a significant impact on the frequency of occurrence of an accident previously evaluated. The proposed amendment will not result in modifications to plant activities associated with inverter maintenance, but rather, provides operational flexibility by allowing additional time to perform inverter troubleshooting, corrective maintenance, and post-maintenance testing on-line.

The proposed extension of the Completion Time for an inoperable vital AC inverter will not significantly affect the capability of the inverters to perform their safety function, which is to ensure an uninterruptible supply of 120-volt AC electrical power to the associated power distribution subsystems. An evaluation, using PRA [probabilistic risk assessment] methods, confirmed that the increase in plant risk associated with implementation of the proposed Completion Time extension is consistent with the NRC's Safety Goal Policy Statement, as further described in [NRC Regulatory Guide] RG 1.174 and RG 1.177. In addition, a deterministic evaluation concluded that plant defense-in-depth philosophy will be maintained with the proposed Completion Time extension. Based on the above, the proposed amendment does not involve a significant increase in 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 accident previously evaluated?

Response: No.

The proposed amendment does not involve physical alteration of the PVNGS. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the PVNGS is operated. There are no setpoints at which protective or mitigating actions are initiated that are affected by this proposed action. The use of the alternate Class 1E power source for the vital AC instrument bus is consistent with the PVNGS plant design. The change does not alter assumptions made in the safety analysis. This proposed action will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration is proposed to the procedures that ensure the PVNGS remains within analyzed limits, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Based on the above, 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 a margin of safety?

Response: No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed amendment does not alter the design or configuration of the vital AC inverters or their associated 120-volt AC subsystems, and does not alter the setpoints at which alarms and associated actions are initiated. With one of the required 120-volt AC vital instrumentation buses being powered from the alternate safety-related Class 1E power supply, which is backed by the divisional diesel generator (DG), there is no significant reduction in the margin of safety. Testing of the DGs and associated electrical distribution equipment provides confidence that the DGs will start and provide power to the associated equipment in the unlikely event of a loss of offsite power during the extended 7-day Completion Time.

Applicable regulatory requirements will continue to be met, adequate defense-in-depth will be maintained, sufficient safety margins will be maintained, and any increases in risk are consistent with the NRC Safety Goal Policy Statement. Furthermore, during the proposed extended inverter Completion Time, any increases in risk posed by potential combinations of equipment out of service will be managed in accordance with the PVNGS site Configuration Risk Management Program, consistent with Paragraph (a)(4) of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants."

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 18, 2009.

Description of amendments request: The proposed license amendments revise Technical Specification 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," Surveillance Requirement 3.3.1.1.8, to increase the frequency interval between local power range monitor calibrations from 1100 megawatt-days per metric ton average core exposure (i.e., equivalent to approximately 907 effective full-power hours (EFPH)) to 2000 EFPH.

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 amendments revise the surveillance interval for the LPRM [local power range monitor] calibration from 1100 MWD/T [megawatt days per metric ton] average core exposure to 2000 effective full power hours (EFPH). Increasing the frequency interval between required LPRM calibrations is acceptable due to improvements in fuel analytical bases, core monitoring processes, and nuclear instrumentation. The revised surveillance interval continues to ensure that the LPRM detector signal will continue to be adequately calibrated.

This change will not alter the operation of process variables, structures, systems, or components as described in the Updated Final Safety Analysis Report. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed change does not alter the initiation conditions or operational parameters for the LPRM subsystem and there is no new equipment introduced by the

extension of the LPRM calibration interval. The performance of the Average Power Range Monitor (APRM), Rod Block Monitor (RBM), and Oscillation Power Range Monitor (OPRM) systems is not affected by the proposed surveillance interval increase. The proposed LPRM calibration interval extension will have no significant effect on the Reactor Protection System (RPS) instrumentation accuracy during power maneuvers or transients and will, therefore, not significantly affect the performance of the RPS. As such, no individual precursors of an accident are affected and the proposed amendments do not increase the probability of a previously analyzed event.

The radiological consequences of an accident can be affected by the thermal limits existing at the time of the postulated accident; however, increasing the surveillance interval frequency will not increase the calculated thermal limits since all uncertainties associated with the increased interval are currently implemented and are currently used to calculate the existing safety limits. Plant specific evaluation of LPRM sensitivity to exposure has determined that the extended calibration frequency increases the LPRM signal uncertainty value used in the SLMCPR [safety limit for minimum critical power] analysis; however, the increase is bounded by the values currently used in the safety analysis. Therefore, the thermal limit calculation is not significantly affected by LPRM calibration frequency, and thus the radiological consequences of any accident previously evaluated are not increased.

Based on the above, the proposed amendments do 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.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The performance of the APRM, RBM, and OPRM systems are not affected by the proposed LPRM surveillance interval increase. The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. For the proposed LPRM extended calibration interval frequency, all uncertainties remain less than the uncertainties assumed in the existing thermal limit calculations. The proposed change does not change or introduce any new equipment, modes of system operation, or failure mechanisms; therefore, no new accident precursors are created. Based on the above information, the proposed amendments 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 a margin of safety?

Response: No.

The proposed change has no impact on equipment design or fundamental operation, and there are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed LPRM surveillance interval increase. The performance of the APRM, RBM, and OPRM systems are not affected by the proposed change. The margin of safety can be affected by the thermal limits existing at the time of the postulated accident; however, uncertainties associated with LPRM chamber exposure have no significant effect on the calculated thermal limits. Plant-specific evaluation of LPRM sensitivity to exposure has determined that the extended calibration frequency increases the LPRM signal uncertainty value used in the SLMCPR analysis; however, the increase is bounded by the values currently used in the safety analysis. The thermal limit calculation is not significantly affected since LPRM sensitivity with exposure is well defined. LPRM accuracy remains within that used to determine the total power uncertainty assumed in the thermal analysis basis, therefore maintaining thermal limits and the safety margin. The proposed change does not affect uncertainties or initial conditions assumed in the thermal limit calculations and therefore the margin of safety in the safety analyses is maintained. Based on the above information, the proposed amendments do not result in 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: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 19, 2009.

Description of amendment request: The proposed amendment relocates the Waterford Steam Electric Station, Unit 3 Steam Generator Level—High trip requirements from Technical Specification Sections 2.2 and 3/4.3.1 to the Technical Requirements Manual.

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 relocates the Steam Generator Level—High Trip to a licensee-controlled document. The Steam Generator (SG) Level—High trip function is not credited in any DBA [design-basis accident] or transient analysis and is not an initiator to any accident analysis. As a result, neither the probability nor the consequences of an accident previously evaluated are significantly increased by this change.

Therefore, this 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 accident previously evaluated?

Response: No.

The proposed change relocates the Steam Generator Level—High trip function to a licensee-controlled document. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

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 proposed change relocates the Steam Generator Level—High trip function to a licensee-controlled document. This will allow changes to the Steam Generator Level—High Trip requirements currently in the Technical Specifications to be performed in accordance with the requirements of 10 CFR 50.59. As the Steam Generator Level—High trip function has been determined to not meet the definition of Technical Specifications or the criteria in 10 CFR 50.36 (c)(2)(ii), lack of NRC review and approval prior to implementation for changes that are not determined to be a significant hazard will not lead to a significant reduction in the 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: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: September 24, 2009.

Description of amendment request: The amendment request proposes a one-time extension of the Completion Time (CT) to restore a unit-specific essential service water train to operable status associated with Technical Specification Limiting Condition for Operation (LCO) 3.7.8, Essential Service Water (SX) System, from 72 hours to 144 hours. The proposed change will only be used one time during the Byron Station Unit 2 spring 2010 refueling outage. The licensee is requesting an extension of the CT to 144 hours to replace two of the four SX pump suction isolation valves; maintenance history has shown that replacement of the SX pump suction isolation valves cannot be assured within the existing 72 hour CT window.

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 changes have been evaluated using the risk-informed processes described in Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998 and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," dated August 1998. In addition, proposed revised guidance as described in Draft Regulatory Guide DG–1226, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and Draft Regulatory Guide DG–1227, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," was reviewed for insights. The risk associated with the proposed changes was shown to be acceptable.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The SX system is not considered an initiator for any of these previously analyzed events. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The unit-specific SX system consists of two separate, electrically independent, 100% capacity, safety related, cooling water trains. Each train consists of a 100% capacity pump, piping, valving, and instrumentation. Normally, the pumps and valves are remotely and manually aligned. However, the pumps are automatically started upon receipt of a safety injection signal or an undervoltage on the engineered safety features (ESF) bus, and all essential valves are aligned to their post accident positions. The SX system is also the backup water supply to the auxiliary feedwater system and fire protection system.

The design basis of the SX system is for one SX train, in conjunction with the component cooling water (CC) system and a 100% capacity containment cooling system, to remove core decay heat following a design basis LOCA [loss-of-coolant accident] as discussed in the UFSAR [updated final safety analysis report], Section 6.2, "Containment Systems." This prevents the containment sump fluid from increasing in temperature during the recirculation phase following a LOCA and provides for a gradual reduction in the temperature of this fluid as it is supplied to the reactor coolant system by the emergency core cooling system pumps. The SX system is designed to perform its function with a single failure of any active component, assuming the loss of offsite power. The proposed one-time increase in the CT is consistent with the philosophy of the current Technical Specification LCO which allows one train of SX to be inoperable for 72 hours. This change only extends the 72 hour Completion Time to 144 hours which has been shown to be acceptable from a risk perspective; therefore, the proposed change does not involve a significant increase in the 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 changes do not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Based on this evaluation, the proposed 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 does not alter any existing setpoints at which protective actions are initiated and no new setpoints or protective actions are introduced. The design and operation of the SX system remains unchanged. The risk associated with the proposed increase in the time an SX pump is allowed to be inoperable was evaluated using the risk-informed processes described in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998 and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," dated August 1998. The risk was shown to be acceptable. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (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. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334, Beaver Valley Power Station, Unit No. 1 (BVPS–1), Beaver County, Pennsylvania

Date of amendment request: July 6, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification 5.6.3, "Core Operating Limits Report," to allow the use of the generically approved Topical Report, WCAP–16009–P–A, "Realistic Large Break LOCA [Loss-of-Coolant Accident] Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method (ASTRUM)," for BVPS–1.

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?

No. No physical changes are required as a result of implementing the ASTRUM best-estimate large break [LOCA] methodology and associated technical specification changes. The plant conditions assumed in the analysis are bounded by the design conditions for all equipment in the plant. Therefore, there will be no increase in the probability of a LOCA. The consequences of a LOCA are not being increased, since it is shown that the emergency core cooling system is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, Paragraph (b). No

other accident is potentially affected by this change.

Therefore, the proposed change does not involve a significant increase in 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 accident previously evaluated?

No. There are no physical changes being made to the plant. No new modes of plant operation are being introduced. The parameters assumed in the analysis are within the design limits of the existing plant equipment. All plant systems will perform as designed during the response to a potential accident.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The methodology used in the analysis would more realistically describe the expected behavior of plant systems during a postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of loss of coolant accidents with different break sizes, different locations and other variations in properties are analyzed to provide assurance that the most severe postulated LOCAs are calculated. As described in Section 3.3, there is a high level of probability that all criteria contained in 10 CFR 50.46, Paragraph (b) are met.

The Nuclear Regulatory Commission (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: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Nancy L. Salgado.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 9, 2009.

Description of amendment request: The proposed amendment would change the frequency of control rod notch testing, as specified in Technical Specification (TS) surveillance requirement (SR) 4.1.3.1.2.a, from at least once per 7 days to at least once per 31 days. The purpose of this SR is to confirm control rod insertion capability which is demonstrated by inserting each partially or fully withdrawn control rod at least one notch and observing that the control rod moves. This ensures that the control rod is not stuck and is free to insert on a scram signal. The proposed amendment would also add the word "fully" to the Action for TS Limiting Condition for Operation (LCO) 3.9.2 to clarify the requirement to fully insert all insertable control rods when the required source range monitor (SRM) instrumentation is inoperable. The licensee stated that the proposed amendment is based on Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) change, TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action." The availability of this change to the Standard Technical Specifications (STS) was announced in the **Federal Register** on November 13, 2007 (72 FR 63935) as part of the consolidated line item improvement process. The **Federal Register** notice included a model safety evaluation, a model application and a model proposed a no significant hazards consideration (NSHC) determination. In its application dated September 9, 2009, the licensee affirmed the applicability of the proposed NSHC determination for TSTF–475 and has incorporated it by reference to satisfy the requirements of 10 CFR 50.91(a). Since Hope Creek Generating Station has not adopted the STS (*e.g.,* NUREG–1433), the licensee has proposed minor variations from the TS changes described in TSTF–475.

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. The NRC staff's review is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to SR 4.1.3.1.2.a reduces the frequency of control rod notch testing. Changing the frequency of testing is not expected to have any significant impact on the reliability of the control rods to insert as required on a scram signal. The proposed change to the Action for LCO 3.9.2 merely clarifies the intent of the action. There are no physical plant modifications associated with this change. The proposed amendment would not alter the way any structure, system, or component (SSC) functions and would not alter the way the plant is operated. As such, the proposed amendment would have no impact on the ability of the affected SSCs to either preclude or mitigate an accident. Therefore, the proposed change does not involve a significant increase in 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 accident previously evaluated?

Response: No.

The proposed amendment would not change the design function or operation of the SSCs involved and would not impact the way the plant is operated. As such, the proposed change would not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. 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 amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. There are no physical plant modifications associated with the proposed amendment. The proposed amendment would not alter the way any SSC functions and would not alter the way the plant is operated. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the NRC staff concludes that the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

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: Vincent Zabielski, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 20, 2009.

Description of amendment request: The proposed amendment would delete paragraph d of Technical Specification 5.2.2, "Unit.Staff," superseded by Title 10 of the Code of Federal Regulations Part 26, Subpart I.

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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change removes Technical Specification (TS) restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shut down condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

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, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas Boyce.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 20, 2009.

Description of amendment request: The proposed amendment would delete paragraph g of Technical Specification 6.2.2, "Facility Staff," which was superseded by Title 10 of the Code of Federal Regulations (10 CFR), Part 26, Subpart I. This change is consistent with Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler TSTF–511, Revision 0, "Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26."

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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change removes Technical Specification (TS) restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Removal of plant specific TS administrative requirements will not reduce a margin of safety because the requirements

in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

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, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339 North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: September 28, 2009.

Description of amendment request: The proposed changes would address the filtration function of the Emergency Core Cooling System (ECCS) Pump Room Exhaust Air Cleanup System (PREACS) and are consistent with the associated design and licensing basis accident analysis assumptions. The proposed changes will add new Conditions B and C with associated Action Statements and Completion Times to Technical Specification (TS) 3.7.12 and modify Conditions A and D.

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 license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not adversely affect accident initiators or precursors and do not alter the design assumptions, conditions, or configuration of the facility. The new conditions only affect the filtration function of ECCS PREACS, which is an accident mitigation function, so accident initiation probability is not impacted. Regarding significance of the proposed changes relative to the accident consequences, the new conditions remain consistent with existing design assumptions (i.e., dose calculations show that the filtration function is not required when ECCS leakage is less than the maximum allowable unfiltered leakage) and filtration is required to be operable as required to support the design analysis assumptions.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The addition of the new Conditions B and C with associated Action Statements and Completion Times to TS 3.7.12 and modification of Condition D to address the filtration function of ECCS PREACS does not impact the accident analysis or associated assumptions. The new conditions only address actions to be taken when portions of ECCS PREACS (an accident mitigation system) is out-of-service.

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 amendment involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The proposed new conditions recognize that there may be limited leakage situations when filtration is not required to meet the accident analysis assumptions. Allowing safety equipment to be inoperable while it is not required is not reducing the analyzed margin of safety.

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 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, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, Virginia 23219.

NRC Branch Chief: Gloria J. Kulesa.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: October 16, 2009.

Description of amendment request: The license amendment request (LAR) adds two references to the list of NRC approved methodologies contained in the Technical Specifications (TSs). Specifically, Westinghouse document WCAP–8745–P–A, "Design Bases for Thermal Overpower Delta-T and Thermal Overtemperature Delta-T Trip Function," and the Dominion Fleet Report DOM–NAF–2–A, "Reactor Core Thermal-Hydraulics Using the VIPRE–D Computer Code," including Appendix B, "Qualification of the Westinghouse WRB–1 CHF [Critical Heat Flux] Correlation in the Dominion VIPRE–D Computer Code," in TS 6.2.C as a referenced analytical methodology report.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Approval of the proposed changes will allow Dominion to use the VIPRE–D/WRB–1 and VIPRE–D/W–3 code/correlation pairs to perform licensing calculations of Westinghouse 15x15 Upgrade fuel in Surry cores, using the DDLs [Deterministic Design Limits] documented in Appendix B of the DOM–NAF–2–A Fleet Report and the SDL [Statistical Design Limit]. Neither the code/correlation pair nor the Statistical Departure from Nucleate Boiling Ratio (DNBR) Evaluation Methodology make any contribution to the potential accident initiators and thus cannot increase the probability of any accident. Further, since both the deterministic and statistical DNBR limits meet the required design basis of avoiding Departure from Nucleate Boiling (DNB) with 95% probability at a 95% confidence level, the use of the new code/correlation and the Statistical DNBR Evaluation Methodology do not increase the potential consequences of any accident. Finally, the full core DNB design limit provides increased assurance that the consequences of a postulated accident which includes radioactive release would be minimized because the overall number of rods in DNB would not exceed the 0.1% level. The pertinent evaluations to be performed as part of the cycle specific reload safety analysis to confirm that the existing safety analyses remain applicable have been performed and determined to be acceptable. The use of a different code/correlation pair will not increase the probability of an accident because plant systems will not be operated in a different manner, and system interfaces will not change. The use of the VIPRE–D/WRB–1 and VIPRE–D/W–3 code/correlation pairs to perform licensing calculations of Westinghouse 15x15 Upgrade fuel in Surry cores will not result in a measurable impact on normal operating plant releases and will not increase the predicted radiological consequences of accidents postulated in the UFSAR [Updated Final Safety Analysis Report].

The remaining proposed changes are being made to enhance the completeness of the Surry TS and to achieve consistency with NUREG–1431 Rev. 3. The proposed changes do not add or modify any plant systems, structures or components (SSCs). The proposed changes to relocate TS parameters to the COLR [Core Operating Limits Report] are programmatic and administrative in nature. These changes do not physically alter safety-related systems nor affect the way in which safety-related systems perform their functions. Additional Safety Limits on the DNB design basis and peak fuel centerline temperature are being imposed in TS 2.1, "Safety Limit, Reactor Core," and the Reactor

Core Safety Limits figure is being relocated to the COLR. The additional Safety Limits are consistent with the values stated in the UFSAR and those being proposed herein. The proposed changes do not, by themselves, alter any of the relocated parameter limits. The removal of the cycle-specific parameter limits from the TS does not eliminate existing requirements to comply with the parameter limits. TS 6.2.C continues to ensure that the analytical methods used to determine the core operating limits meet NRC reviewed and approved methodologies and that applicable limits of the safety analyses are met. Deletion of the obsolete limits associated with N–1 loop operation (TS 2.1.A.2, TS 2.1.A.3, TS Figure 2.1–2, TS Figure 2.1–3) and fuel densification (TS figure 2.1–4) is acceptable since these limits no longer represent limiting conditions for operation and are not required to be in the Technical Specifications.

Thus, the proposed changes do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in 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 changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed).

The use of VIPRE–D and its applicable fuel design limits for DNBR does not impact any of the applicable design criteria and all pertinent licensing basis criteria will continue to be met. Demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could introduce a new type of accident. Setpoint safety analysis evaluations have demonstrated that the use of VIPRE–D is acceptable. Design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the VIPRE–D code/correlation or the Statistical DNBR Evaluation Methodology does not involve any alteration to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors.

The proposed change adds a new surveillance requirement of RCS [Reactor Coolant System] Total Flow Rate and requests the addition of an already approved method for determining plant operating limits. The proposed change does not adversely affect accident initiators or precursors, nor does it alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to relocate TS parameters to the COLR are programmatic and administrative in nature. Additional Safety Limits on the DNB design basis and peak fuel centerline temperature are being imposed in TS 2.1, "Safety Limit, Reactor Core," and the Reactor Core Safety Limits figure is being relocated to the COLR. The additional Safety Limits are consistent with the values stated in the UFSAR and those being proposed herein.

Approval of the proposed changes will allow Dominion to use the VIPRE–D/WRB–1 and VIPRE–D/W–3 code/correlation pairs to perform licensing calculations of Westinghouse 15x15 Upgrade fuel in Surry cores, using the DDLs documented in Appendix B of the DOM–NAF–2–A Fleet Report and the SDL documented herein. The SDL has been developed in accordance with the Statistical DNBR Evaluation Methodology. The DNBR limits meet the design basis of avoiding DNB with 95% probability at a 95% confidence level. The use of the VIPRE–D/WRB–1 code/correlation provides the same margin to safety as the current code/correlation COBRA/WRB–1 used at Surry.

Therefore, the proposed TS 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: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

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 Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *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 e-mail to *pdr.resource@nrc.gov*.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: April 17, 2009.

Brief description of amendment: The amendment revises Operating License No. DPR–49 by changing "FPL Energy Duane Arnold, LLC" to "NextEra Energy Duane Arnold, LLC," where appropriate, to reflect the renaming of FPL Energy Duane Arnold, LLC to NextEra Energy Duane Arnold, LLC.

Date of issuance: November 13, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 275.

Facility Operating License No. DPR–49: The amendment revised the License and Appendix B—Additional Conditions.

Date of initial notice in ***Federal Register:*** June 30, 2009 (74 FR 31324).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2009.

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: June 2, 2009.

Brief description of amendment: The amendment (1) deleted Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revised SR 3.1.3.3, (2) removed reference to SR 3.1.3.2 from Required Action A.3 of TS 3.1.3, "Control Rod OPERABILITY," and (3) revised Example 1.4–3 in Section 1.4, "Frequency," to clarify the applicability of the 1.25 surveillance test interval extension. The changes are in accordance with NRC-approved TS Task Force (TSTF) traveler TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action."

Date of issuance: November 12, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 235.

Facility Operating License No. DPR–46: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 30, 2009 (74 FR 31325).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 2009.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, (SSES Units 1 and 2) Luzerne County, Pennsylvania

Date of application for amendments: March 24, 2009, as supplemented by letters dated April 24, and September 11, 2009.

Brief description of amendments: The change revised the allowable value in the Technical Specification (TS) Table 3.3.5.1–1 (Function 3.d) for the high-pressure coolant injection automatic pump suction transfer from the condensate storage tank (CST) to the suppression pool. The present allowable value for this transfer is greater than or equal to 36 inches above the CST bottom. The change is to increase the allowable value for this transfer to occur at greater than or equal to 40.5 inches above the CST bottom.

Additionally, the amendment also included an editorial/administrative change which corrected a typographical error in the SSES Units 1 and 2 TS Section 3.10.8.f.

Date of issuance: November 9, 2009.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 254 for Unit 1 and 234 for Unit 2.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 6, 2009, (74 FR 51332).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 2009.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: July 28, 2009, supplemented by letters dated September 16 and 30, 2009.

Brief Description of amendments: These amendments revise the Technical Specifications (TS) of Surry Power Station, Units 1 and 2. The request proposed changes to the inspection scope and repair requirements of TS Section 6.4.Q, "Steam Generator (SG) Program," to the reporting requirements of TS Section 6.6.A.3, "Steam Generator (SG) Tube Inspection Report," and to TS Sections 4.13 and 3.1.C, "RCS [Reactor Coolant System] Operational Leakage." The proposed changes would establish alternate repair inspection and criteria for portions of the SG tubes within the tubesheet. The alternate inspection and repair criteria would be applicable to Unit 1 during Refueling Outage 23 (fall 2010) and the subsequent operating cycle and to Unit 2 during Refueling Outage 22 (fall 2009) and the subsequent operating cycle.

Date of issuance: November 5, 2009.

Effective date: Unit 1 is effective as of its date of issuance and shall be implemented by the end of the fall 2010 refueling outage. Unit 2 is effective as of its date of issuance and shall be implemented by the end of the fall 2009 refueling outage.

Amendment Nos.: 267 and 266.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** August 19, 2009 (74 FR 41939).

The supplements dated September 16, 2009 and September 30, 2009, 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. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 5, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, MD, this 19th day of November 2009.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28630 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of November 30, December 7, 14, 21, 28, 2009, January 4, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 30, 2009

Friday, December 4, 2009

9:30 a.m.—Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Antonio Dias, 301–415–6805).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of December 7, 2009—Tentative

Tuesday, December 8, 2009

9:30 a.m.—Briefing on the Proposed Rule: Enhancements to Emergency, Preparedness Regulations (Public Meeting), (Contact: Lauren Quiñones, 301–415–2007).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of December 14, 2009—Tentative

There are no meetings scheduled for the week of December 14, 2009.

Week of December 21, 2009—Tentative

There are no meetings scheduled for the week of December 21, 2009.

Week of December 28, 2009—Tentative

There are no meetings scheduled for the week of December 28, 2009.

Week of January 4, 2010—Tentative

There are no meetings scheduled for the week of January 4, 2010.

* * * * *

* 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.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

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 the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@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 e-mail to *darlene.wright@nrc.gov.*

Dated: November 25, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–28815 Filed 11–27–09; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0522; Docket No. 50–284; License No. R–110]

Idaho State University; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated June 26, 2009, Dr. Kevan Crawford requested that the U.S. Nuclear Regulatory Commission (NRC) take the following enforcement actions:

(1) The reactor operating license should be suspended immediately. All continuing violations, including items that Dr. Crawford determined: (1) Were unresolved from the 93–1 Notice of Violation (NOV), (2) as well as the additional 20 violations [1] that Dr. Crawford determined to be concealed must be reconciled with the regulatory requirements immediately.

(2) The licensee should be fined for all damages related to the violations and cover-up of violations.

(3) The licensee should be required to carry a 50-year $50,000,000 bond to cover latent radiation injuries instead of covering these injuries with unreliable State budget allocations for contingency funds.

(4) Every potential exposure and contamination victim should be identified through facility records, located. and informed of the potential risk to them and their families. The Medical Center in Pocatello, ID, should also be informed so that they may do the same. They should be informed of the entire range of expected symptoms. They should be informed of their right to seek compensation from the licensee.

(5) The following should warrant immediate revocation of the operating license due to the inability of the licensee to account for, with documentation, controlled by-product nuclear materials that were:

a. Released in clandestine, undocumented shipments before August 4, 1993,

b. In possession of individuals not licensed to hold the materials, and were not certified to handle the materials,

c. Without proper *Title 49 Code of Federal Regulations* (49 CFR) Department of Transportation (DOT) certified containers,

d. Without proper labeling for transport on public roads, and

e. Concealed via fraudulent Annual Operating Reports as defined in 18 USC 1001 that were never amended even after NOV in 93–1.

(6) It is recommended that the Broad Form License be permanently revoked.

(7) The licensee must publicly acknowledge that there was a loss of Special Nuclear Material (SNM) control.

(8) The licensee must publicly acknowledge persons that served as an accessory to concealing unlawful distribution of controlled substances, fraud (both Annual Operating Reports and National Whistleblower Center), loss of control of SNM, and child endangerment.

The request is being treated pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). The Petitioner participated in a conference call with the NRR Petition Review Board (PRB) on September 1, 2009, to discuss the petition. The additional information provided by the Petitioner was considered by the PRB before making its final recommendation.

By letter dated September 21, 2009, the Director accepted in part for review, pursuant to 10 CFR 2.206, the Petitioner's concerns regarding:

(1) Failure to conduct 10 CFR 50.59 safety review of the modification of the Controlled Access Area by the addition of an undocumented roof access for siphon breaker experiment implemented prior to 1991. The June 26, 2009, petition letter states this allowed random student access to the roof of the reactor room.

(2) Release of controlled by-product nuclear materials in containers not certified [10 CFR 49] for transport of such materials on public roads and not labeled with the required labeling.

(3) Failure to require the reactor operator conducting the startup procedures to wear protective clothing to routinely remove the activated startup channel detector from the reactor core. In the June 26, 2009, letter, Dr. Crawford states that this was cited and mishandled in the 93–1 NOV.

(4) Violation of 10 CFR 20 for the routine, unprotected handling of an unshielded neutron source.

The issues that were not accepted into the 2.206 petition process did not satisfy the criteria as specified in NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions." In such instances: (1) The incoming correspondence does not ask for an enforcement-related action or fails to provide sufficient facts to support the petition, but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns and/or, (2) The petitioner raises issues that have already been the subject of NRC staff review and evaluation, either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been resolved, and the resolution is applicable to the facility in question.

On September 28, 2009, the petitioner was contacted via telephone and was provided the initial recommendations of the PRB. Pursuant to NRC MD 8.11, the petitioner was offered the opportunity to comment on the recommendations and to "provide any relevant additional explanation and support for the request in light of the PRB's recommendations." Through subsequent e-mail communication, the petitioner declined the opportunity for response to the

[1] Page 9 from the June 26, 2009, petition letter to the Executive Director of Operations states 20 "Violations Completely Concealed by the NRC."

recommendations of the PRB and to provide further information to support the petition request (Agencywide Documents Access and Management Systems (ADAMS) Accession Nos. ML092720460 and ML092720824).

As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. A copy of the petition and addenda can be located at ADAMS Accession Nos. ML092440721 and ML092650381 (respectively), and are available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Dated at Rockville, MD, this 19th day of November 2009.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28658 Filed 11–30–09; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

PBGC Flat Premium Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice regarding flat premium rates.

SUMMARY: This notice informs the public of the PBGC flat premium rates for premium payment years beginning in 2010 and announces that PBGC will no longer publish annual flat premium rate notices in the **Federal Register**. These rates can be derived from information published elsewhere and are published by PBGC on its Web site (*http://www.pbgc.gov*).

DATES: The flat premium rates announced in this notice apply to premium payment years beginning in 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, 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: Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates.

The Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA 2005) amended section 4006 of ERISA. DRA 2005 changed the per-participant flat premium rate for plan years beginning in 2006 from $19 to $30 for single-employer plans and from $2.60 to $8 for multiemployer plans and provided for inflation adjustments to the flat rates for future years. The adjustments are based on changes in the national average wage index as defined in section 209(k)(1) of the Social Security Act, with a two-year lag—for example, for 2010, the 2008 index is compared to the baseline (the 2004 index). The provisions were written in such a way that the premium rate can never go down; if the change in the national average wage index is negative, the premium rate remains the same as in the preceding year. Also, premium rates are rounded to the nearest whole dollar.

The baseline national average wage index, the 2004 index, was $35,648.55. The 2008 index is $41,334.97. The ratio of the 2008 index to the 2004 index is 1.1595134. Multiplying this ratio by $30.00 gives $34.79, which rounds to $35.00. Multiplying the ratio by $8.00 gives $9.28, which rounds to $9.00. Thus, the 2010 flat premium rates for PBGC's two insurance programs will be $35.00 per participant for single-employer plans and $9.00 per participant for multiemployer plans.

Before DRA 2005, PBGC flat premium rates remained constant for many years at a time. Since DRA 2005, PBGC has published annual notices (like this one) in the **Federal Register** to inform the public of the rates. PBGC also publishes the flat rates in its annual premium instructions on its Web site (*http://www.pbgc.gov;* click on "Practitioners," then on "Premium Instructions and Forms" under the heading "Premium Filings" in the center column). PBGC has concluded that since the flat rates are easily accessible to the public on its Web site, it is no longer necessary to publish annual flat premium rate notices in the **Federal Register.**

Issued in Washington, DC, on this *13th* day of November 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–28640 Filed 11–30–09; 8:45 am]

BILLING CODE 7709–01–P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 31

This document replaces and supersedes "Line of Succession Designation No. 1–A, Revision 30"

Line of Succession Designation No. 1–A, Revision 31

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998, to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief Operating Officer
(2) Chief of Staff
(3) General Counsel
(4) Associate Administrator for Disaster Assistance
(5) Regional Administrator for Region 1.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, "absence from the office," as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a) (1) through (5), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (5), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: November 23, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–28749 Filed 11–30–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11937]

North Carolina Disaster #NC–00021 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of North Carolina, dated 11/24/2009.

Incident: Landslide on Interstate 40.

Incident Period: 10/25/2009 and continuing.

DATES: *Effective Date:* 11/24/2009.

EIDL Loan Application Deadline Date: 08/24/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury 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: Haywood.

Contiguous Counties:

North Carolina: Buncombe, Henderson, Jackson, Madison, Swain, Transylvania.

Tennessee: Cocke, Sevier.

The Interest Rates are:

	Percent
Businesses and 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 economic injury is 119370.

The States which received an EIDL Declaration # are North Carolina, Tennessee.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: November 24, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–28645 Filed 11–30–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 13E–4F, OMB Control No. 3235–0375, SEC File No. 270–340.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 13E–4F (17 CFR 240.13e-102) may be used by an issuer that is incorporated or organized under the laws of Canada to make a cash tender or exchange offer for the issuer's own securities and less than 40 percent of the class of such issuer's securities outstanding that are the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Schedule 13E–4F and that the information is filed by approximately 3 respondents for a total annual reporting burden of 6 hours (2 hours per response × 3 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28682 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–7, OMB Control No. 3235–0383, SEC File No. 270–331.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–7 (17 CFR 239.37) that is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) used to register securities that are offered for cash upon the exercise of rights that are granted to a registrant's existing security holders to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–7 takes approximately 4 hours per response to

prepare and is filed by approximately 5 respondents. We estimate that 25% of 4 hours per response (one hour) is prepared by the company for a total annual reporting burden of 5 hours (one hour per response × 5 responses). The remaining 75% of the burden hours is attributed to outside cost.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28684 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–X, OMB Control No. 3235–0379, SEC File No. 270–336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or filing periodic reports on Form 40–F under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Form F–X and that the information is filed by approximately 161 respondents for a total annual reporting burden of 322 hours (2 hours per response × 161 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28686 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 14D–1F, OMB Control No. 3235–0376, SEC File No. 270–338.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Schedule 14D–1F (17 CFR 240.14d-102) may be used by any person making a cash tender or exchange offer for securities of any foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory and the foreign private issuer has less than 40% of the outstanding class securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in securities of Canadian issuers. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 18 respondents annually for a total reporting burden of 36 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28691 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 14f–1, OMB Control No. 3235–0108, SEC File No. 270–127.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 14f–1 (17 CFR 240.14f–1) requires a registrant to disclose a change in a majority of the directors of the registrant. The information filed under Rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 172 respondents for a total annual reporting burden of 3,096 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28690 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 13e–1, OMB Control No. 3235–0305, SEC File No. 270–255

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–1 (17 CFR 240.13e–1) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information require by the Rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. The information filed under Rule 13e–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by approximately 20 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 50 hours (2.5 hours per response x 20 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28689 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 12d1–3; OMB Control No. 3235–0109; SEC File No. 270–116]

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour per response to provide the information required under Rule 12d1–3 and that the information is filed by approximately 688 respondents for a total annual reporting burden of 344 hours (.5 hours per response x 688 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28688 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Industry Guides, OMB Control No. 3235–0069, SEC File No. 270–069.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Industry Guides are used by registrants in certain industries as disclosure guidelines to be followed in disclosing information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The Commission estimates for administrative purposes only that the total annual burden with respect to the Industry Guides is one hour. The Industry Guides do not directly impose any disclosure burden.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28687 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Form F–8; OMB Control No. 3235–0378; SEC File No. 270–332]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–8 takes approximately one hour per response to prepare and is filed by approximately 10 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of 3 hours (15 minutes/60 minutes per response x 10 responses = 2.5 hours rounded to 3 hours).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28685 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 18–K, OMB Control No. 3235–0120, SEC File No. 270–108.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments and political subdivisions that have securities listed on an U.S. securities exchange. The information to be collected is intended to ensure the

adequacy of information available to investors in the registration of securities and assures public availability. Form 18–K takes approximately 8 hours to prepare and is filed by approximately 143 respondents for a total annual reporting burden of 1,144 hours. We estimate that 100% of the total burden is prepared by the company.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28683 Filed 11–30–09; 8:45 am]

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, December 3, 2009 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 Casey, 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, December 3, 2009 will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; adjudicatory 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 25, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28813 Filed 11–27–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61059; File No. SR–FINRA–2009–059]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Appoving Proposed Rule Change To Adopt NASD Rules 2360 and 2361 Into the Consolidated Rulebook as FINRA Rules 2130 and 2270

November 24, 2009.

I. Introduction

On September 9, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 NASD Rule 2360 (Approval Procedures for Day-Trading Accounts) as FINRA Rule 2130 and to adopt NASD Rule 2361 (Day-Trading Risk Disclosure Statement) as FINRA Rule 2270 in the consolidated FINRA rulebook, with minor changes. The proposed rule change was published for comment in the Federal Register on October 8, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

As part of the process of developing a new consolidated rulebook (the "Consolidated FINRA Rulebook"),[4] FINRA proposed to adopt NASD Rules 2360 and 2361 as FINRA Rules 2130 and 2270. NASD Rules 2360 and 2361 focus on members' obligations to disclose to non-institutional customers[5] the basic risks of engaging in a "day-trading strategy" and to assess the appropriateness of day-trading strategies for such customers. The rules define a "day-trading strategy" as "an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities."[6] NASD Rule 2360 creates an obligation on members that promote a day-trading strategy regarding account-opening approval procedures for non-institutional customers. NASD Rule 2361 creates an obligation on such members to disclose to non-institutional customers the unique risks of engaging in a day-trading strategy.

Approval Procedures for Day-Trading Accounts

NASD Rule 2360 prohibits a member promoting a day-trading strategy from opening an account for a non-institutional customer unless, prior to opening the account, the member has furnished the customer with a risk disclosure statement (as described in NASD Rule 2361) and has either (1) approved the customer's account for a day-trading strategy and prepared a record setting forth the basis for the approval; or (2) obtained from the customer a written agreement stating that the customer does not intend to use the account to engage in a day-trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 60754 (Oct. 2, 2009), 74 FR 51886.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

[5] For purposes of these rules, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under NASD Rule 3110(c)(4). *See* NASD Rule 2360(f); NASD Rule 2361(d). FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). *See Regulatory Notice* 08–25 (May 2008).

[6] *See* NASD Rule 2360(e); NASD Rule 2361(c).

strategy. The rule further requires that, in order to approve a customer's account for a day-trading strategy, a member must have reasonable grounds to make a determination that a day-trading strategy is appropriate for the customer.[7]

The proposed rule change would transfer NASD Rule 2360 with the following minor changes into the Consolidated FINRA Rulebook as FINRA Rule 2130. First, the proposed rule change would add Supplementary Material to clarify the concept of "promoting a day-trading strategy," based on guidance provided in the 2000 FINRA *Notice* and the 2000 SEC Approval Order, as follows:

.01 Promoting a Day-Trading Strategy. (a) A member shall be deemed to be "promoting a day-trading strategy" if it affirmatively endorses a "day-trading strategy," as defined in paragraph (e) of this Rule, through advertising, its Web site, training seminars or direct outreach programs. For example, a member generally shall be deemed to be "promoting a day-trading strategy" if its advertisements address the benefits of day-trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A member also shall be deemed to be "promoting a day-trading strategy" if it promotes its day-trading services through a third party. Moreover, the fact that many of a member's customers are engaging in a day-trading strategy will be relevant in determining whether a member has promoted itself in this way.[8]

Second, the proposed rule change would add Supplementary Material, based on guidance provided in the 2000 SEC Approval Order and the 2000 FINRA *Notice*, to specifically provide that a member may submit advertising materials to FINRA's Advertising Department for review and guidance on whether the content of the advertisement constitutes "promoting a day-trading strategy," as follows:

.02 Review by FINRA's Advertising Department. A member may submit its advertisements to FINRA's Advertising Department for review and guidance on whether the content of the advertisement constitutes "promoting a day-trading strategy" for purposes of this Rule.

[7] In making such determination, the rule requires a member to exercise reasonable diligence to ascertain the essential facts relative to the customer, including investment objectives, investment and trading experience and knowledge, financial situation, tax status, employment status, marital status, number of dependents and age. *See* NASD Rule 2360(b).

[8] To enhance the readability of the rule, the proposed rule change would relocate paragraph (g) of Rule 2360 regarding those activities that would not constitute "promoting a day-trading strategy," as paragraph (b) of this new Supplementary Material .01.

Third, the proposed rule change would add Supplementary Material to alert members of additional FINRA rules specifically addressing day-trading, including the rule addressing the Disclosure Statement (further discussed below) and rules regarding margin requirements.[9]

Finally, the proposal would make minor changes to the rule to update cross-references and format.

Day-Trading Risk Disclosure Statement

NASD Rule 2361 requires members that promote a day-trading strategy to deliver to their non-institutional customers, prior to opening an account for such customers, a risk disclosure statement, as specified in paragraph (a) of the rule (the "Disclosure Statement").[10] In addition, members that promote a day-trading strategy must post the Disclosure Statement on their Web sites in a clear and conspicuous manner. The Disclosure Statement includes seven specific points, described in more detail in the statement itself, addressing the factors that a customer should consider before engaging in day-trading.

The proposed rule change would transfer NASD Rule 2361 with the following minor changes into the Consolidated FINRA Rulebook as FINRA Rule 2270.

First, the proposed rule change would slightly modify the rule's existing provisions regarding form of delivery of documents. Currently, the rule provides that the disclosure statements may be provided to individuals either "in writing or electronically." Because in some circumstances electronic documents may be considered a form of "writing," the proposal would amend the rule to clarify that the documents may be provided "in paper or electronic form."

Second, to comport with the proposed revisions to NASD Rule 2360, the proposed rule change would add a statement to FINRA Rule 2270 that the term "promoting a day-trading strategy" shall have the meaning as provided in FINRA Rule 2130.

Third, the proposed rule change would add Supplementary Materials similar to those proposed to be added to FINRA Rule 2130, as discussed above, to specifically provide that a member may submit advertising materials to FINRA's Advertising Department for review and guidance on whether the content of the advertisement constitutes "promoting a day-trading strategy" and to alert members of additional FINRA rules specifically addressing day-trading.[11]

Finally, the proposed rule change would make minor changes to the rule to update cross-references and format.

[9] *See* proposed Supplementary Material .03 to proposed FINRA Rule 2130.

[10] The rule provides that, in lieu of the disclosure statement specified in the rule, a member may use an alternative disclosure statement, provided that it is substantially similar to the specified disclosure statement and is approved by FINRA's Advertising Department prior to use. *See* NASD Rule 2361(b).

III. Discussion

Day-trading raises unique investor protection concerns. In general, day traders seek to profit from very small movements in the price of a security. Such a strategy often requires aggressive trading of a brokerage account and the use of strategies including margin trading and short selling. As a result, day-trading generally requires a significant amount of capital, a sophisticated understanding of securities markets and trading techniques, and a high tolerance for risk. Even experienced day traders with in-depth knowledge of the securities markets may suffer severe and unexpected financial losses.

Firms that are actively promoting a day-trading strategy should be responsible for assessing whether the strategy is appropriate for an individual who opens a day-trading account at that firm. These firms also should be required to disclose the risks of engaging in a day-trading strategy to an individual prior to opening an account for that individual. NASD Rules 2360 and 2361 were designed to assure that firms promoting a day-trading strategy check to make certain that day-trading is an appropriate investment strategy for a customer opening a day-trading account and that the customer is aware of its risks.

After careful review, the Commission finds that transferring NASD Rules 2360 and 2361, with the changes specified above, into the FINRA Consolidated Rulebook as FINRA Rules 2130 and 2270 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and

[11] *See* proposed Supplementary Material .01 and .02 to proposed FINRA Rule 2270.

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission believes requiring a member firm to disclose the risks of day-trading to non-institutional customers when the firm promotes a day-trading strategy should help alert individuals to the risks associated with a day-trading strategy. In addition, requiring a member firm to determine whether a day-trading strategy is appropriate for a customer should help to assure that individuals who are unable to bear the risks of day-trading, or who have investment objectives incompatible with day-trading, are not approved for day-trading.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–FINRA–2009–059) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28613 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61046; File No. SR–NYSE–2009–114]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Sample Broker Letters Set Forth In Rule 451

November 20, 2009.

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 16, 2009, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 of the Exchange's Listed Company Manual (the "Manual") to amend the forms of letters contained in those rules to reflect the recent amendments to the Exchange's broker voting rules.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary 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 NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended Exchange Rule 452 and Section 402.08 of the Manual to provide that brokers which are record holders of shares held in client accounts will no longer be permitted to vote those shares in the election of directors without instructions from the beneficial holder of those shares.[4] The amendments take effect for shareholder meetings held on or after January 1, 2010, except to the extent that a meeting was originally scheduled to be held prior to such effective date but was properly adjourned to a date on or after such effective date.[5]

Supplementary Material .20 to Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 contain specimens of letters containing the information and instructions required pursuant to the proxy rules to be given by NYSE member organizations to clients where the member organization is the record holder of shares beneficially owned by those clients in the circumstances where a broker (i) may vote on all proposals without voting instructions (Section 905.01), (ii) may not vote on any proposals without instructions (Section 905.02), and (ii) may vote on certain but not all proposals without instructions (Section 905.03). These letters are shown as examples and not as prescribed forms. Member organizations are permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients.

The Exchange is concerned that many shareholders receiving proxy materials from their brokers for meetings scheduled after January 1, 2010 will not be aware of the amendments to the NYSE's broker voting rules and may therefore assume that the broker as record holder will vote their shares on the election of directors if they do not return voting instructions to their broker. The NYSE believes it is important for as many shares as possible to be voted in the election of directors and, therefore, believes it is important to educate retail investors with respect to the implications of their failure to return voting instructions under the amended rules. Consequently, the Exchange proposes to amend the forms of letters provided for use in connection with meetings where the broker may vote on none of the proposals before the meeting and meetings where the broker may vote on some but not all of the proposals before the meeting. The proposed amendments will insert the following language in those forms for use in connection with meetings scheduled after January 1, 2010:

> Please note that, under a rule amendment adopted by the New York Stock Exchange for shareholder meetings held on or after January 1, 2010, brokers are no longer allowed to vote shares held in their clients' accounts on uncontested elections of directors unless the client has provided voting instructions (it will continue to be the case that brokers cannot vote their clients' shares in contested director elections). Consequently, if you want us to vote your shares on your behalf on the election of directors, you must provide voting instructions to us. Voting on matters presented at shareholders meetings, particularly the election of directors, is the primary method for shareholders to influence the direction taken by a publicly-traded

---

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 60215 (July 1, 2009) 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[5] The amendment does not affect brokers voting as record holders of shares of companies registered under the Investment Company Act of 1940.

company. We urge you to participate in the election by returning the enclosed voting instruction form to us with instructions as to how to vote your shares in this election.

The Exchange also proposes to amend Supplementary Material .20 to Rule 451 and Sections 905.01, 905.02 and 905.03 of the Manual to correct references in the text which indicate that the broker is sending a "proxy" to its clients. In actuality, these letters are intended for use in circumstances where the broker as record holder is seeking voting instructions from its clients as beneficial holders. The broker then provides a voting proxy to the company, voting according to client instructions to the extent applicable. As such, the broker sends a voting instruction form to its clients, rather than a proxy, and the Exchange is amending the rule text to accurately reflect this fact.

Currently, the letters for use when the broker may not vote on any proposals without instructions and may vote on certain but not all proposals without instructions state that if a client returns a signed voting instruction form without otherwise marking the form, the shares will be voted as recommended by the management on all matters to be considered at the meeting. Rule 14a–4(b)(1) under the Act provides that "a proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder provided that the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case." In light of this requirement that it be made very clear that the absence of instructions gives the broker discretion as to how the shares are voted, the Exchange proposes to amend the language of the applicable letters to emphasize this fact by clarifying that it is understood that, if the client signs without otherwise marking the form, this will be construed as instruction to vote the shares as recommended by the management on all matters to be considered at the meeting.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular in that it is designed 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 Exchange believes that the proposed amendments are consistent with the investor protection objectives of the Act in that their sole purpose is to explain to shareholders the implications of failing to provide voting instructions to their brokers, thereby enabling them to make a more informed decision with respect to the exercise of their voting rights.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–114 and should be submitted on or before December 22, 2009.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange has met this requirement.

[10] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28614 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61049; File No. SR–NYSEAmex–2009–82]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Rescinding NYSE Information Memoranda 04–27 and 07–66 and Issuing a New Information Memo Concerning the Exchange's Gap Quote Policy

November 23, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 9, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rescind NYSE Information Memoranda ("Information Memo") 04–27 and 07–66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Exchange's Gap Quote Policy (the "Policy"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to rescind NYSE Information Memos 04–27 and 07–66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Policy.[4]

The principal change to the Policy is a reduction in the minimum size (from at least 10,000 shares to at least 5,000) and value (from $200,000 or more to $100,000 or more) requirements for publishing a gap quote. In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote. Finally, the Exchange proposes adding language clarifying or reminding members of certain aspects of the Policy and other technical or non-substantive changes.

In order to ensure an orderly transition to usage of the new parameters, the Exchange proposes that these changes be made operative within ten business days after the approval of this filing.

Background

The purpose of the Policy, described in greater detail below, is to provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side of an imbalance.

An order imbalance may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest.

When an imbalance in a security exists, the Policy provides that the Designated Market Maker ("DMM") for the security should widen the spread between the bid and offer—a process known as "gapping the quote." The use of a gap quote signals the existence of the imbalance to the market in order to attract contra-side liquidity and mitigate volatility.

Gap quotes occur more frequently in securities that are illiquid or thinly traded than in securities that are very liquid or heavily traded.[5]

History

In 2004, the NYSE updated its policies and procedures for gapping the quote, which had previously been implemented in 1994.[6] The NYSE announced the updated policy through a new Information Memo 04–27 (June 9, 2004), which it also filed with the Commission.[7] In 2007, the NYSE changed the minimum size and value requirements for use of gap quotes to at least 10,000 shares or $200,000, and updated the policies and procedures to reflect technical changes to the market and NYSE systems.[8]

Effective October, 1, 2008, NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger").[9] In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, later renamed NYSE Amex LLC.[10] In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading to systems and facilities located at 11 Wall Street, New York, New York (the "NYSE Amex Equities Trading Systems"), which are operated by the NYSE on behalf of the Exchange.[11] The Exchange then adopted NYSE Rules 1–1004 and related interpretive guidance and policies, including NYSE Information Memos 04–27 and 07–66, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Equities Trading Systems.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange's corporate affiliate, New York Stock Exchange LLC ("NYSE"), has submitted an identical companion filing updating its Gap Quote Policy governing equities trading. *See* SR–NYSE–2009–112. The proposed new Information Memo will be jointly issued by both the Exchange and NYSE.

[5] Currently, it is not cost-effective for the Exchange to implement stock-specific gap quote procedures.

[6] *See* NYSE Information Memo 94–32 (August 9, 1994).

[7] *See* Securities Exchange Act Release No. 50237 (August 24, 2004), 69 FR 53123 (August 31, 2004) (SR–NYSE–2004–37) (concerning NYSE Information Memo 04–27).

[8] *See* NYSE Information Memo 07–66 (July 5, 2007). This Information Memo was not filed with the Commission.

[9] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger).

[10] 15 U.S.C. 78f.

[11] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation).

[12] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008)

Continued

The Current Policy

Under the current Policy, a gapped quotation consists of, on one side, a bid or offer for the amount representing the amount of the imbalance in the market priced at the price of the last sale, and, on the side of the market opposite the imbalance, an offer or bid for 100 shares, priced at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred as a result of the gapped quotation. The resulting quote is shown as either "100 x size" or "size x 100," depending on the side of the imbalance.[13]

To qualify for a gapped quotation, the size of the imbalance must be 10,000 shares or more, or have a market value of $200,000 or more. Depending on the trading characteristics of an individual stock, including its average daily trading volume and its average volatility, a gapped quotation may not be appropriate every time the stock crosses these thresholds, but rather may only become appropriate when the imbalance amount or value reaches some higher level that is more consistent with the stock's trading characteristics.

When a DMM has determined that a gapped quotation is appropriate, the DMM must follow these procedures:

- Prior to publishing the gapped quotation, the DMM must honor the displayed quotation on the side opposite the imbalance by executing a portion of the imbalance amount against the displayed amount at the bid (for sell imbalances) or offer (for buy imbalances). The DMM should complete all related Display Book reports and check the status of the order imbalance. Note that the requirement to honor the displayed bid or offer does not apply if the exposed quote results from a Liquidity Replenishment Point ("LRP") being reached through trading and the quote has a quote condition of non-firm.

Gap quotations are typically used after a security has reached a high or low LRP. In such instances, the trade that triggered the LRP will have hit the firm bid or taken the firm offer on the Display Book prior to the posting of a gap quote and the Display Book will issue the related execution reports.

- The DMM's pricing determination for the gapped quotation should take account of executable orders, e-Quotes and verbal interest in the Crowd at prices better than the price of the 100-share bid or offer. If the imbalance interest is limited as to price, the price on the 100-share side cannot exceed that limit price.
- The DMM must publish the gapped quotation, using the Gap Quote Template in the Display Book, as follows:
  - On the side of the imbalance, the bid or offer price, as appropriate, (which is generated by the Display Book) will be the price of the last sale. The DMM must input a size of at least 10,000 shares or a market value of at least $200,000 and record the badge number of the Floor broker representing the imbalance. If a number of brokers' interest makes up the imbalance, the badge number of the broker with the most significant interest should be used. If the imbalance is caused by an influx of system orders, the DMM must record "1" as the badge number.
  - On the side opposite the imbalance, the DMM must show the possible extent of price impact in the bid or offer price by bidding or offering for 100 shares (one round lot) at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred as a result of the gapped quotation.

Following publication, the DMM must immediately contact a senior-level Floor Official (*i.e.*, Executive Floor Governor, Floor Governor, Executive Floor Official or Senior Floor Official). The required Floor Official Approval Form documenting the consultation must be completed within a reasonable period of time after the intraday imbalance has been resolved.

- Following the publication of the gapped quote, the DMM should, where feasible or necessary due to conditions in the security or in the market, attempt to contact known contra-side parties to solicit participation to offset the imbalance. Brokers are expected to monitor conditions in securities where have interest or potential interest and should not rely on the DMM to contact them to advise of intraday order imbalances.
- During the term of the gapped quotation, the DMM must continue to permit the entry and cancellation of orders in the Display Book and not implicitly freeze the Book.

The gapped quotation is required to remain in place for a reasonable amount of time to permit interested parties to respond to the order imbalance. What constitutes a "reasonable time" is determined by the unique circumstances of each gapped quotation situation, but as a general guideline, gapped quotations are in place for at least 30 seconds unless offsetting interest is received earlier and generally should not last more than two minutes. As soon as the DMM receives offsetting interest that permits a trade within the stock's normal trading characteristics, the DMM must trade out of the gap quote to return to a fast market.

Role of the Senior-Level Floor Official

As noted above, DMMs must consult with a senior-level Floor Official in connection with a gapped quotation. The senior-level Floor Official is responsible for monitoring the gapped quotation. As a result of this consultation, the senior-level Floor Official may determine that a gapped quotation is no longer necessary because the DMM can execute the orders immediately without undue price dislocation, or may determine to maintain the gap quote but for no more than two minutes, or may determine to halt trading in the stock due to the size and extent of the imbalance. If the senior-level Floor Official determines that the stock should be halted, he or she must declare a non-regulatory order imbalance halt in trading to address the imbalance rather than continue the gapped quotation.

Display Book Support for Gapping the Quote

The Gap Quote Template in the Display Book facilitates the DMM's compliance with the Policy. When using the Gap Quote Template, the DMM or DMM trading assistant must enter the correct size or dollar value (*i.e.*, 10,000 shares or more, or a value of $200,000 or more), as well as the badge number of the Floor broker who is most responsible for the imbalance if that information is known to the DMM. If the imbalance is the result of order flow through the System, the DMM or trading assistant must enter the number '1' in the badge number field. If the user fails to comply with either of those requirements, the Display Book prompts the user for the necessary information.

(SR–Amex–2008–63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) *and* Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[13] The current version of the Policy contained in NYSE Information Memo 07–66 refers to "specialists" and "specialist member organizations." In accordance with the Merger and the Exchange's adoption of the NYSE Amex Equities Trading Systems, the Exchange refers herein to "DMMs" and "DMM Units." *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62).

Prohibited Use of the Gap Quote Template

The Gap Quote Template is to be used only when the DMM is gapping the quote in conformity with the Policy. Use of the Gap Quote Template for other purposes, such as to make the market slow to clean up a cross trade, or to manage trading immediately following the Opening or in advance of the Closing trade, is inappropriate. Misuse of the Gap Quote Template may result in violations of the limit order display rule and/or the firm quote rule, and as such may subject the DMM and/or the DMM Unit to disciplinary action by the Exchange. In addition, DMM Units are required to have adequate policies and procedures in place to ensure appropriate use of the Gap Quote Template.

Proposed Changes

1. Reduced Minimum Size and Value Requirements

As noted above, the principal change to the Policy proposed by the Exchange is reduction of the minimum size and value requirements.

The Exchange proposes to reduce the minimum size and value requirements for the use of a gap quote under the Policy to at least 5,000 shares or a market value of $100,000 or more. The Exchange believes that these lower thresholds better reflect current market conditions, which have changed significantly since the NYSE last issued guidance on the Policy in 2007. The Exchange believes that the current parameters are generally too high in light of current market conditions, where the average size of trades is smaller and average stock prices are lower. As a result the current parameters inhibit DMMs from using gap quotes to facilitate price discovery and minimize short-term price dislocation to the degree warranted by the market for particular securities. Based on an analysis of historical market conditions, the Exchange believes that lowering the gap quote size and value requirements will increase the use of gap quotes in line with current market conditions, providing greater transparency and efficiency and reducing volatility. The Exchange does not believe, however, that lowering these requirements will cause an increase in the use of gap quotes to such a degree that would negatively impact the quality of the Exchange market.

In addition, the Exchange proposes to add language clarifying that, notwithstanding meeting the minimum size and value requirements, an imbalance must also be anticipated to cause a significant price dislocation in the stock at issue in order to qualify under the Policy. The Exchange believes it is important to emphasize that whether a gap quote is appropriate depends on the characteristics of a security as much as on the minimum requirements.

2. Setting the Price of the Gap Quote

In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote.

Currently, DMMs are instructed to set the price of a gap quote "at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred[.]" The Exchange proposes to clarify this guidance to provide that the DMM should publish the gap quote at the price where the DMM "reasonably anticipates" the stock would trade if no contra side interest developed or no cancellations occurred.

The Exchange also proposes to clarify that the Policy still requires a DMM to take into account, "to the extent known," executable orders, e-Quotes and verbal interest in the Crowd (on the side of the market opposite the imbalance) at prices better than the price of the 100-share bid or offer when making his or her pricing determination. If the imbalance is known to be limited as to price, the DMM should not set the gap quote higher than that limit price.

The Exchange also proposes adding a provision reminding the DMMs that, at the time they publish a gap quote, they should set the price of the gap quote such that it would likely result in a trade of at least the minimum size of 5,000 shares or $100,000 in value.

3. Other Technical or Non-Substantive Changes

The Exchange also proposes additional technical or non-substantive changes:

- The Exchange proposes to change the requirement that the DMM honor the "displayed" quote on the opposite side of the imbalance before publishing the gap quote to a requirement that the DMM honor the "protected" quote, consistent with the terminology of Regulation NMS. The Exchange believes that, given its new minimum and non-displayed liquidity options, use of the word "displayed" could be misleading.[14]
- The Exchange proposes to update the Policy to reflect that Display Book now automatically completes certain reports that were, in the past, manually completed by DMMs.
- The Exchange proposes to add language reminding members and member organizations that only the badge number of the relevant Floor broker or brokers—and not Floor Officials—should be entered into the Gap Quote Template in accordance with the Policy.
- The Exchange proposes to add Staff Governors to the list of qualifying senior-level Floor Officials who may oversee a gap quote publication.[15] In addition, to provide the DMM with greater flexibility, the Exchange proposes to change the guidance for contacting senior-level Floor Officials from "immediately" following publication of the gap quote to "as soon as possible."
- The Exchange proposes to add language clarifying that, while the DMM should attempt to obtain price discovery using appropriate Display Book tools, he or she should not leave any Display Book templates open for an extended duration of time so as not to implicitly freeze the Book and shut out interest. DMMs must balance the need for accurate price discovery with that of trying to attract contra side interest and trade out of the gap quote as soon as possible. The DMM should also, in consultation with a senior-level Floor Official, consider updating the initial gap quote if necessary to attract sufficient contra side interest.
- The Exchange proposes to add language reminding members and member organizations that the gap quote procedures may not be initiated after trading has closed. Instead, where there

[14] A Minimum Display Order requires a portion of the shares in the order to be displayed when the interest is at or becomes the Exchange Best Bid or Offer ("Exchange BBO") and, upon execution, this amount is replenished at that price point until the entire order is either filled or canceled. Minimum Display Orders are eligible to participate in both electronic and manual transactions, such as gap quote situations.

A Non-Displayed Reserve Order does not require the display of any portion of the order. Non-Displayed Reserve Orders entered by Off-Floor participants are not included in the published quote and are not eligible for participation in manual transactions. Non-Displayed Orders entered by Floor brokers, however, are eligible to participate in manual transactions and will be displayed to the DMM in such circumstances unless the Floor broker designates the order as "Do Not Display." DMM Non-Displayed Reserve interest is eligible to participate in manual transactions since there is no anonymity to protect in that instance.

For more information concerning these order types, *see* NYSE Information Memo 08–57 (November 14, 2008).

[15] "Staff Governors" are designated pursuant to NYSE Amex Equities Rule 46(b)(v), which permits the Exchange Chairman to "designate such number of qualified NYSE Euronext employees" as needed, who shall be permitted to take any action assigned to or required of a Floor Governor as prescribed under Exchange rules.

is a significant imbalance in a security at the close of trading, members and member organizations should use the other procedures provided under Exchange rules when attempting to mitigate the imbalance. *See, e.g.*, NYSE Amex Equities Rule 123C(8).

• The Exchange proposes to add a summary of the options available to a DMM when publishing a gap quote to include: (1) Trading out of the gap quote by executing contra side interest against the imbalance (allowing for any cancellations); (2) updating the gap quote in consultation with a senior-level Floor Official; or (3) in consultation with a senior-level Floor Official, requesting an order imbalance trading halt in the security at issue.

• In view of the current market conditions and the lower minimum size and value requirements, the Exchange proposes to amend the original example it included in the Policy (in NYSE Information Memo 07–66) to reflect the changed parameters and to add a second example to clarify how the Policy works when an LRP is reached as opposed to when it is implemented following an influx of orders from the Floor.

• The Exchange proposes to substitute new screenshots of the Gap Quote Template reflecting the changed parameters.

• Finally, because DMMs no longer act as agent for orders on the Display Book, the Exchange proposes to clarify that a failure to follow the Policy by a DMM would not lead to violations of the Order Display rule and/or the Firm Quote rule under Regulation NMS, but could rather result in a failure to maintain a fair and orderly market or a failure to observe high standards of commercial honor and just and equitable principles of trade under NYSE Amex Equities Rules 104(a), 104(f) and 2010.[16]

The Exchange also proposes other non-substantive wording changes.

The Exchange represents that it has reasonable policies and procedures to surveil the use of gap quotes and to detect the potential misuse of gap quotes in violation of Exchange rules and Federal securities laws.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,[17] in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)[18] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed updates to its Gap Quote Policy will better reflect current market conditions and improve transparency in situations where gapped quotations are used. The Exchange believes these changes will result in greater efficiency and less volatility, and a better functioning market for all participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–82 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–2009–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference Room, 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–NYSEAmex–2009–82 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28616 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

[16] The role of DMMs and their obligations on the NYSE Amex Equities Trading Systems are described in Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61057; File No. SR–FINRA–2009–075]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Postponement Fee and Hearing Session Fee Rules of the Code of Arbitration Procedure for Customer and Industry Disputes

November 24, 2009.

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 4, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA Dispute Resolution is proposing to amend Rules 12601(b) and 12902(a) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rules 13601(b) and 13902(a) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to clarify the applicability of the fee waiver provision of the postponement rule and to codify the hearing session fee for an unspecified damages claim heard by one arbitrator.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend the rules of the Customer Code and the Industry Code (collectively, the "Codes") that address the fee waiver provision of the postponement rule and the hearing session fee for one arbitrator in an unspecified damages claim. First, FINRA is proposing to amend Rules 12601(b)(3) and 13601(b)(3) of the Codes, hereinafter referred to as the fee waiver provision of the postponement rule, to clarify that the late postponement fee will not be waived if parties request a postponement within three business days before the scheduled hearing session. Second, the proposal would amend Rules 12902(a)(1) and 13902(a)(1) of the Codes to codify FINRA's current practice of charging $450 per hearing session for an unspecified damages claim heard by one arbitrator. Each proposal is discussed separately below.[3]

Amendment to Fee Waiver Provision of Postponement Rule

The Codes require arbitration hearings to be postponed if the parties agree.[4] Hearings may also be postponed by the Director of FINRA Dispute Resolution ("Director"), by the panel in its own discretion, or by the panel on a motion of a party.[5] If a hearing is postponed, the arbitration panel will assess a postponement fee against one or more of the parties, which is typically equivalent to the applicable hearing session fee that would have been assessed had the hearing been held.[6]

There are instances, however, in which a postponement fee is not assessed against the parties. Under Rule 12601(b)(3) of the Customer Code, for example, staff will not charge parties a postponement fee if they agree to submit the matter to mediation at FINRA.[7] Thus, if the parties agree to mediation administered through FINRA, the Director will waive the postponement fee. This provision does not apply to late postponement fees.

Nevertheless, FINRA has received complaints from arbitrators that parties are using the fee waiver provision in connection with an agreement to mediate through FINRA to avoid paying a late postponement fee. If parties request and are granted a hearing postponement within three business days of a scheduled hearing session (*i.e.*, a late postponement request), the Director will assess a postponement fee of $100 per arbitrator.[8] Parties who make this late postponement request contend that, if they agree to mediate their dispute through FINRA, they should not be assessed the $100 late postponement fee, because Rule 12601(b)(3) waives the postponement fee if the parties agree to mediate through FINRA.

FINRA did not intend Rule 12601(b)(3) to be applied this way.[9] Parties who make late postponement requests should be charged the $100 late postponement fee, regardless of their intent to mediate through FINRA. FINRA is therefore proposing to amend Rule 12601(b)(3) to state that no postponement fee will be charged if a hearing is postponed because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) for late postponement requests.[10]

FINRA believes the proposed amendment will ensure that arbitrators continue to receive some compensation in the event a scheduled hearing is postponed because of a late postponement request, and will continue to serve as an incentive to parties to settle their disputes earlier to avoid additional fees.

Amendment to the Hearing Session Fee for One Arbitrator in Unspecified Damages Claim

In FINRA's arbitration forum, if the parties and the arbitrator(s) meet to discuss the issues giving rise to the arbitration dispute, the meeting is called a "hearing session."[11] The Customer Code authorizes FINRA to assess hearing session fees against the parties for each hearing session.[12] The total

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] To simplify the explanation, the discussion will focus on the proposed amendments to the Customer Code. However, the explanation and rationale apply to the same rules of the Industry Code, which, in this case, are identical to the rules of the Customer Code.

[4] *See* Rules 12601(a)(1) and 13601(a)(1).

[5] *See* Rules 12601(a)(2) and 13601(a)(2).

[6] *See* Rules 12601(b)(1) and 13601(b)(1).

[7] *See also* Rule 13601(b)(3) of the Industry Code.

[8] *See* Rules 12601(b)(2) and 13601(b)(2).

[9] *See supra* note 6.

[10] The proposal would amend Rule 13601(b)(3) of the Industry Code with the same proposed language.

[11] A hearing session can either be an arbitration hearing or a prehearing conference. Rule 12100(n) of the Customer Code and Rule 13100(n) of the Industry Code.

[12] *See* Rule 12902(a)(1). *See also* Rule 13902(a)(1) of the Industry Code.

amount charged to the parties for each hearing session is based on the amount in dispute.[13] For claims that do not request or specify money damages (*i.e.*, an unspecified damages claim), however, Rule 12902(a)(2) gives the Director the discretion to determine the amount of the hearing session fee, except that the fee cannot exceed $1,200.[14]

Currently, under the Customer Code, the hearing session fee charged for each hearing session in an unspecified damages claim heard by three arbitrators is $1,000.[15] However, for an unspecified damages claim heard by one arbitrator, the rules list the hearing session fee as not applicable ("N/A").[16] Thus, FINRA is proposing to amend Rule 12902(a)(1) to change the current amount for an unspecified damages claim heard by one arbitrator from "N/A" to $450.[17]

FINRA's current practice is to charge parties $450 per hearing session for an unspecified damages claim heard by one arbitrator, even though the Code gives the Director the discretion to determine the amount of the hearing session fee for an unspecified damages claim. The Director charges this amount currently because it is the same amount assessed for hearing sessions heard by one arbitrator in which parties request damages ranging from $10,000.01 to over $500,000, and thus provides case administration with a uniform fee structure that is easy to apply. So, for example, under current practice and the proposed rule, if the parties agree to a single arbitrator in a case involving unspecified damages,[18] the Director would assess the $450 hearing session fee.[19] FINRA believes the proposal would benefit parties by notifying them of the potential costs at the outset of an unspecified damages case heard by one arbitrator, thereby providing more transparency in FINRA's fee structure. The proposal would also ensure consistent assessment of fees in its arbitration forum and would enhance the efficiency of the forum by making the rules easier to apply and understand.

Moreover, FINRA believes that codifying its current practice of charging $450 per hearing session for an unspecified damages claim heard by one arbitrator would not represent an increase in customer fees, because the proposed single arbitrator fee is the same as the current fee for any specific claim over $10,000. Further, FINRA notes that, even though the proposal would codify a fee for an unspecified damages claim heard by one arbitrator, the Code would continue to authorize the Director to determine whether the hearing session fee for an unspecified damages claim should be more or less than the amount specified in the fee schedule of the rule.[20] Thus, the proposal would not change FINRA's practice of reducing or waiving its fees in documented cases of financial hardship.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will preserve fairness in the arbitration process by ensuring that arbitrators receive some compensation in the event that a scheduled hearing session is postponed as a result of a late postponement request, and will enhance the efficiency of the forum by making the rules easier to apply and understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference Room. 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 the File Number SR–FINRA–2009–075 and

[13] *Id.*

[14] *See also* Rule 13902(a)(2) of the Industry Code.

[15] For hearing sessions involving three arbitrators in which parties request damages ranging from $25,000.01 to over $500,000, the amount for each hearing session can range from $600 to $1200. *See supra* note 11.

[16] *Id.*

[17] The proposal would amend Rule 13902(a)(1) of the Industry Code with the same proposed language.

[18] *See* Rule 12401(c) of the Customer Code and Rule 13401(c) of the Industry Code.

[19] The proposed hearing session fee would also apply, for example, if the chairperson conducts a prehearing conference in a claim for unspecified damages.

[20] *See* Rules 12902(a)(2) and 13902(a)(2).

[21] 15 U.S.C. 78*o*–3(b)(6).

should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28618 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61052; File No. SR–FINRA–2009–066]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Adopt FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials) in the Consolidated FINRA Rulebook

November 23, 2009.

On October 2, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to adopt without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD IM–2260 (Approved Rates of Reimbursement) in the consolidated FINRA rulebook.[3] The proposed rule change would combine NASD Rule 2260 and NASD IM–2260 into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook. Notice of the proposal was published for comment in the **Federal Register** on October 22, 2009.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

NASD Rule 2260 sets forth certain requirements with respect to the transmission of proxy materials and other communications to beneficial owners of securities and the limited circumstances in which members are permitted to vote proxies without instructions from those beneficial owners. NASD IM–2260 regulates the reimbursement that members are entitled to receive in connection with forwarding proxy materials and other communications.

FINRA proposes to combine the two rules, without material change, into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook.[5] FINRA proposed making clarifying changes and other changes primarily to reflect the new formatting and terminology conventions of the consolidated FINRA rulebook.[6] In addition, the proposed rule change would add language where appropriate to remind members that they are obligated to comply both with the FINRA rule and applicable Commission rules and/or guidance. With respect to NASD Rule 2260(c)(2)'s provisions allowing a member to give a proxy to vote any stock pursuant to the rules of "any national securities exchange to which the member is also responsible," proposed FINRA Rule 2251 would clarify that a "member may give a proxy to vote any stock pursuant to the rules of any national securities exchange of which it is a member. * * *"

FINRA stated that it will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials, as well as applicable rates of reimbursement. The Commission notes that the consolidation of these rules does not result in any substantive changes to the existing requirements.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–FINRA–2009–066) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28679 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61061; File No. SR–NYSEArca–2009–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Partial Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, Expanding the Penny Pilot Program

November 24, 2009.

I. Introduction

On May 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its options trading rule to extend through December 31, 2010

---

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Securities Exchange Act Release No. 60824 (Oct. 14, 2009), 74 FR 54610.

[5] NASD IM–2260 would be redesignated as Supplementary Material within proposed FINRA Rule 2251.

[6] For example, the language in NASD Rule 2260(a) stating that a member "has an inherent duty" to forward materials would be revised to state that a member "shall" forward such materials. Further, the proposed rule change would move the footnoted provisions defining the terms "ERISA" and "State" to the rule text, and the footnoted provision regarding verification of investment advisers would be redesignated as Supplementary Material. The proposed rule change would also add internal cross-references within the rule.

[7] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and expand a program to quote certain options in smaller increments ("Pilot Program" or "Pilot"). The proposed rule change was published for comment in the **Federal Register** on May 27, 2009.[3] The Commission received nine comments letters in response to the initial notice of this proposal.[4] On August 19, 2009 and September 22, 2009, the Exchange filed Amendment Nos. 1 and 3, respectively.[5] Among other things, in Amendment No. 3, the Exchange consented to a bifurcation of the filing such that the portion of the proposed rule change proposing to quote all series of IWM (iShares Russell 2000 Index Fund) and SPY (SPDR S&P 500 ETF) in pennies would be subject to further notice and comment prior to Commission action. On September 23, 2009, the Commission solicited further comment on the proposed rule change, as modified by Amendment Nos. 1 and 3, and simultaneously granted partial approval to the proposed rule change, as modified by Amendment Nos. 1 and 3, on an accelerated basis.[6] The Commission specifically requested comment on NYSE Arca's proposal to quote all option series of IWM and SPY in pennies. The Commission received two additional comment letters in response to this further request for comments.[7] On October 30, 2009, the Exchange filed Amendment No. 4 to the proposed rule change.[8] This Order approves the balance of the proposed rule change, as modified by Amendment No. 4.[9]

II. Description of the Proposal

Currently, all seven options exchanges participate in the Pilot Program, which is scheduled to expire on December 31, 2010. The minimum variation for all classes included in the Pilot, except for QQQQ,[10] is $0.01 for all quotations in option series that are quoted at less than $3.00 per contract, and $0.05 for all quotations in option series that are quoted at $3.00 or greater. Thus, the current minimum increment for bids and offers in SPY and IWM is $0.01 for all options series below $3.00 and $0.05 for all options series $3.00 and above. The Exchange proposes to designate all options series of SPY and IWM as eligible to quote and trade in $0.01 increments, regardless of premium value, similar to QQQQ.

III. Discussion and Findings

After careful review of the proposed rule change, Amendment Nos. 1, 3, and 4, the comment letters,[11] and the NYSE Arca Response,[12] the Commission finds that the portion of the proposal to quote IWM and SPY entirely in one-cent increments is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[14]

In response to the initial notice of this proposal,[15] the Commission received several comment letters with respect to the portion of the proposal that would allow quoting of all series of options on IWM and SPY in one-cent increments.[16] In response to the additional request for comment, the Commission received two comment letters.[17]

Two commenters do not support this aspect of NYSE Arca's proposal and question NYSE Arca's basis for the proposal.[18] In particular, one commenter does not find persuasive NYSE Arca's rationale that because IWM and SPY have more series trading at premiums between $3.00 and $10.00, the $3.00 breakpoint should be eliminated, noting that only 11% of IWM's national average daily volume and 18% of SPY's national average daily volume is in series with premiums greater than $3.00.[19] In its second comment letter, this commenter stated its belief that the potential benefit to retail investors of eliminating the $3.00 breakpoint in these classes is small and does not outweigh the costs of the proposed change.[20] Specifically, the commenter estimates that eliminating the $3.00 breakpoint in IWM and SPY would result in a 128% increase in quote message traffic. In addition, the commenter believes that investors are already receiving the benefits of penny quoting in these two classes because the majority of volume and trades in these two classes occurs in series that are already quoting in $0.01 increment.[21] Finally, this commenter notes that they have not observed pressure on the minimum increment in SPY and IWM in series priced at $3.00 and above.[22]

One commenter supports NYSE Arca's proposal to eliminate a breakpoint for options on these two exchange-traded funds, as a way to expand the benefits of penny quoting to more options.[23] In its second comment letter, this commenter reiterates its

---

[3] See Securities Exchange Act Release No. 59944 (May 20, 2009), 74 FR 25294 (May 27, 2009) ("Notice").

[4] See letter from Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company, dated June 10, 2009 ("GETCO Letter 1"); letter from Edward J. Joyce, President and COO, Chicago Board Options Exchange, dated June 12, 2009 ("CBOE Letter 1"); letter from Thomas Wittman, Vice President, The NASDAQ OMX Group, Inc., dated June 12, 2009 ("Nasdaq Letter"); letter from Christopher Nagy, Managing Director Order Routing Strategy, TD Ameritrade, Inc., dated June 17, 2009 ("Ameritrade Letter"); letter from Thomas F. Price, Managing Director, Securities Industry and Financial Markets Association, dated June 17, 2009 ("SIFMA Letter"); letter from Anthony J. Saliba, CEO, LiquidPoint LLC, dated June 17, 2009 ("LiquidPoint Letter"); letter from Michael J. Simon, Secretary, International Securities Exchange, LLC, dated June 23, 2009 ("ISE Letter"); letter from John Ingrill, Gerard Satur, Karen Wendell, Managing Directors, UBS Securities LLC, dated June 30, 2009 ("UBS Letter"); and letter from Jerome Johnson, Vice President, Market Development, BATS Exchange, Inc., dated August 28, 2009 ("BATS Letter"). See Notice, *supra* note 3.

[5] On September 22, 2009, the Exchange filed Amendment No. 2 to the proposed rule change, which it withdrew on September 22, 2009.

[6] See Securities Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (order granting partial approval of SR–NYSEArca–2009–44, ("Order")).

[7] See letter from John A. McCarthy, General Counsel, Global Electronic Trading Company, to Elizabeth M. Murphy, Secretary, Commission, dated October 19, 2009 ("GETCO Letter 2") and letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, to Elizabeth M. Murphy, Secretary, Commission, dated October 15, 2009 ("CBOE Letter 2").

[8] In Amendment No. 4, the Exchange proposes to move the start date for quoting all options on IWM and SPY in one-cent increments to February 1, 2010, to correspond with the second phase-in date for additional classes in the Pilot. The Commission believes that Amendment No. 4 is technical in nature and therefore not subject to separate notice and comment.

[9] The Exchange has granted the Commission an extension of time to act, until November 30, 2009.

[10] Options on QQQQ are quoted in $0.01 increments for all series.

[11] See *supra* notes 4 and 7.

[12] See letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Arca, to Elizabeth M. Murphy, Secretary, Commission, dated August 18, 2009.

[13] 15 U.S.C. 78f(b)(5).

[14] In approving the 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).

[15] See Notice, *supra* note 3.

[16] See CBOE Letter 1, GETCO Letter 1, and SIFMA Letter, *supra* note 4.

[17] See GETCO Letter 2 and CBOE Letter 2, *supra* note 7.

[18] See CBOE Letter 1, *supra* note 4, at 2–3, and SIFMA Letter, *supra* note 4, at 5.

[19] See CBOE Letter 1, *supra* note 4, at 3. This commenter further noted that the average spread width in series with a premium $3.00 or greater is $0.27 for SPY and $0.25 for IWM. *Id.*

[20] See CBOE Letter 2, *supra* note 7, at 1.

[21] See *id.* at 2.

[22] See *id.* at 2.

[23] See GETCO Letter 1, *supra* note 4, at 2–3.

strong support of NYSE Arca's proposal.[24] This commenter believes that all option series of SPY and IWM are well suited to quoting in penny increments and provides data supporting the elimination of breakpoints with respect to SPY and IWM. Specifically, the commenter compared effective spreads in options on IWM, SPY, and QQQQ and found that the size of the effective spreads for options on IWM and SPY increased markedly at the $3.00 breakpoint, as compared to options on QQQQ. This commenter also compared effective spreads for options on IWM, SPY, and QQQQ when quoted in one-cent increments with effective spreads for SPY and IWM when quoted in five-cent increments. The results show that the size of the quoting increment appears to be a significant determinant of the width of the effective spreads.[25]

The Commission believes that NYSE Arca's proposal is consistent with the Act because allowing market participants to quote in smaller increments has been shown to reduce spreads, thereby lowering costs to investors. The reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in options included in the Pilot.[26] Permitting all series in options on IWM and SPY to be quoted in smaller increments will provide the opportunity for reduced spreads for a significant amount of trading volume.[27] The Commission believes that the proposed rule change, which will allow quoting in one-cent increments for all series in options on IWM and SPY, is designed to allow the continuing narrowing of spreads.[28]

Further, although the Pilot has contributed to the increase in quote message traffic, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission has not received any reports of disruptions in the dissemination of pricing information. As noted in the Order, although the Commission anticipates that NYSE Arca's proposal, including that portion proposing to quote and trade all series of options on SPY and IWM, will contribute to further increases in quotation message traffic, the Commission believes that NYSE Arca's proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of information.

The Commission believes that eliminating the $3.00 breakpoint in options on IWM and SPY will result in additional meaningful data from which to analyze the impact of quoting and trading entirely in one-cent increments. Currently, only one class, the QQQQ, quotes and trades all series in one-cent increments. The Commission believes that allowing two additional classes to quote and trade all series in pennies may provide valuable information, useful to future analysis of the Penny Pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2009–44 and should be submitted on or before December 22, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2009–44) as modified by Amendment No. 4, be, and hereby is, partially approved, as discussed above.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28680 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* GETCO Letter 2, *supra* note 7, at 1–2.

[25] *Id.* at 3–4.

[26] *See* Memorandum from J. Daniel Aromi, Office of Economic Analysis ("OEA"), to Heather Seidel, Assistant Director, Division of Trading and Markets, Commission, dated July 24, 2009.

[27] OEA staff estimated that for a four month period earlier this year, approximately 40.9 million contracts for SPY and approximately 4.5 million contracts for IWM traded at premia of $3.00 or greater, as compared to approximately 2.7 million contracts for QQQQ that traded at premia of $3.00 or greater. *See* Memorandum from J. Daniel Aromi, OEA, to Heather Seidel, Assistant Director, Division of Trading and Markets, Commission, dated August 14, 2009 (measuring from February 2, 2009 to May 27, 2009). These numbers represent approximately 29% of contract volume for SPY and 18% of contract volume for IWM. The Commission specifically requested comment on these findings. *See* Order, *supra* note 6.

[28] One commenter stated that "full access to penny increments provides investors with more flexibility to compete and determine the natural spread for each security independently." This commenter further stated that "penny pricing gives market participants the flexibility to trade with spreads at six or eleven cents wide, as much as it facilitates trading in one or two cent spreads." This commenter explained that even if spreads in a Pilot class increase, quoting in pennies mitigates the increase. For example, the commenter noted that CBOE's March Report showed that for the period August 1, 2008 through January 31, 2009, the average spread in OIH options increased from $0.13 to $0.19. The commenter pointed out that if this class were not quoting in pennies, the $0.06 increase in the spread could have been a $0.10 increase. *See* BATS Letter, *supra* note 4, at 1–2.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61065; File No. SR–BX–2009–076]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Effective Date of the Rule Governing the Exchange's Directed Order Process on the Boston Options Exchange

November 25, 2009.

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 24, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effective date of the amended rule governing the Exchange's Directed Order process on the Boston Options Exchange ("BOX") from November 30, 2009 to February 26, 2010. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx,cchwallstreet.com/NASDAQOMXBX/Filings/*.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 14, 2006, the Exchange proposed an amendment to the BOX Rules governing the Directed Order[5] process on BOX.[6] The Rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant ("EP") the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, ("Pilot Program") while the Securities and Exchange Commission ("Commission") considered a corresponding Exchange proposal[7] to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 20, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on BOX from June 30, 2006 to September 30, 2006,[8] while the Commission continued to consider the corresponding Exchange proposal.

On September 11, 2006, January 16, 2007, July 2, 2007, January 18, 2008, January 26, 2009 and May 21, 2009 the Exchange proposed extending the effective date of the amended rule governing the Directed Order process on BOX from September 30, 2006 until January 31, 2007,[9] from January 31, 2007 until July 31, 2007,[10] from July 31, 2007 until January 31, 2008,[11] from January 31, 2008 until January 31, 2009,[12] from January 31, 2009 until May 29, 2009,[13] and from May 29, 2009 until November 30, 2009,[14] respectively, while the Commission considered the corresponding Exchange proposal to amend the BOX Rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

This filing from the Exchange again proposes extending the effective date of the amended rule governing its Directed Order process on BOX, from November 30, 2009 to February 26, 2010.[15] In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend the BOX Rules before February 26, 2010, the amended rule governing the Directed Order process on the BOX will cease to be effective at the time of that decision.

2. Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from November 30, 2009 to February 26, 2010. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend the BOX rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[16] in general, and Section 6(b)(5) of the Act,[17] in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[6] *See* Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR–BSE–2006–14).

[7] *See* Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR–BSE–2005–52).

[8] *See* Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR–BSE–2006–29).

[9] *See* Securities Exchange Act Release No. 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR–BSE–2006–38).

[10] *See* Securities Exchange Act Release No. 55139 (January 19, 2007), 72 FR 3448 (January 25, 2007) (SR–BSE–2007–01).

[11] *See* Securities Exchange Act Release No. 56014 (July 5, 2007), 72 FR 38104 (July 12, 2007) (SR–BSE–2007–31).

[12] *See* Securities Exchange Act Release No. 57195 (January 24, 2008), 73 FR 5610 (January 30, 2008) (SR–BSE–2008–04).

[13] *See* Securities Exchange Act Release No. 59311 (January 28, 2009), 74 FR 6071 (February 4, 2009) (SR–BX–2009–007).

[14] *See* Securities Exchange Act Release No. 59983 (May 27, 2009), 74 FR 26445 (June 2, 2009) (SR–BX–2009–027).

[15] In the event that the issue of anonymity in the Directed Order process is not resolved by February 26, 2010 the Exchange will consider whether to submit another filing under Rule 19b–4(f)(6) extending this rule and system process.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[18] of the Act and Rule 19b–4(f)(6) thereunder.[19] As required under Rule 19b–4(f)(6)(iii),[20] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[23] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are not anonymous without interruption.[24]

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *Id.*

[24] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–076 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–076. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–076 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28678 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61053; File No. SR–CHX–2009–15]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Change by Chicago Stock Exchange, Inc. to Its Bylaws and Those of Its Parent Corporation, CHX Holdings, Inc.

November 23, 2009.

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 13, 2009, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CHX. CHX filed this proposal pursuant to Rule 19b–4(f)(6) under the Act[3] and requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its Bylaws and those of its parent corporation, CHX Holdings, Inc. ("CHX Holdings") to eliminate an age restriction for Directors. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in the Commission's Public Reference Room.

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchange proposes to remove the current age restriction relating to Directors in its Bylaws and in the Bylaws of the Exchange's parent corporation. The Bylaws of both the Exchange and CHX Holdings currently provide that no Director who is 71 years old or over is eligible to begin a term of office, although he or she may complete a term if elected prior to reaching age 71. The Exchange notes that certain existing Directors of both corporations will be impacted by this restriction in the near future. The forced departure of those Directors could negatively impact the Exchange and its parent, due to the loss of their knowledge and experience. The Exchange also has received expressions of interest from persons above the age of 71 to be nominated to stand for election as a Director of one or both corporations and has had to turn them away due to the age restriction. The Exchange believes that there it would be beneficial to be able to consider the candidacy of such persons without regard to their age. The removal of the age restrictions would be consistent with the provisions of the bylaws of other national securities exchanges.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[6] and furthers the objectives of Section 6(b)(5) in particular,[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. By removing the age restriction from its bylaws and those of CHX Holdings, the Exchange hopes to attract and retain additional qualified candidates for service as Directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposed removal of age restrictions relating to Directors are consistent with exchange bylaws the Commission has approved in the past and does not raise any new regulatory issues.[12] The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2009–15 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–CHX–2009–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference

[5] *See, e.g.*, Bylaws of BATS Exchange, Inc., Article III, § 3(b) (Terms of Office); Bylaws of National Stock Exchange, Inc., Article III, § 3.4 (Terms of Office); Constitution of the Chicago Board Options Exchange, Inc., Article VI, § 6.1 (Number, Election and Term of Office of Directors).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) under the Act requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter items as designated by the Commission. CHX has complied with this requirement.

[11] *Id.*

[12] *See* note 5 *supra*. For board composition of a parent company of an exchange, *see e.g.*, Bylaws of BATS Global Markets, Inc., Article III, § 3.01.

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CHX–2009–15 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28617 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61048; File No. SR–NYSE–2009–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Rescinding Information Memoranda 04–27 and 07–66 and Issuing a New Information Memo Concerning the Exchange's Gap Quote Policy

November 23, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 9, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, 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 rescind NYSE Information Memoranda ("Information Memo") 04–27 and 07–66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Exchange's Gap Quote Policy (the "Policy"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to rescind Information Memos 04–27 and 07–66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Policy.[4]

The principal change to the Policy is a reduction in the minimum size (from at least 10,000 shares to at least 5,000) and value (from $200,000 or more to $100,000 or more) requirements for publishing a gap quote. In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote. Finally, the Exchange proposes adding language clarifying or reminding members of certain aspects of the Policy and other technical or non-substantive changes.

In order to ensure an orderly transition to usage of the new parameters, the Exchange proposes that these changes be made operative within ten business days after the approval of this filing.

Background

The purpose of the Policy, described in greater detail below, is to provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side of an imbalance.

An order imbalance may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest.

When an imbalance in a security exists, the Policy provides that the Designated Market Maker ("DMM") for the security should widen the spread between the bid and offer—a process known as "gapping the quote."[5] The use of a gap quote signals the existence of the imbalance to the market in order to attract contra-side liquidity and mitigate volatility.

Gap quotes occur more frequently in securities that are illiquid or thinly traded than in securities that are very liquid or heavily traded.[6]

History

In 2004, the Exchange updated its policies and procedures for gapping the quote, which had previously been implemented in 1994.[7] The Exchange announced the updated policy through a new Information Memo 04–27 (June 9, 2004), which it also filed with the Commission.[8] In 2007, the Exchange changed the minimum size and value requirements for use of gap quotes to at least 10,000 shares or $200,000, and updated the policies and procedures to reflect technical changes to the market and Exchange systems.[9]

The Current Policy

Under the current Policy, a gapped quotation consists of, on one side, a bid or offer for the amount representing the amount of the imbalance in the market priced at the price of the last sale, and, on the side of the market opposite the imbalance, an offer or bid for 100 shares, priced at the price at which the DMM believes the stock would trade if

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange's corporate affiliate, NYSE Amex LLC ("NYSE Amex"), has submitted an identical companion filing updating its Gap Quote Policy governing equities trading. See SR–NYSE–Amex–2009–82. The proposed new Information Memo will be jointly issued by both the Exchange and NYSE Amex.

[5] The current version of the Policy contained in Information Memo 07–66 refers to "specialists" and "specialist member organizations." In accordance with the Exchange's adoption of its New Market Model ("NMM"), the Exchange refers herein to "DMMs" and "DMM Units." *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving the NMM).

[6] Currently, it is not cost-effective for the Exchange to implement stock-specific gap quote procedures.

[7] See Information Memo 94–32 (August 9, 1994).

[8] See Securities Exchange Act Release No. 50237 (August 24, 2004), 69 FR 53123 (August 31, 2004) (SR–NYSE–2004–37) (concerning Information Memo 04–27).

[9] *See* Information Memo 07–66 (July 5, 2007). This Information Memo was not filed with the Commission.

no contra side interest developed or no cancellations occurred as a result of the gapped quotation. The resulting quote is shown as either "100 x size" or "size x 100," depending on the side of the imbalance.

To qualify for a gapped quotation, the size of the imbalance must be 10,000 shares or more, or have a market value of $200,000 or more. Depending on the trading characteristics of an individual stock, including its average daily trading volume and its average volatility, a gapped quotation may not be appropriate every time the stock crosses these thresholds, but rather may only become appropriate when the imbalance amount or value reaches some higher level that is more consistent with the stock's trading characteristics.

When a DMM has determined that a gapped quotation is appropriate, the DMM must follow these procedures:

- Prior to publishing the gapped quotation, the DMM must honor the displayed quotation on the side opposite the imbalance by executing a portion of the imbalance amount against the displayed amount at the bid (for sell imbalances) or offer (for buy imbalances). The DMM should complete all related Display Book reports and check the status of the order imbalance. Note that the requirement to honor the displayed bid or offer does not apply if the exposed quote results from a Liquidity Replenishment Point ("LRP") being reached through trading and the quote has a quote condition of non-firm.
- Gap quotations are typically used after a security has reached a high or low LRP. In such instances, the trade that triggered the LRP will have hit the firm bid or taken the firm offer on the Display Book prior to the posting of a gap quote and the Display Book will issue the related execution reports.
- The DMM's pricing determination for the gapped quotation should take account of executable orders, e-Quotes and verbal interest in the Crowd at prices better than the price of the 100-share bid or offer. If the imbalance interest is limited as to price, the price on the 100-share side cannot exceed that limit price.
- The DMM must publish the gapped quotation, using the Gap Quote Template in the Display Book, as follows:
  - On the side of the imbalance, the bid or offer price, as appropriate, (which is generated by the Display Book) will be the price of the last sale. The DMM must input a size of at least 10,000 shares or a market value of at least $200,000 and record the badge number of the Floor broker representing the imbalance. If a number of brokers' interest makes up the imbalance, the badge number of the broker with the most significant interest should be used. If the imbalance is caused by an influx of system orders, the DMM must record "1" as the badge number.
  - On the side opposite the imbalance, the DMM must show the possible extent of price impact in the bid or offer price by bidding or offering for 100 shares (one round lot) at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred as a result of the gapped quotation.

Following publication, the DMM must immediately contact a senior-level Floor Official (*i.e.* Executive Floor Governor, Floor Governor, Executive Floor Official or Senior Floor Official). The required Floor Official Approval Form documenting the consultation must be completed within a reasonable period of time after the intraday imbalance has been resolved.

- Following the publication of the gapped quote, the DMM should, where feasible or necessary due to conditions in the security or in the market, attempt to contact known contra-side parties to solicit participation to offset the imbalance. Brokers are expected to monitor conditions in securities where have interest or potential interest and should not rely on the DMM to contact them to advise of intraday order imbalances.
- During the term of the gapped quotation, the DMM must continue to permit the entry and cancellation of orders in the Display Book and not implicitly freeze the Book.

The gapped quotation is required to remain in place for a reasonable amount of time to permit interested parties to respond to the order imbalance. What constitutes a "reasonable time" is determined by the unique circumstances of each gapped quotation situation, but as a general guideline, gapped quotations are in place for at least 30 seconds unless offsetting interest is received earlier and generally should not last more than two minutes. As soon as the DMM receives offsetting interest that permits a trade within the stock's normal trading characteristics, the DMM must trade out of the gap quote to return to a fast market.

Role of the Senior-level Floor Official

As noted above, DMMs must consult with a senior-level Floor Official in connection with a gapped quotation. The senior-level Floor Official is responsible for monitoring the gapped quotation. As a result of this consultation, the senior-level Floor Official may determine that a gapped quotation is no longer necessary because the DMM can execute the orders immediately without undue price dislocation, or may determine to maintain the gap quote but for no more than two minutes, or may determine to halt trading in the stock due to the size and extent of the imbalance. If the senior-level Floor Official determines that the stock should be halted, he or she must declare a non-regulatory order imbalance halt in trading to address the imbalance rather than continue the gapped quotation.

Display Book Support for Gapping the Quote

The Gap Quote Template in the Display Book facilitates the DMM's compliance with the Policy. When using the Gap Quote Template, the DMM or DMM trading assistant must enter the correct size or dollar value (*i.e.* 10,000 shares or more, or a value of $200,000 or more), as well as the badge number of the Floor broker who is most responsible for the imbalance if that information is known to the DMM. If the imbalance is the result of order flow through the System, the DMM or trading assistant must enter the number '1' in the badge number field. If the user fails to comply with either of those requirements, the Display Book prompts the user for the necessary information.

Prohibited Use of the Gap Quote Template

The Gap Quote Template is to be used only when the DMM is gapping the quote in conformity with the Policy. Use of the Gap Quote Template for other purposes, such as to make the market slow to clean up a cross trade, or to manage trading immediately following the Opening or in advance of the Closing trade, is inappropriate. Misuse of the Gap Quote Template may result in violations of the limit order display rule and/or the firm quote rule, and as such may subject the DMM and/or the DMM Unit to disciplinary action by the Exchange. In addition, DMM Units are required to have adequate policies and procedures in place to ensure appropriate use of the Gap Quote Template.

Proposed changes

1. Reduced minimum size and value requirements

As noted above, the principal change to the Policy proposed by the Exchange is reduction of the minimum size and value requirements.

The Exchange proposes to reduce the minimum size and value requirements for the use of a gap quote under the Policy to at least 5,000 shares or a

market value of $100,000 or more. The Exchange believes that these lower thresholds better reflect current market conditions, which have changed significantly since the Exchange last issued guidance on the Policy in 2007. The Exchange believes that the current parameters are generally too high in light of current market conditions, where the average size of trades is smaller and average stock prices are lower. As a result the current parameters inhibit DMMs from using gap quotes to facilitate price discovery and minimize short-term price dislocation to the degree warranted by the market for particular securities. Based on an analysis of historical market conditions, the Exchange believes that lowering the gap quote size and value requirements will increase the use of gap quotes in line with current market conditions, providing greater transparency and efficiency and reducing volatility. The Exchange does not believe, however, that lowering these requirements will cause an increase in the use of gap quotes to such a degree that would negatively impact the quality of the Exchange market.

In addition, the Exchange proposes to add language clarifying that, notwithstanding meeting the minimum size and value requirements, an imbalance must also be anticipated to cause a significant price dislocation in the stock at issue in order to qualify under the Policy. The Exchange believes it is important to emphasize that whether a gap quote is appropriate depends on the characteristics of a security as much as on the minimum requirements.

2. Setting the price of the gap quote

In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote.

Currently, DMMs are instructed to set the price of a gap quote "at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred[.]" The Exchange proposes to clarify this guidance to provide that the DMM should published the gap quote at the price where the DMM "reasonably anticipates" the stock would trade if no contra side interest developed or no cancellations occurred.

The Exchange also proposes to clarify that the Policy still requires a DMM to take into account, "to the extent known," executable orders, e-Quotes and verbal interest in the Crowd (on the side of the market opposite the imbalance) at prices better than the price of the 100-share bid or offer when making his or her pricing determination. If the imbalance is known to be limited as to price, the DMM should not set the gap quote higher than that limit price.

The Exchange also proposes adding a provision reminding the DMMs that, at the time they publish a gap quote, they should set the price of the gap quote such that it would likely result in a trade of at least the minimum size of 5,000 shares or $100,000 in value.

3. Other technical or non-substantive changes

The Exchange also proposes additional technical or non-substantive changes:

- The Exchange proposes to change the requirement that the DMM honor the "displayed" quote on the opposite side of the imbalance before publishing the gap quote to a requirement that the DMM honor the "protected" quote, consistent with the terminology of Regulation NMS. The Exchange believes that, given its new minimum and non-displayed liquidity options, use of the word "displayed" could be misleading.[10]
- The Exchange proposes to update the Policy to reflect that Display Book now automatically completes certain reports that were, in the past, manually completed by DMMs.
- The Exchange proposes to add language reminding members and member organizations that only the badge number of the relevant Floor broker or brokers—and not Floor Officials—should be entered into the Gap Quote Template in accordance with the Policy.
- The Exchange proposes to add Staff Governors to the list of qualifying senior-level Floor Officials who may oversee a gap quote publication.[11] In addition, to provide the DMM with greater flexibility, the Exchange proposes to change the guidance for contacting senior-level Floor Officials from "immediately" following publication of the gap quote to "as soon as possible."
- The Exchange proposes to add language clarifying that, while the DMM should attempt to obtain price discovery using appropriate Display Book tools, he or she should not leave any Display Book templates open for an extended duration of time so as not to implicitly freeze the Book and shut out interest. DMMs must balance the need for accurate price discovery with that of trying to attract contra side interest and trade out of the gap quote as soon as possible. The DMM should also, in consultation with a senior-level Floor Official, consider updating the initial gap quote if necessary to attract sufficient contra side interest.
- The Exchange proposes to add language reminding members and member organizations that the gap quote procedures may not be initiated after trading has closed. Instead, where there is a significant imbalance in a security at the close of trading, members and member organizations should use the other procedures provided under Exchange rules when attempting to mitigate the imbalance. *See, e.g.*, NYSE Rule 123C(8).
- The Exchange proposes to add a summary of the options available to a DMM when publishing a gap quote to include: (1) Trading out of the gap quote by executing contra side interest against the imbalance (allowing for any cancellations); (2) updating the gap quote in consultation with a senior-level Floor Official; or (3) in consultation with a senior-level Floor Official, requesting an order imbalance trading halt in the security at issue.
- In view of the current market conditions and the lower minimum size and value requirements, the Exchange proposes to amend the original example it included in the Policy (in Information Memo 07–66) to reflect the changed parameters and to add a second example to clarify how the Policy works when an LRP is reached as opposed to when it is implemented following an influx of orders from the Floor.
- The Exchange proposes to substitute new screenshots of the Gap

[10] A Minimum Display Order requires a portion of the shares in the order to be displayed when the interest is at or becomes the Exchange Best Bid or Offer ("Exchange BBO") and, upon execution, this amount is replenished at that price point until the entire order is either filled or canceled. Minimum Display Orders are eligible to participate in both electronic and manual transactions, such as gap quote situations.

A Non-Displayed Reserve Order does not require the display of any portion of the order. Non-Displayed Reserve Orders entered by Off-Floor participants are not included in the published quote and are not eligible for participation in manual transactions. Non-Displayed Orders entered by Floor brokers, however, are eligible to participate in manual transactions and will be displayed to the DMM in such circumstances unless the Floor broker designates the order as "Do Not Display." DMM Non-Displayed Reserve interest is eligible to participate in manual transactions since there is no anonymity to protect in that instance.

For more information concerning these order types, *see* Information Memo 08–57 (November 14, 2008) (describing key features of the New Market Model adopted by the Exchange).

[11] "Staff Governors" are designated pursuant to NYSE Rule 46(b)(v), which permits the Exchange Chairman to "designate such number of qualified NYSE Euronext employees" as needed, who shall be permitted to take any action assigned to or required of a Floor Governor as prescribed under Exchange rules.

Quote Template reflecting the changed parameters.

• Finally, because DMMs no longer act as agent for orders on the Display Book, the Exchange proposes to clarify that a failure to follow the Policy by a DMM would not lead to violations the Order Display rule and/or the Firm Quote rule under Regulation NMS, but could rather result in a failure to maintain a fair and orderly market or a failure to observe high standards of commercial honor and just and equitable principles of trade under NYSE Rules 104(a), 104(f) and 2010.[12]

The Exchange also proposes other non-substantive wording changes.

The Exchange represents that it has reasonable policies and procedures to surveil the use of gap quotes and to detect the potential misuse of gap quotes in violation of Exchange rules and federal securities laws.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,[13] in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)[14] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed updates to its Gap Quote Policy will better reflect current market conditions and improve transparency in situations where gapped quotations are used. The Exchange believes these changes will result in greater efficiency and less volatility, and a better functioning market for all participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[12] The role of DMMs and their obligations on the Exchange are described in Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–112 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will 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 inspection and copying in the Commission's Public Reference Room, 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–NYSE–2009–112 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28615 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Amended and New Routine Uses

AGENCY: Social Security Administration (SSA).

ACTION: Proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to amend one routine use and add a new routine use applicable to our system of records entitled, *Master Files of Social Security Number (SSN) Holders and SSN Applications*, 60–0058 (the Enumeration System). The two routine uses to the Enumeration System will:

(1) Allow us to verify SSNs and disclose the results to State agencies that issue non-driver's license identification documents to the public; and

(2) Allow us to verify the SSN, disclose the results, and provide citizenship status information in our records to State agencies that administer Medicaid and the State Children's Health Insurance Program (CHIP) to assist them in determining new applicants' entitlement to benefits provided by the CHIP.

We discuss the routine uses in greater detail in the Supplementary Information

[15] 17 CFR 200.30–3(a)(12).

section below. We invite public comment on this proposal.

DATES: We filed a report of the routine uses with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 20, 2009. The routine uses will become effective on December 29, 2009 unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested persons may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments we receive will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Talya Harris, Social Insurance Specialist, Disclosure Policy Development and Services Division 2, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–6176, e-mail: *talya.harris@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Routine Uses

A. Disclosure of SSN Verifications for State Identification Card Programs

The Social Security Act (Act) authorizes State Motor Vehicle Administration agencies (MVAs) to use the SSN to administer laws relating to issuing driver's licenses and non-driver identity cards. Sections 205(c)(2)(C)(i) and 205(r)(8) of the Act, 42 U.S.C. 405(c)(2)(C)(i) and 405(r)(8). The Act permits the use of the SSN as a means for verifying personal information of the applicants. State MVA agencies may also require any person to furnish his or her SSN to the State MVA agency or to any agency having administrative responsibility for the driver's license or identity card programs. To support this requirement, we currently have a routine use that allows us to verify the SSN and disclose the results to State MVA agencies so that States can verify the information that they collect as part of their driver's license programs. Under the existing routine use, State MVA agencies may also use this information to issue identification cards for applicants who do not apply for driver's licenses. However, some States have identification card programs (ICP) for the public administered by agencies other than their MVAs. These agencies need to receive the same information to verify the information on people who apply for identification cards. To support this need, we are amending the existing routine use to allow us to disclose the results of the SSN verification to State agencies that administer ICPs for the public.

B. Disclosure of Citizenship Data for the State Children's Health Insurance Program

On February 4, 2009, President Obama signed the Children's Health Insurance Program (CHIP) Reauthorization Act of 2009 (Pub. L. 111–3). This legislation allows States to subsidize premiums for employer-provided group health coverage for eligible children and families. Section 211 gives States the option to verify citizenship information with us for purposes of establishing CHIP eligibility. State agencies that administer the CHIP may submit the applicant's name, SSN, and date of birth (DOB) to us to verify. We will confirm whether new CHIP applicants' declarations of citizenship are consistent with the information in our records by verifying the submitted names, SSNs, and DOBs against our Enumeration System records and provide those verification results, including indicator codes of citizenship data that may be part of the record. State agencies administering the CHIP are responsible for resolving any discrepancies with the applicant. If the investigation indicates there is a discrepant SSN in our records, State agencies will direct those applicants to one of our local offices for assistance.

II. Proposed Amended and New Routine Uses

A. State Identification Card Programs

As described above, we already verify SSNs for State MVAs under an existing routine use in the Enumeration System. To comply with the Privacy Act, we will amend routine use number 33 to allow us to disclose SSN verification information to State agencies that also administer ICPs for the public. The amended routine use reads:

> To State motor vehicle administration agencies (MVA) and to State agencies charged with administering State identification card programs (ICP) for the public to verify names, dates of birth, and Social Security numbers on those persons who apply for, or for whom the State issues, driver's licenses or State identification cards. When we verify this information, we will indicate whether the information the State MVA or ICP provides matches or does not match the records covered by this system of records. We will also indicate which information the State submits does not match our records. If the information does not match our records, we will not disclose the actual information in our records.

B. State Children's Health Insurance Program

The Privacy Act requires that agencies publish a notice in the **Federal Register** of "each routine use of the records contained in the system, including the categories of users and the purpose of such use." 5 U.S.C. 552a(e)(4)(D). We developed the following routine use, number 43, for the Enumeration System that will allow us to disclose information to the appropriate State agencies charged with administering CHIP. The routine use reads:

> To State agencies charged with administering Medicaid and the Children's Health Insurance Program (CHIP) to verify personal identification data (i.e., name, SSN, and date of birth) and to disclose citizenship status information in our records to assist these agencies with determining new applicants' entitlement to benefits provided by the CHIP.

III. Compatibility of Routine Uses

We can disclose information when the disclosure is required by law (20 CFR 401.120). Section 205(c)(2)(C)(i) of the Social Security Act permits States to collect the SSN to administer their driver's license and ICP programs and section 205(r)(8) allows us to verify information for State MVAs. In addition, section 211 of the CHIP Reauthorization Act of 2009 specifically allows States to verify assertions of citizenship with us:

We can also disclose information when the purpose is compatible with the purpose for which we collected the information and is supported by published routine uses (20 CFR 401.150). Individuals can use driver's licenses and identification cards the MVAs and other State agencies administering ICPs issue to establish their identity for Federal, State, and local benefit program purposes. Disclosures for the CHIP are also compatible because the State agencies will use the information to assist in determining new applicants' entitlement to the benefits the program provides. For these reasons, we find that verifying the SSN for State MVAs and other State agencies that administer ICPs for the public and verifying the citizenship status information in our records to State agencies charged with administering the CHIP serve both the

statutory and compatibility requirements to permit these routine use disclosures.

IV. Effect of the Routine Uses on the Rights of Individuals

The routine uses will permit us to verify the identification data used by State MVAs, other State agencies charged with administering ICPs for the public, and State agencies administering the CHIP. We will adhere to all applicable statutory requirements for disclosure, including those under the Social Security Act and the Privacy Act. We will disclose SSN verification information, including disclosure of citizenship status information in our records to the CHIP agencies, only under written agreements that stipulate that the States will collect, verify, and redisclose information we disclose only as provided for by Federal law. We will also safeguard from unauthorized access the data we receive from these entities to verify. Thus, we do not anticipate that the routine uses will have any unwarranted adverse effect on the rights of persons about whom we will disclose information.

Dated: November 20, 2009.

Michael J. Astrue,

Commissioner.

Social Security Administration

Notice of Proposed Amended and New Routine Uses Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60–0058.

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, Social Security Administration (SSA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SSA, Office of Telecommunications and Systems Operations, 6401 Security Boulevard Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each person who has applied for and to whom we have assigned a Social Security Number (SSN). This system also contains records of each person who applied for an SSN, but to whom we did not assign one because: (1) his or her application was supported by documents that we suspect may be fraudulent and we are verifying the documents with the issuing agency; (2) we have determined the person submitted fraudulent documents; (3) we do not suspect fraud but we need to further verify information the person submitted or we need additional supporting documents; or (4) we have not yet completed processing the application.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on applications for SSNs (e.g., name, date and place of birth, sex, both parents' names, and race/ethnic data). In the case of an application for an SSN for an individual who has not yet attained the age of 18, we also maintain the SSNs of the parents. We also collect:

- Changes in the information on the applications the SSN holders submit;
- Information from applications supported by evidence we suspect or determine to be fraudulent, along with the mailing addresses of the persons who filed such applications and descriptions of the documentation they submitted;
- Cross-references when multiple numbers have been issued to the same individual;
- A form code that identifies the Form SS–5 (Application for a Social Security Number) as the application the person used for the initial issuance of an SSN, or for changing the identifying information (e.g., a code indicating original issuance of the SSN, or that we assigned the person's SSN through our enumeration at birth program);
- A citizenship code that identifies the number holder status as a U.S. citizen or the work authorization of a non-citizen;
- A special indicator code that identifies type or questionable data or special circumstance concerning an application for an SSN (e.g., false identity; illegal alien; scrambled earnings;
- An SSN assigned based on harassment, abuse, or life endangerment); and
- An indication that a person has filed a benefit claim under a particular SSN.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act (42 U.S.C. §§ 405(a) and 405(c)(2)).

PURPOSE:

We use information in this system to assign SSNs. We also use the information for a number of administrative purposes:

- For various Old Age, Survivors, and Disability Insurance, Supplemental Security Income, and Medicare/Medicaid claims purposes including using the SSN itself as a case control number, as a secondary beneficiary cross-reference control number for enforcement purposes, for verification of claimant identity factors, and for other claims purposes related to establishing benefit entitlement;
- As a basic control for retained earnings information;
- As a basic control and data source to prevent us from issuing multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;

The information is also used:

- By our Office of the Inspector General, Office of Audit, for auditing benefit payments under Social Security programs;
- By the Department of Health and Human Services (DHHS), Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the DHHS Office of Refugee Resettlement for administering Cuban refugee assistance payments;
- By the DHHS Centers for Medicare and Medicaid Services (CMS) for administering Titles XVIII and XIX claims;
- By the Secretary of the Treasury for use in administering those sections of the Internal Revenue Code of 1986 that grant tax benefits based on support or residence of children. These provisions apply specifically to SSNs parents provide on applications for persons who are not yet age 18; and
- To prevent the processing of an SSN card application for a person whose application we identified was supported by evidence that either:
  - We suspect may be fraudulent and we are verifying it, or,
  - We determined the person submitted fraudulent information.

We alert our offices when an applicant who attempts to obtain an SSN card visits other offices to find one that might unwittingly accept fraudulent documentation.

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures are as indicated below; however, we will not disclose any information defined as "return or return information" under 26

U.S.C. 6103 of the Internal Revenue Code (IRC) unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To employers in order to complete their records for reporting wages to us pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.

2. To Federal, State, and local entities to assist them with administering income maintenance and health-maintenance programs, when a Federal statute authorizes them to use the SSN.

3. To the Department of Justice, Federal Bureau of Investigation and United States Attorneys Offices, and to the Department of Homeland Security, United States Secret Service, for investigating and prosecuting violations of the Social Security Act.

4. To the Department of Homeland Security, United States Citizenship and Immigration Services, for identifying and locating aliens in the United States pursuant to requests received under section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating, or otherwise refining records when we contract with a private firm. We will require the contractor to maintain Privacy Act safeguards with respect to such records.

6. To the Railroad Retirement Board to:

(a) Administer provisions of the Railroad Retirement and Social Security Act relating to railroad employment; and

(b) Administer the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its epidemiological research study of the long-term effects of low-level radiation exposure, as permitted by our regulations at 20 CFR 401.150(c).

8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the IRC (26 U.S.C. 6103);

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks; and

(c) Administering those sections of the IRC that grant tax benefits based on support or residence of children. As required by section 1090(b) of the Taxpayer Relief Act of 1997, Pub. L. 105–34, this routine use applies specifically to the SSNs of parents shown on an application for an SSN for a person who has not yet attained age 18.

9. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

10. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.

11. To the American Institute, a private corporation under contract to the Department of State, for administering the Social Security Act on Taiwan through facilities and services of that agency.

12. To the Department of Veterans Affairs (DVA), Regional Office, Manila, Philippines, for administering the Social Security Act in the Philippines and other parts of the Asia-Pacific region through facilities and services of that agency.

13. To the Department of Labor for:

(a) Administering provisions of the Black Lung Benefits Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

14. To DVA:

(a) To validate SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by DVA to us for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for, or amount of DVA benefits, or verifying other information with respect thereto.

15. To Federal agencies that use the SSN as a numerical identifier in their record-keeping systems, for the purpose of validating SSNs.

16. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components; or

(b) Any SSA employee in his or her official capacity; or

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

17. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

18. To the social security agency of a foreign country to carry out the purpose of an international social security agreement entered into between the United States and the other country, pursuant to section 233 of the Social Security Act.

19. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs those agencies use to administer cash or non-cash income maintenance programs or health maintenance programs, including programs under the Social Security Act.

20. To third party contacts (e.g., State bureaus of vital statistics and the Department of Homeland Security) that issue documents to individuals when the party to be contacted has, or is expected to have, information that will verify documents when we are unable to determine if such documents are authentic.

21. To DOJ, Criminal Division, Office of Special Investigations, upon receipt of a request for information pertaining to the identity and location of aliens for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

22. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. § 462, as amended by section 916 of Pub. L. 97–86).

23. To contractors and other Federal agencies, as necessary, to assist us in efficiently administering our programs. We will disclose information under this routine use only in situations in which we may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

24. To organizations or agencies such as prison systems required by Federal law to furnish us with validated SSN information.

25. To the General Services Administration and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information that is not restricted from disclosure by Federal law for the their use in conducting records management studies.

26. To DVA or third parties under contract to DVA to disclose SSNs and dates of birth for the purpose of conducting DVA medical research and epidemiological studies.

27. To the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), to disclose SSN information when OPM needs the information to administer its pension

program for retired Federal Civil Service employees.

28. To the Department of Education, upon request, to verify SSNs that students provide to postsecondary educational institutions, as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

29. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they need access to information in our records in order to perform their assigned agency duties.

30. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to ensure the safety of our employees and customers, the security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

31. To recipients of erroneous Death Master File (DMF) information, to disclose corrections to information that resulted in erroneous inclusion of persons in the DMF.

32. To State vital records and statistics agencies, the SSNs of newborn children for administering public health and income maintenance programs, including conducting statistical studies and evaluation projects.

33. To State motor vehicle administration agencies (MVA) and to State agencies charged with administering State identification card programs (ICP) for the public to verify names, dates of birth, and Social Security numbers on those persons who apply for, or for whom the State issues, driver's licenses or State identification cards. When we verify this information, we will indicate whether the information the State MVA or ICP provides matches or does not match the records covered by this system of records. We will also indicate which information the State submits does not match our records. If the information does not match our records, we will not disclose the actual information in our records.

34. To entities conducting epidemiological or similar research projects, upon request, to disclose information as to whether a person is alive or deceased pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), provided that:

(a) We determine, in consultation with the Department of Health and Human Services, that the research may reasonably be expected to contribute to a national health interest;

(b) The requester agrees to reimburse us for the costs of providing the information; and

(c) The requester agrees to comply with any safeguards and limitations we specify regarding re-release or re-disclosure of the information.

35. To employers in connection with a pilot program, conducted with the Department of Homeland Security under 8 U.S.C. 1324a(d)(4), to test methods of verifying that persons are authorized to work in the United States. We will inform an employer participating in such pilot program that the identifying data (SSN, name, and date of birth) furnished by an employer concerning a particular employee match, or do not match, the data maintained in this system of records, and when there is such a match, that information in this system of records indicates that the employee is, or is not, a citizen of the United States.

36. To a State bureau of vital statistics (BVS) that is authorized by States to issue electronic death reports when the State BVS requests that we verify the SSN of a person on whom the State will file an electronic death report after we verify the SSN.

37. To the Department of Defense (DOD) to disclose validated SSN information and citizenship status information for the purpose of assisting DOD in identifying those members of the Armed Forces and military enrollees who are aliens or non-citizen nationals that may qualify for expedited naturalization or citizenship processing. These disclosures will be made pursuant to requests made under section 329 of the Immigration and Nationality Act, 8 U.S.C. 1440, as executed by Executive Order 13269.

38. To a Federal, State, or congressional support agency (e.g., Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and, analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if we:

(a) Determine that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the proposed use is to be made:

i. Cannot reasonably be accomplished unless the record is provided in a form that identifies persons;

ii. Is of sufficient importance to warrant the effect on, or risk to, the privacy of the person which such limited additional exposure of the record might bring;

iii. Has reasonable probability that the objective of the use would be accomplished;

iv. Is of importance to the Social Security program or the Social Security beneficiaries; or

v. Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Requires the recipient of information to:

i. Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by SSA's personnel, its agents, or by independent agents of the recipient agency of those safeguards;

ii. Remove or destroy the information that enables the person to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, for retaining such information;

iii. Make no further use of the records except:

(1) Under emergency circumstances affecting the health and safety of any person, following written authorization from us; or

(2) For disclosure to an identified person approved by us for the purpose of auditing the research project;

iv. Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about a person;

(d) Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and

willingness to abide by, these provisions.

39. To State and Territory MVA officials (or agents or contractors on their behalf) and State and Territory chief election officials to verify the accuracy of information the State agency provides with respect to applications for voter registration, when the applicant provides the last four digits of the SSN instead of a driver's license number.

40. To State and Territory MVA officials (or agents or contractors on their behalf) and State and Territory chief election officials, under the provisions of section 205(r)(8) of the Social Security Act (42 U.S.C. 405(r)(8)), to verify the accuracy of information the State agency provides with respect to applications for voter registration for those persons who do not have a driver's license number:

(a) When the applicant provides the last four digits of the SSN, or

(b) When the applicant provides the full SSN, in accordance with section 7 of the Privacy Act (5 U.S.C. 552a note), as described in section 303(a)(5)(D) of the Help America Vote Act of 2002. (42 U.S.C. 15483(a)(5)(D).

41. To the Secretary of Health and Human Services or to any State, we will disclose any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if we disclosed records or information of such type under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

42. To the appropriate Federal, State, and local agencies, entities, and persons when: (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, risk of identity theft or fraud, or harm to the security or integrity of this system or our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of its records.

43. To State agencies charged with administering Medicaid and the Children's Health Insurance Program (CHIP) to verify personal identification data (i.e., name, SSN, and date of birth) and to disclose citizenship status information to assist them in determining new applicants' entitlement to benefits provided by the CHIP.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in this system in paper form (Forms SS–5 (Application for a Social Security Card), and system generated forms); magnetic media (magnetic tape and disc with on-line access); in microfilm and microfiche form, and on electronic files (NUMIDENT and Alpha-Index).

RETRIEVABILITY:

We will retrieve records by both SSN and name. If we deny an application because the applicant submitted fraudulent evidence, or if we are verifying evidence we suspect to be fraudulent, we will retrieve records either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

We have established safeguards for automated records in accordance with our Systems Security Handbook. These safeguards include maintaining the magnetic tapes and discs within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge we issue only to authorized personnel.

For computerized records we transmit electronically between Central Office and Field Office locations, including organizations administering our programs under contractual agreements, safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Only authorized personnel who have a need for the records in the performance of their official duties may access microfilm, microfiche, and paper files.

We annually provide appropriate security guidance and training to all our employees and contractors that include reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. See 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must annually sign a sanction document, acknowledging their accountability for inappropriately accessing or disclosing such information.

RETENTION AND DISPOSAL:

We retain most paper forms only until we film and verify them for accuracy. We then shred the paper records. We retain electronic, as well as updated microfilm and microfiche records indefinitely. We update all tape, discs, microfilm, and microfiche files periodically. We erase out-of-date magnetic tapes and discs and we shred out-of-date microfiches.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Enumeration Verification and Death Alerts, Office of Earnings, Enumeration, and Administrative Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information that may be in this system of records that will identify them. Persons requesting notification by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification of records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record about which notification is sought. If we determine that the identifying information the person provides by telephone is insufficient, we will require the person to submit a request in writing or in person. If a person requests information by telephone on behalf of another person, the subject

person must be on the telephone with the requesting person and with us in the same phone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name), and ask for his or her consent to provide information to the requesting person. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Persons must also reasonably specify the record contents they are seeking. These procedures are in accordance with our regulations at 20 CFR 401.40(c).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Persons must also reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

RECORD SOURCE CATEGORIES:

We obtain information in this system from SSN applicants (or persons acting on their behalf) and generate it internally. We assign the SSN to persons as a result of the system's internal process.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–28579 Filed 11–30–09; 8:45 am]
BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 6823]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Future Leaders Exchange (FLEX) Program: Host Family and School Placement

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–10–02.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: January 19, 2010.

Executive Summary: The Future Leaders Exchange (FLEX) program seeks to promote mutual understanding between the United States and the countries of Eurasia by providing secondary school students from the region the opportunity to live in American society for an academic year. In turn, these students will expose U.S. citizens to the culture, traditions, and lifestyles of people in Eurasia. Organizations are invited to submit proposals to identify host schools; vet, select, and monitor host families; and place and monitor a portion of the students participating in the FLEX program during the 2010–11 academic year. Pending availability of funds, an FY–2010 grant will provide the monies required to recruit and screen host families; secure school placements; conduct student and host family orientations; provide cultural and educational enrichment activities; handle all counseling and programmatic issues; and evaluate program implementation.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The FLEX Program seeks to provide approximately 1,000 high school students from Eurasia with an opportunity to live in the United States for the purpose of promoting mutual understanding between our countries. Participants will reside with American host families and attend high school during the 2010–11 academic year. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select host families and schools for high school students between the ages of 15 and 17 from Eurasia. This solicitation refers only to FLEX students from the following Eurasian countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, and Ukraine.

In addition to identifying schools and screening families, organizations will be responsible for: (1) Providing English language enhancement activities for approximately 10% of their students who are specially identified; (2) orienting all students to local conditions, resources and opportunities; (3) providing support services for students; (4) arranging enhancement activities and skill-building opportunities; (5) monitoring student, family and coordinator performance and progress; (6) providing mid-year programming and re-entry training; and (7) evaluating project success. Preference will be given to those organizations that offer participants opportunities to develop leadership skills and raise their awareness of tolerance and civic responsibility through community activities and networks. The number of students who will participate is subject to the availability of funding in fiscal year 2010.

During the year, FLEX participants will be engaged in a variety of activities, such as community and school-based programs, skill-building workshops, and cultural events. Academic year 2010/2011 will be the 18th year of the FLEX program, with more than 19,000 students having been awarded scholarships.

Goal: The goal of the program is to promote mutual understanding and foster relationships between the people of Eurasia and the United States by:

- Gaining an understanding of American culture and diversity;
- Teaching Americans about their home countries and cultures;
- Interacting with Americans and generating enduring ties;
- Exploring and acquiring an understanding of the key elements of U.S. civil society; and
- Motivating students to share and apply experiences and knowledge in their home communities as FLEX alumni.

Considering the specific focus of the FLEX program, the following outcomes will indicate a successful project:

1. Participants will develop an appreciation for American culture, an understanding of the diversity of American society, and increased tolerance and respect for others with differing views and beliefs.
2. Participants will teach Americans about the cultures of their home countries.
3. Participants will interact with Americans and generate enduring ties.
4. Participants will acquire an understanding of important elements of a civil society. This includes concepts

such as volunteerism, the idea that American citizens can and do act at the grassroots level to deal with societal problems, and an awareness of and respect for the Rule of Law.

5. Participants will gain leadership capacity that will enable them, as FLEX alumni, to initiate activities in their home countries that focus on development and community service.

Objectives: The objectives of the FLEX program are:

- To place approximately 1,000 pre-selected high school students from 10 Eurasian countries in safe, qualified, well-suited host families;
- To place students in accredited schools.
- To expose program participants to American culture and enable them to obtain a broad view of U.S. society and history;
- To provide appropriate venues for program participants to share their culture, lifestyles, and traditions with U.S. citizens;
- To provide participants with development opportunities that foster skills they can take back with them and use in their home countries; and
- To provide activities that will increase and enhance students' leadership capacity, enabling them—as FLEX alumni—to initiate activities in their home countries that focus on development and community service.

Other Components: One organization already has been awarded a grant to administer the "Organizational Components" of the FLEX program, and performs the following functions: Recruitment and selection of Eurasian students; assistance in documentation and preparation of DS–2019 visa forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and the placement organization, as needed; maintenance of a student database and provision of data to the U.S. Department of State; and ongoing follow-up with alumni after their return to Eurasia.

Another organization is currently responsible for supporting students with disabilities. This involves a pre-program orientation and a year-end reentry training, as well as ongoing support throughout the year in order to help them cope with challenges specific to their circumstances. Placement organizations will be in direct communication with both organizations. Some students with disabilities may need supplementary independence skills training early on in the program.

Guidelines: Applicants are requested to submit a narrative outlining a comprehensive strategy for the administration and implementation of the placement component of the FLEX program that includes the following responsibilities:

(1) Recruitment, screening, selection, and FLEX-specific orientation of local coordinators and host families;

(2) Enrollment in an accredited school;

(3) Post-arrival orientation for participants;

(4) Placement of a small number of students with disabilities;

(5) Pre-program specialized English language programming for pre-selected students who require focused preparation for their academic year;

(6) Preparation and dissemination of placement organization materials to the organization administering the "Organizational Components" by May 1, 2010 (these materials will be distributed to the students at the Pre-Departure Orientation);

(7) Troubleshooting;

(8) Monitoring of students, host families and local coordinators;

(9) Quarterly evaluation of the organization's success in achieving program goals;

(10) Mid-year orientations to assess progress; and

(11) Re-entry training to prepare students for readjustment to their home environments.

Applicants must request a grant for placement and monitoring of at least 30 students; there is no maximum number of students that may be placed by one organization. Placements may be in any region of the United States. Strong preference will be given to organizations that choose to place participants in clusters of at least three students (these students should be from different countries) in a particular Local Coordinator's area of responsibility. Please refer to the Solicitation Package for details on essential program elements, permissible costs, and criteria used to select and place students. We anticipate grants beginning no later than April 2010, subject to the availability of funds.

Participants begin to arrive in their host communities in late July 2010 and remain for 10 or 11 months until their departure mid-May to late June 2011. Students with disabilities and students requiring supplementary English language instruction may arrive earlier. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. If use of a private plan is proposed, the State Department will compare that plan with the Bureau plan and make a determination as to which will be applicable.

II. Award Information

Type of Award: New Grant Agreement.

Fiscal Year Funds: FY 2010.

Approximate Total Funding: $7,000,000 pending availability of funds.

Approximate Number of Awards: 10–15 grants.

Approximate Average Award: Funding level is dependent on the number of proposed students, monitoring, the quality of support, and volume of activities.

Anticipated Award Date: Pending availability of funds, April 2010.

Anticipated Project Completion Date: August 2011.

Additional Information: Contingent upon the availability of funds in subsequent fiscal years; awardees' ability to comply with Federal Regulations and ECA guidelines; and the otherwise successful implementation of this program; it is ECA's intent to renew grants awarded under this competition for up to two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and

in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with fewer than four years' experience in conducting international exchanges be limited to $60,000 in Bureau funding. Since an award to support program and administrative costs required to implement this exchange program for a minimum of 30 students will exceed $60,000, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact The Office of Youth Programs, ECA/PE/C/PY, SA–5, Floor 3, U.S. Department of State, Washington, DC 20522–0503, telephone (202) 632–6416, and fax (202) 632–9355, e-mail Amrote Molla at *MollaAB@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–10–02 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from Grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify the Funding Opportunity Number (ECA/PE/C/PY–10–02) at the top of this announcement on all inquiries and correspondence.

IV.2. To Download a Solicitation Package Via the Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html* or from the Grants.gov website at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov website as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J-Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J-visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J-visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J-visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR

62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Program Monitoring includes Participant Monitoring, which focuses specifically on ensuring students' safety and well-being throughout the year; see page 31 for details and instructions. This section focuses on other aspects of Program Monitoring.

Program Monitoring: Proposals must include a plan to monitor and report on the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique, plus a description of a methodology that will be used to link outcomes to original project objectives. The Bureau expects that the grantee will track participants and be able to respond to key monitoring questions throughout the year, particularly on effects of the program on program participants, their host families and communities.

Successful monitoring depends heavily on setting clear goals and outcomes at the outset of a program. Your monitoring plan should include a description of your project's objectives and how and when you intend to measure these outcomes. You should also show how your project objectives link to the goals of the program described in this RFGP.

Overall, the quality of your monitoring plan will be judged on how well it specifies successes and challenges. Grantees will be required to provide reports analyzing their monitoring findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Evaluation: The Bureau's Office of Policy and Evaluation will conduct evaluations of the FLEX program through E-GOALS, its online system for surveying program participants and collecting data about program performance. These evaluations assist ECA and its program grantees in meeting the requirements of the Government Performance Results Act (GPRA) of 1993. This Act requires federal agencies to measure the results of their programs in meeting pre-determined performance goals and objectives.

Please see specific responsibilities in the accompanying POGI document.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. The budget must reflect costs for a minimum of 30 participants. Please indicate clearly the number of students funded. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: January 19, 2010.

Reference Number: ECA/PE/C/PY–10–02.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications:

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important Note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM."

The original and eight (8) copies of the application should be sent to: Program Management Division (ECA–IIP/EX/PM), Ref.: ECA/PE/C/PY–10–02, SA–5, Floor 4, Department of State,

2200 C Street, NW., Washington, DC 20522–0504.

IV.3f.2—Submitting Electronic Applications:

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: Due to Recovery Act related opportunities, there has been a higher than usual volume of grant proposals submitted through Grants.gov. Potential applicants are advised that the increased volume may affect the Grants.gov proposal submission process. As stated in this RFGP, ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support; Contact Center Phone: 800–518–4726; Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time; E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning/Ability to Achieve Program Objectives:* Your proposal narrative should exhibit originality, substance, and relevance to the Bureau's mission. Reviewers will assess the degree to which proposals engage participants in community activities that involve skills development and leadership training. A detailed agenda and work plan should adhere to the program overview and guidelines described in the solicitation package. Reviewers will also assess the degree to which the proposed outcomes of the project are realistic and measurable. Strategies should creatively utilize resources at the local level to ensure an efficient use of program funds.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity.

Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venue and program evaluation) and program content (orientations, program meetings, resource materials and follow-up activities).

3. *Organization's Record/Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Reviewers will assess the applicant and its partners to determine if they offer adequate resources, expertise, and experience to fulfill program objectives. Partner activities should be clearly defined. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting and J–1 Visa requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Reviewers will assess ways in which proposals include innovative ideas to expose U.S. communities to FLEX-related goals and activities that involve students, host families and schools. This includes media outreach, visits to local and national government representatives, Internet-based applications and other interactions. Reviewers will also evaluate substantive plans to prepare FLEX students for their role as active, effective FLEX alumni.

5. *Participant Monitoring:* Proposals must include a detailed monitoring

plan, which addresses Student, Local Coordinator (LC) and Host Family (HF) monitoring. Given the importance the Department places on this criterion, you should dedicate a significant percentage of the narrative to explaining how you will achieve the Department's goals in regard to monitoring. You may use the appendices to house additional details and supporting documentation. Please see the Project Objectives, Goals, and Implementation (POGI) for additional details regarding this review criterion.

6. *Project Evaluation:* Proposals should include a plan to monitor and evaluate the activity's success, both as the activities unfold and at the end of the program. Reviewers will assess your plans to monitor student progress and program activities, particularly in regard to intended outcomes indicated in your proposal. Grantees will be expected to submit quarterly reports, which should be included as an inherent component of the work plan. Your primary method of evaluation is E–GOALS; other organization-specific instruments are encouraged. Proposals should also specify ways in which students will be encouraged to complete the mandatory end-of-the-year surveys administered through the E–GOALS system.

7. *Cost-effectiveness/Cost Sharing:* Reviewers will analyze the budget for clarity and cost-effectiveness. They will also assess the rationale of the proposed budget and whether the allocation of funds is appropriate to complete tasks outlined in the project narrative. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other

private sector support as well as institutional direct funding contributions. Preference will be given to organizations whose proposals demonstrate a quality, cost-effective program.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus *one* copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award.

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include both quantitative and qualitative data you have available.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jon Crocitto (*crocittoja@state.gov*; 202–632–6426) or Callie Ward (*wardca@state.gov*; 202–632–6431), Office of Citizen Exchanges, ECA/PE/C/PY, SA–5, Floor 3, Department of State, Washington, DC 20522–0503. All correspondence with the Bureau concerning this RFGP should reference the above contacts and ECA/PE/C/PY–10–02.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 24, 2009.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E9–28761 Filed 11–30–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6822]

U.S. National Commission for UNESCO Notice of Meeting

The U.S. National Commission for UNESCO will host its Annual Meeting on Thursday, December 17, 2009, from

10 a.m. until 1 p.m. Eastern Time by telephone conference.

The meeting will have a series of subject-specific reports and allow for brief question and answer periods. The Commission will accept brief oral comments or questions from the public or media during a portion of this approximately three-hour conference call. The public comment period will be limited to approximately 15 minutes in total, with two minutes allowed per speaker. Those who wish to present oral comments or listen to the conference call must make arrangements with the Executive Secretariat of the National Commission by December 14, 2009.

The National Commission may be contacted via e-mail at *DCUNESCO@state.gov*, or via phone at (202) 663–0026. Its Web site can be accessed at: *http://www.state.gov/p/io/unesco/*.

Dated: November 20, 2009.

Elizabeth Kanick,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. E9–28762 Filed 11–30–09; 8:45 am]

BILLING CODE 4710–19–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement ("NAFTA") provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty ("AD/CVD") proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2010, through March 31, 2011.

DATES: Applications should be received no later than December 16, 2009.

ADDRESSES: Applications should be submitted (i) electronically to *http://www.regulations.gov*, docket number USTR–2009–0039, or (ii) by fax, to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9617.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade ("GATT"), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) ("Section 402") provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Adherence to the NAFTA Code of Conduct for Binational Panelists

The "Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20" (*see http://www.nafta-sec-alena.org/en/view.aspx?x=345&mtpiID=ALL*), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members "shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved." The Code also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to "disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias." Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In

particular, Annex 1901.2 states that "[w]hile acting as a panelist, a panelist may not appear as counsel before another panel."

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative ("USTR") of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2010, through March 31, 2011, are invited to submit applications. Persons submitting applications may either send one copy by fax to Sandy McKinzy at 202–395–3640, or should be submitted electronically *http://to www.regulations.gov,* docket number USTR–2009–0039.

To submit an application via *http://www.regulations.gov,* enter docket number USTR–2009–0039 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most applications will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter 19 Roster." Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster must submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will not be subject to public disclosure and will not be posted publicly on *http://www.regulations.gov*. They may be referred to other federal agencies in the course of determining eligibility for the roster, and shared with foreign governments and the NAFTA Secretariat in the course of panel selection.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act ("PRA") that has been approved by the Office of Management and Budget ("OMB"). 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 PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or record keeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0014. Please send comments regarding the collection of information burden or any

other aspect of the information collection to USTR at the above e-mail address or fax number.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. This information is maintained in a system of records entitled "Dispute Settlement Panelists Roster." Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified individuals for inclusion on the Chapter 19 roster and for service on Chapter 19 binational panels.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E9–28751 Filed 11–30–09; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. RITA–2009–0004]

Notice of Request for Clearance of a New Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an information collection related to the Nation's ferry operations. The information collected will be used to produce a descriptive database of existing ferry operations. A summary report of survey findings will be published by BTS on the BTS web page.

DATES: Comments must be submitted on or before February 1, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA–2009–0004 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No., U.S. Department of Transportation, 1200 NJ Ave., SE., West Building Room W12–140, Washington, DC 20590. Comments should identify the docket number as indicated above. Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on Docket RITA–2009–0004." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. Comments can also be viewed and/or submitted via the Federal eRulemaking Portal: *http://www.regulations.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://www.gpoaccess.gov/fr/.*

FOR FURTHER INFORMATION CONTACT: Kenneth W. Steve, (202) 366–4108, NCFO Project Manager, BTS, RITA, Department of Transportation, 1200 NJ Ave., SE., Room E34–431, Washington, DC 20590. Office hours are from 9 a.m. to 6:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO).

Background: The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Public Law 109–59, Section 1801(e)) requires that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

This same legislation also requires biennial updating of the database. BTS conducted the first Census of Ferry Operators in 2006 and this information was subsequently updated via another census data collection in 2008. Based on what has been learned from the 2006 and 2008 census efforts, BTS is embarking on a redesign of the data collection instrument. The redesign will exclude previous items in order to produce more useful data. It will also include substantial revisions to current items that will reduce respondent burden and increase data reliability and validity. The BTS data collection will rely on a dual mode of data collection. Respondents will be given the option of responding via a paper questionnaire or Web-based survey. An electronic version of the questionnaire may also be available to respondents on request. The Web and electronic survey response fields will be pre-populated with existing data where appropriate for the operator to which it is sent. Thus, many operators can more easily confirm and/or correct data that they have provided in previous years.

The survey will be administered to the entire population of ferry operators (estimate 260 or less). The survey will request the respondents to provide information such as: The points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), peak periods of use, and intermodal connectivity. All

data collected in 2010 will be added to the existing NCFO database.

Respondents: The target population for the survey will be all of the approximately 260 operators of existing ferry services in the United States.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 20 minutes. This average is based on an estimate of 10 minutes to answer new questions and an additional 10 minutes to review (and revise as needed) previously submitted data.

Estimated Total Annual Burden: The total annual burden (in the year that the survey is conducted) is estimated to be just under 87 hours (that is 20 minutes per respondent for 260 respondents equals 5,200 minutes or 86.7 hours, i.e., 86:42).

Frequency: This survey will be updated every other year.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: The Transportation Equity Act for the 21st Century, (Pub. L. 105–178), section 1207(c) and The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Public Law 109–59 and 49 CFR 1.46.

Issued in Washington, DC on the 24th day of November 2009.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. E9–28739 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fiftieth Meeting, RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held December 14–17, 2009, 8 a.m. on December 17th/9 a.m. on the other days.

ADDRESSES: The meeting will be held at the RTCA Conference Rooms at 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B) meeting. The agenda will include:

Specific Working Group Sessions

Monday, December 14

• RTCA—All Day, RFG, MacIntosh—NBAA Room & Hilton—ATA Room.

Tuesday, December 15

• RTCA—All Day, RFG, MacIntosh—NBAA Room & Hilton—ATA Room.

Wednesday, December 16

• RTCA—All Day, RFG, MacIntosh—NBAA Room & Hilton—ATA Room.
• RTCA—All Day, WG–4, Colson Board Room.

Thursday, December 17

Plenary Session—*See* Agenda Below

Joint RTCA SC–186/EUROCAE WG–51

Agenda—Plenary Session—Agenda—December 17, 2009

(RTCA—Washington, DC—MacIntosh—NBAA Room & Hilton—ATA Room and EUROCAE)

Starting at 8 a.m. at RTCA and 2 p.m. in Europe

(WebEx and Phone Bridge information to be provided.)

• Chairman's Introductory Remarks, Review of Meeting Agenda.
• Review/Approval of the Forty-Ninth Meeting Summary, RTCA Paper No. 230–09/SC186–289.
• Consider for Approval—New Document—*Safety, Performance and Interoperability Requirements Document for Enhanced Traffic Situational Awareness During Flight Operations (ATSA–AIRB),* RTCA Paper No. 188–09/SC186–284.
• FAA Surveillance and Broadcast Services (SBS) Program—Status.
• Review of EUROCAE WG–51 Activities.
• Date, Place and Time of Next Meeting.
• Working Group Reports.
• WG–1—Operations and Implementation.
• WG–2—TIS–B MASPS.
• WG–3—1090 MHz MOPS.
• WG–4—Application Technical Requirements.
• WG–5—UAT MOPS.
• RFG—Requirements Focus Group.
• ADS–B ITP Coordination with SC–214 for Data Link Requirements—Review/Approve ISRA Form and DO–306 Recommendations.
• New Business.
• Other Business.
• Review Action Items/Work Programs.
• Adjourn Plenary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 23, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–28644 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting, Special Committee 214/Working Group 78: Standards for Air Traffic Data Communication Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 214/Working Group 78: Standards for Air Traffic Data Communication Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Special Committee 214/Working Group 78: Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held December 14–18, 2009 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Marriott Pyramid North Hotel, 5151

San Francisco Road NE., Albuquerque, New Mexico 87109, U.S.A., Telephone: +1–505–821–3333.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 214/Working Group 78: Standards for Air Traffic Data Communication Services meeting. The agenda will include:

Meeting Objectives

- Acceptance of the Criteria for Release of Mature Draft #2.
- Acceptance of Release of Mature Draft #2.
- Acceptance of the Plan for Release of Mature Draft #2.
- Acceptance of TOR Revisions to be Proposed to RTCA & Eurocae:
- Harmonization of Continental and Oceanic Data Link Standards.
- Revision of VDL mode 2 MOPS and MASPS.
- Development of Data Link Security Requirements.

Agenda

Monday Morning (14 DEC): Review of Status and Needs

- Welcome/Introductions/ Administrative Remarks.
- Approval of the Agenda.
- Approval of the Summary of Plenary # 8.
- Summary of Review Status:
- WP1.
- WP2.

Monday Afternoon: SC–214/WG78 Plenary Session

- Acceptance of the Criteria for Release of Mature Draft #2.
- Debate of Unresolved Major Comments, Recommendations for Resolution, and Items for Further Subgroup Consideration.

Tuesday Morning (15 DEC): SC–214/ WG78 Plenary Session

- Debate of Unresolved Major Comments, Recommendations for Resolution, and Items for Further Subgroup Consideration.

Tuesday Afternoon: Subgroup Working Sessions

- Incorporation of Plenary Guidance for Major Comments and Consideration of Items Referred from Plenary.

Wednesday (16 DEC): Subgroup Working Sessions

- Incorporation of Plenary Guidance for Major Comments and Consideration of Items Referred from Plenary.

Thursday (17 DEC): SC–214/WG78 Plenary Session

- Tabling of Issues Remaining to be Resolved Prior to Release of Mature Draft #2.
- Debate of Recommendations for Resolution of Remaining Items.
- Agreement of Prelease Changes to be Incorporated by Editorial Subgroup.
- Agreement to Release Mature Draft #2 Subject to Incorporation of Prerelease changes.
- Acceptance of Plan for Release of Mature Draft #2.

Friday Morning (18 DEC): SC–214/WG78 Plenary Session

- Acceptance of TOR Revisions to be Proposed to RTCA & EUROCAE.
- Review Dates and Locations Upcoming Meetings.
- Any Other Business.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 23, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–28646 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Meeting

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

ACTION: Notice of Motor Carrier Safety Advisory Committee meeting.

SUMMARY: FMCSA announces that the Agency's Motor Carrier Safety Advisory Committee (MCSAC) will hold a committee meeting via conference call on December 7, 2009. The conference call is open to the public.

DATES: The meeting will be held by conference call on December 7, 2009, from 8:30 a.m. to 9:30 a.m. Eastern Standard Time.

Matters To Be Considered: The MCSAC will be requested to begin work on a new task: as part of FMCSA's broad efforts to gather information and recommendations on hours-of-service requirements for drivers of property-carrying vehicles, FMCSA is asking MCSAC to provide advice and recommendations on the hours of service requirements.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kostelnik, Acting Chief, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–5730, *mcsac@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish a Motor Carrier Safety Advisory Committee. The committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2).

Hours-of-Service Task

On October 26, 2009, Public Citizen, *et al.* (Petitioners) and FMCSA entered into a settlement agreement under which Petitioners' petition for judicial review of the November 19, 2008 Final Rule on drivers' hours of service will be held in abeyance pending the publication of a Notice of Proposed Rulemaking (NPRM). The settlement agreement states that FMCSA will submit the draft NPRM to the Office of Management and Budget (OMB) within nine months of the date of the settlement agreement and that FMCSA will publish a Final Rule within 21 months of the date of the settlement agreement. The current rule will remain in effect during the rulemaking proceedings.

Assigning MCSAC this task is one of several steps that FMCSA will be undertaking in its process of proposing hours-of-service requirements for drivers of property-carrying vehicles. Other steps will include public listening sessions across the country and the opportunity for public comment on the forthcoming NPRM.

II. Meeting Participation

The meeting is open to the public and FMCSA seeks participation by all interested parties, including safety advocacy groups, State safety agencies, motor carriers, motor carrier associations, owner-operators, drivers, and labor unions. For information on the agenda, bridge line and web link for the conference call, please send an e-mail to *mcsac@dot.gov*. For information on services for individuals with disabilities or to request special assistance, please e-mail your request to *mcsac@dot.gov* by December 4, 2009.

Please note that oral comments will not be taken during this conference call from the public due to time limitations. Members of the public may submit written comments on this topic by December 3, 2009, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

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

Issued on: November 24, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–28672 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0242]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-three individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective *December 1, 2009*. The exemptions expire on December 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://Docketinfo.dot.gov*.

Background

On September 22, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-three individuals and requested comments from the public (74 FR 48338). The public comment period closed on October 22, 2009, and no comments were received.

FMCSA has evaluated the eligibility of the twenty-three applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-three applicants have had ITDM over a range of 1 to 39 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage his/her diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the September 22, 2009, **Federal Register** Notice, therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of

the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twenty-three exemption applications, FMCSA exempts, Charles E. Boyle, John A. Churchill, Dennis O. Chynoweth, Warren B. Copple, Jr., Ruben L. Flores, William J. Garber, Richard S. Gino, Hernan Hernandez, Devin J. Johansen, Michael J. Kelly, Jeffrey E. Kiehl, Dennis Larsen, Jesus G. Maesse, Richard M. Munoz, Jackson R. Olive, Wayne E. Parry, Thomas N. Pico, Matthew L. Pritchard, Paul Ramirez, Randall D. Stegemiller, Jon C. Thomas, Dennis M. Thyfault, and Howard M. Wilson, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 23, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–28701 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9561; FMCSA–2003–15268; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2007–28695]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 26 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on October 26, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence regarding any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 26 renewal applications, FMCSA renews the Federal vision exemptions for Calvin D. Atwood, Gregory W. Babington, George L. Cannon, William P. Doolittle, Steven C. Durst, Kenneth J. Fisk, Jonathan M. Gentry, Danny R. Gray, Benny D. Hatton, Jr., Robert W. Healey, Jr., Nathaniel H. Herbert, Jr., Jason E. Mallette, Thomas W. Markham, Raul Martinez, Joseph L. Mast, Kevin L. Moody, Terry W. Moore, Charles W. Mullenix, Robert M. Pickett, II, Donald F. Plouf, John N. Poland, Brent L. Seaux, Humberto A. Valles, Gary M. Wolff, John C. Young and George R. Zenor.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 23, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–28702 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Kinston Regional Jetport, Kinston, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from the North Carolina Global TransPark Authority to waive the requirement that a 3.63 acre parcel of surplus property, located at the Kinston Regional Jetport, be used for aeronautical purposes.

DATES: Comments must be received on or before December 31, 2009.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2–260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Darlene A. Waddell, Executive Director at the following address: 2780 Jetport Road, Suite A, Kinston, NC 28504.

FOR FURTHER INFORMATION CONTACT: Rusty Nealis, Program Manager, Atlanta Airports District Office, 1701 Columbus Ave., Campus Bldg., Suite 2–260, College Park, GA 30337, (404) 305–7142. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the North Carolina Global TransPark Authority to release 3.63 acres of surplus property at the Kinston Regional Jetport. The surplus property is being used for a computer design software facility for Spatial Integrated Systems, Inc.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at 2780 Jetport Road, Suite A, Kinston, NC 28504.

Issued in Atlanta, GA on November 17, 2009.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. E9–28445 Filed 11–30–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Monetary and Financial Policy within the Department of the Treasury is soliciting comments concerning Revision of Foreign Currency Form FC–1 (OMB No. 1505–0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, Revision of Form FC–2 (OMB No. 1505–0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and Extension without change of Form FC–3 (OMB No. 1505–0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before February 1, 2010.

ADDRESSES: Direct all written comments to Timothy D. Dulaney, Office of International Monetary and Financial Policy, Market Room, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Dulaney by e-mail (*tim.dulaney@do.treas.gov*), FAX (202–622–2021) or telephone (202–622–3121).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Federal Reserve Bank of New York's Web site, in the section for Banking Reporting Forms and Instructions, on the Web pages for the TFC–1 and TFC–2 forms, for example at: *http://www.ny.frb.org/banking/reportingforms/TFC_1.html.* Requests for additional information should be directed to Mr. Dulaney.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–1.

OMB Control Number: 1505–0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Control Number: 1505–0010.

Title: Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Control Number: 1505–0014.

Abstract: The filing of Foreign Currency Forms FC–1, FC–2, and FC–3 is required by law (31 U.S.C. 5315, 31 CFR 128, Subpart C), which directs the Secretary of the Treasury to prescribe regulations requiring reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The forms collect data on the foreign exchange spot, forward, futures, and options markets from all significant market participants. Current Actions: Two changes are proposed for FC–1, FC–2 and the Instructions to reduce reporting burden and improve the accuracy of the reports. (1) Eliminate the reporting of Net Reported Dealer position on the two forms. This would remove row 4 (six cell) from FC–1 and row 9 from FC 2 (6 cells), leading to a significant reduction in reporting burden. (2) Add some clarifying language to the reporting instructions on the treatment of cross-currency interest rate swaps. This would be beneficial to both preparers of the forms and to users of the data.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents:

Foreign Currency Form FC–1: 22 respondents.

Foreign Currency Form FC–2: 22 respondents.

Foreign Currency Form FC–3: 38 respondents.

Estimated Average Time Per Response:

Foreign Currency Form FC–1: 48 minutes (0.8 hours) per response.

Foreign Currency Form FC–2: 3 hours 36 minutes (3.6 hours) per response.

Foreign Currency Form FC–3: Eight (8) hours per response.

Estimated Total Annual Burden Hours:

Foreign Currency Form FC–1: 915 hours, based on 52 reporting periods per year.

Foreign Currency Form FC–2: 950 hours, based on 12 reporting period per year.

Foreign Currency Form FC–3: 1,216 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Foreign Currency Forms FC–1, FC–2, and FC–3 are necessary for the proper

performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimates of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Timothy D. Dulaney,

Office of International Monetary and Financial Policy, Market Room, U.S. Department of the Treasury.

[FR Doc. E9–28648 Filed 11–30–09; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of eight individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the eight individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On November 24, 2009, OFAC removed from the SDN List the eight individuals listed below, whose property and interests in property were blocked pursuant to the Order:

GALVEZ RODRIGUEZ, Luz Marina, c/o PRODUCTOS GALO Y CIA. LTDA., Bogota, Colombia; c/o REPRESENTACIONES Y DISTRIBUCIONES HUERTAS Y ASOCIADOS S.A., Bogota, Colombia; DOB 15 Mar 1953; Cedula No. 41589020 (Colombia); Passport 41589020 (Colombia) (individual) [SDNT].

MOSQUERA MAYA, Maria Alejandra (a.k.a. SANTACOLOMA, Maria Alejandra), 14420 NW 16th St., Pembroke Pines, FL 33028; c/o ASH TRADING, INC., Pembroke Pines, FL; DOB 22 Sep 1973; Cedula No. 34564670 (Colombia); Passport 34564670 (Colombia) (individual) [SDNT].

RODRIGUEZ AYALA, Jhon Jairo, c/o COOPIFARMA, Bucaramanga, Colombia; Avenida Bucaros No. 3–05 Bloq. 8 ap. 302, Bucaramanga, Colombia; DOB 29 Nov 1975; Cedula No. 91480692 (Colombia) (individual) [SDNT].

MOR GAVIRIA, Jaime, c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o PROMOCIONES E INVERSIONES LAS PALMAS S.A., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; c/o GAVIRIA MOR Y CIA. LTDA., Girardot, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; DOB 27 Sep 1980; POB Colombia; Cedula No. 11203386 (Colombia); Passport AG443304 (Colombia) (individual) [SDNT].

GAVIRIA DE MOR, Liliana, c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MOR GAVIRIA S.C.S., Bogota, Colombia; c/o GAVIRIA MOR Y CIA. LTDA., Girardot, Colombia; c/o CONSTRUCTORA AMERICA S.A., Bogota, Colombia; DOB 16 Mar 1965; POB Bogota, Colombia; Cedula No. 20621292 (Colombia); Passport AG443233 (Colombia) (individual) [SDNT].

RODRIGUEZ DE ROJAS, Haydee (a.k.a. RODRIGUEZ DE MUNOZ, Haydee; a.k.a. RODRIGUEZ OREJUELA, Haydee), c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o HAYDEE DE MUNOZ Y CIA. S. EN C., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o SORAYA Y HAYDEE LTDA., Cali, Colombia; DOB 22 Sep 1940; Cedula No. 38953333 (Colombia) (individual) [SDNT].

RODRIGUEZ ARBELAEZ, Carolina, c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o PRODUCCIONES CARNAVAL DEL NORTE Y COMPANIA LIMITADA, Cali, Colombia; c/o ASISTENCIA PROFESIONAL ESPECIALIZADA EN COLOMBIA LIMITADA, Cali, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o CREDIREBAJA S.A., Cali, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o DROCARD S.A., Bogota, Colombia; c/o CRASESORIAS E.U., Cali, Colombia; c/o FUNDASER, Cali, Colombia; c/o INVERSIONES CARFENI, S.L., Madrid, Spain; DOB 17 May 1979; Cedula No. 29117505 (Colombia) (individual) [SDNT].

BARON DIAZ, Carlos Arturo, c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; DOB 22 Jul 1931; Cedula No. 49994 (Colombia) (individual) [SDNT].

Dated: November 24, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–28748 Filed 11–30–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (LGY Foreclosure Impact Survey)]

Agency Information Collection (Loan Guaranty Service (LGY) Foreclosure Impact Survey—Veterans Recently Separated) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 31, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–New (LGY Foreclosure Impact Survey)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (LGY Foreclosure Impact Survey)."

SUPPLEMENTARY INFORMATION:

Titles: Loan Guaranty Service (LGY) Foreclosure Impact Survey—Veterans Recently Separated.

OMB Control Number: 2900–New (LGY Foreclosure Impact Survey).

Type of Review: New collection.

Abstract: The foreclosure impact survey will be used to respond to Public Law 110–389, Veterans' Benefits Improvement Act of 2008, Section 502, Report on Impact of Mortgage Foreclosures on Veterans. The mission of LGY is to help veterans and active duty personnel purchase and retain homes in recognition of their service to our nation. The program offers many advantages to veterans, including no down payment, and no mortgage insurance premiums.

The survey will address two elements of Public Law 110–389: (1) Data regarding the income levels of recently separated veterans and (2) the impact of delays in the adjudication of disability compensation claims on the capacity of veterans to maintain adequate housing.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 25, 2009, at page 49073.

Affected Public: Individuals or Households.

Estimated Annual Burden: 450 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,800.

Dated: November 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–28631 Filed 11–30–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (26–8261a)]

Agency Information Collection (Request for Certificate of Veteran Status) Activities Under OMB

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 31, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7316. Please refer to "OMB Control No. 2900–New (26–8261a)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (26–8261a)."

SUPPLEMENTARY INFORMATION: *Title:* Request for Certificate of Veteran Status, VA Form 26–8261a.

OMB Control Number: 2900–New (26–8261a).

Type of Review: New collection.

Abstract: The data collected on VA Form 26–8261a will be used to determine Veteran applicants' eligibility to receive a reduced down payment on a Federal Housing Administration (FHA) backed loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 16, 2009, at page 47645.

Affected Public: Individuals or households.

Estimated Annual Burden: 17 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 100.

Dated: November 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–28632 Filed 11–30–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory

Group will meet on December 14, 2009, in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 2:30 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration.

The agenda for the meeting will include discussions of the Blue Ribbon Panel on VA–Medical School Affiliations Report, update on Quality Initiatives, update on Homelessness Initiatives and an update on Model of Care.

Any member of the public wishing to attend should contact Juanita Leslie, Office of Administrative Operations (10B2), Veterans Health Administration, Department of Veterans Affairs at (202) 461–7019 or *j.t.leslie@va.gov*. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Ms. Leslie before the meeting or within 10 days after the meeting.

Dated: November 23, 2009.

By direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. E9–28651 Filed 11–30–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
December 1, 2009

Part II

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 40

Federal Reserve System
12 CFR Part 216

Federal Deposit Insurance Corporation
12 CFR Part 332

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 573

National Credit Union Administration
12 CFR Part 716

Federal Trade Commission
16 CFR Part 313

Commodity Futures Trading Commission
17 CFR Part 160

Securities and Exchange Commission
17 CFR Part 248

Final Model Privacy Form Under the Gramm-Leach-Bliley Act; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 40

[Docket ID OCC–2009–0011]

RIN 1557–AC80

FEDERAL RESERVE SYSTEM

12 CFR Part 216

[Docket No. R–1280]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AD16

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 573

[Docket ID OTS–2009–0014]

RIN 1550–AC12

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

RIN 3133–AC84

FEDERAL TRADE COMMISSION

16 CFR Part 313

[Project No. 034815]

RIN 3084–AA94

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AC04

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–61003, IA–2950, IC–28997; File No. S7–09–07]

RIN 3235–AJO6

Final Model Privacy Form Under the Gramm-Leach-Bliley Act

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); Federal Trade Commission (FTC); Commodity Futures Trading Commission (CFTC); and Securities and Exchange Commission (SEC).

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, FTC, CFTC, and SEC (the "Agencies") are publishing final amendments to their rules that implement the privacy provisions of Subtitle A of Title V of the Gramm-Leach-Bliley Act ("GLB Act"). These rules require financial institutions to provide initial and annual privacy notices to their customers. Pursuant to Section 728 of the Financial Services Regulatory Relief Act of 2006 ("Regulatory Relief Act" or "Act"), the Agencies are adopting a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules. In addition, the Agencies other than the SEC are eliminating the safe harbor permitted for notices based on the Sample Clauses currently contained in the privacy rules if the notice is provided after December 31, 2010. Similarly, the SEC is eliminating the guidance associated with the use of notices based on the Sample Clauses in its privacy rule if the notice is provided after December 31, 2010.

DATES: This rule is effective on December 31, 2009, except for the following amendments, which are effective January 1, 2012:

Instructions 3B, 10B, 17B, 24B, 31B, 38B, 45B, and 52B removing paragraphs (g) to 12 CFR 40.6, 216.6, 332.6, 573.6, and 716.6, 16 CFR 313.6, and 17 CFR 160.6 and 248.6, respectively; and

Instructions 7B, 14B, 21B, 28B, 35B, 42B, 49B, and 55B removing Appendixes B to 12 CFR parts 40, 216, 332, 573, and 716, 16 CFR part 313, and 17 CFR parts 160 and 248, respectively.

FOR FURTHER INFORMATION CONTACT: *OCC:* Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Heidi Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or David Nebhut, Director, Policy Analysis Division, (202) 874–5220, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Jeanne Hogarth, Consumer Policies Program Manager, Jelena McWilliams, Attorney, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, (202) 452–3667; Kara Handzlik, Attorney, Legal Division, (202) 452–3852; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Samuel Frumkin, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6602; or Kimberly A. Stock, Counsel, (202) 898–3815, Legal Division; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ekita Mitchell, Consumer Regulations Analyst, (202) 906–6451; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409; 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina Metz, Staff Attorney, (703) 518–6561, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FTC: Loretta Garrison, Senior Attorney, and Anthony Rodriguez, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Stop NJ–3158, Washington, DC 20580.

CFTC: Laura Richards, Deputy General Counsel, (202) 418–5126, or Gail B. Scott, Counsel, Office of General Counsel, (202) 418–5139, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SEC: Paula Jenson, Deputy Chief Counsel, or Brice Prince, Special Counsel, Office of the Chief Counsel, Division of Trading and Markets, (202) 551–5550; or Penelope Saltzman, Assistant Director, Thoreau Bartmann, Senior Counsel, or Daniel Chang, Staff Attorney, Office of Regulatory Policy, Division of Investment Management, (202) 551–6792, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Agencies are publishing final amendments to each of their rules (which are consistent and comparable) that implement the privacy provisions of the GLB Act: 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); 12 CFR part 716 (NCUA); 16 CFR part 313 (FTC); 17 CFR part 160 (CFTC); and 17 CFR part 248 (SEC) (collectively, the "privacy rule").[1]

[1] Because the Agencies' privacy rules generally use consistent section numbering, relevant sections will be cited, for example, as "section __.6" unless otherwise noted.

I. Introduction

A. Statutory Authority and Overview

The Regulatory Relief Act was enacted on October 13, 2006.[2] Section 728 of the Act directs the Agencies to "jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under [section 503 of the GLB Act]." [3] The Regulatory Relief Act stipulates that the model form shall be a safe harbor for financial institutions that elect to use it. Section 728 further directs that the model form shall:

(A) Be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

On March 29, 2007, the Agencies published a proposed model privacy form (the "proposed model form") that financial institutions would be able to use to comply with certain disclosures under the privacy rule.[4] On April 15, 2009, the SEC reopened the comment period on the proposed rulemaking to solicit comment on a research report and test data pertaining to additional consumer testing of the proposed model privacy form.[5] Today, the Agencies are amending the privacy rule to include a model privacy form that institutions may use to provide required disclosures. The final model form is substantially as proposed with changes based on comments we received as well as additional consumer testing.

B. Overview of the Final Model Privacy Form

As explained more fully in the Agencies' Proposed Rule, key elements of the final model form's structure and design, as well as vocabulary, reflect the research findings of the qualitative consumer testing.[6] The Agencies believe that the final model form as revised meets all the requirements of the Act and, based on the qualitative research that led to the development of the proposed model form and the quantitative consumer testing described below, is easier to understand and use than most privacy notices currently being disseminated.

While the model form provides a legal safe harbor, institutions may continue to use other types of notices that vary from the model form so long as these notices comply with the privacy rule. For example, an institution could continue to use a simplified notice if it does not have affiliates and does not intend to share nonpublic personal information with nonaffiliated third parties outside of the exceptions provided in sections __.14 and __.15.[7] Likewise, while the Agencies are eliminating the Sample Clauses and related safe harbor (or, for the SEC, guidance), institutions may continue to use notices containing these clauses, so long as these notices comply with the privacy rule.[8]

The following section briefly summarizes the key features of the final model form and the changes to the proposed form. A detailed discussion of the elements of the final model form appears in section III.

1. The Structure

The final model form has two pages, rather than the three pages in the proposed form, and may be printed on a single piece of paper.[9] Together, pages one and two address the legal requirements of applicable Federal financial privacy laws and are designed to increase consumer comprehension. The Agencies are not mandating a specific paper size in the final model form as long as the paper is in portrait orientation and sufficient to accommodate minimum font size, spacing, and content requirements.

2. Page One—Background Information, the Disclosure Table, and Opt-Out Information

Page one of the final model form has five parts: (1) The title; (2) an introductory section called the "key frame" which provides context to help the consumer understand the required disclosures; (3) a disclosure table that describes the types of sharing used by financial institutions consistent with Federal law, which of those types of sharing the institution actually does, and whether the consumer can limit or opt out of any of the institution's sharing; (4) only if needed, a box titled "To limit our sharing" for opt-out information; and (5) the institution's customer service contact information. Where the institution provides a mail-in

---

[2] Public Law No. 109–351, 120 Stat. 1966 (2006).

[3] *Id.*, adding 15 U.S.C. 6803(e). *See also infra* discussion at section II.A. on the GLB Act requirements for financial privacy notices. Section 728 of the Regulatory Relief Act directs the agencies named in Section 504(a)(1) of the GLB Act, 15 U.S.C. 6804(a)(1), to develop a model form. The CFTC, which did not become subject to Title V of the GLB Act until 2000, is not named in that section. The Commodity Exchange Act ("CEA") was amended in 2000 by the Commodity Futures Modernization Act of 2000 to make the CFTC a "Federal functional regulator" subject to the GLB Act Title V. *See* Section 5g of the CEA, 7 U.S.C. 7b-2. The CFTC interprets Section 728 of the Regulatory Relief Act as applying to it through Section 5g.

[4] *See* Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act ("Proposed Rule"), 72 FR 14940 (Mar. 29, 2007), available at *http://www.ftc.gov/os/2007/03/CorrectedNeptuneMarsandGenericFormsfrn.pdf*. A Correction Notice was published at 72 FR 16875 (Apr. 5, 2007).

[5] *See* Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act, Securities Exchange Act Release No. 59769, Investment Company Act Release No. 28697 (Apr. 15, 2009) [74 FR 17925 (Apr. 20, 2009)].

[6] The Agencies conducted the consumer research in two phases: the first was qualitative testing or form development; the second was quantitative testing. *See infra* section II.

[7] *See* privacy rule, section __.6(c)(5), NCUA section 716.6(e)(5).

[8] *See infra* section IV.

[9] For ease, the Appendix provides three versions of the final model form: (1) Model form with no opt-out; (2) model form with telephone and Web opt-out only; and (3) model form that includes a mail-in opt-out form. An alternative mail-in form (version 4) may be substituted for the mail-in portion of the model form in version 3. For those institutions that use the model form and need to provide a mail-in opt-out form, the reverse side to that opt-out form must not include any content of the model form. *See* F.4 of the Frequently Asked Questions for the Privacy Regulation, available at *http://www.ftc.gov/privacy/glbact/glb-faq.htm* (Dec. 2001) (staff guidance issued by the Board, FDIC, FTC, OCC, OTS, and NCUA) (stating that a consumer generally should be able to detach a mail-in opt-out form from a privacy notice without removing text from the privacy policy).

opt-out form, that form appears at the bottom of page one.

There are three significant changes on page one of the final model form.[10] First, the "What?" box has been modified to permit institutions to select from a menu of terms the types of information collected and shared (other than Social Security number). Second, information (if needed) about how to limit sharing or opt out follows the disclosure table. If the institution provides a mail-in opt-out form, that form appears at the bottom of page one. Third, the final model form includes at the top of the page in the right-hand corner the date by month and year of the most recent version of the notice. Institutions may include at the bottom of page one a "tagline" (an internal identifier) or barcode for information internal to the company, so long as these do not interfere with the clarity or text of the form.[11]

3. Page Two—Supplemental Information

As in the proposed model form, the second page of the final model form provides additional explanatory information that, in combination with page one, ensures that the notice includes all elements described in the GLB Act as implemented by the privacy rule. There is supplemental information in the form of Frequently Asked Questions ("FAQs")[12] at the top and definitions below. There are three significant changes to the disclosures on page two of the final form.[13] First, a new FAQ appears at the top of page two that can be used to identify those institutions that jointly provide the notice. Second, the FAQ on the collection of information has been modified to allow institutions to select from a menu of terms. Third, a new box has been provided at the bottom of page two titled "Other important information." This box can be used in only two ways: (1) to discuss state and/or international privacy law requirements; and (2) to provide an acknowledgment of receipt form.[14]

[10] *See infra* section III.I.

[11] *See*, e.g., comment letters of T. Rowe Price Associates, Inc. (May 29, 2007); Wolters Kluwer Financial Services (May 24, 2007).

[12] Note that a financial institution must insert its name or a common corporate identity as indicated in the two questions in this section each time that "[name of financial institution]" appears. The revised form has eliminated the FAQ "How does [name of financial institution] notify me about its practices."

[13] *See infra* section III.J.

[14] This use was provided in response to a request by the National Automobile Dealers Ass'n, whose members routinely ask customers to sign an acknowledgment of receipt on a copy of the dealer's privacy notice and retain this record verifying delivery of the notice. Comment letter of the National Automobile Dealers Ass'n (May 29, 2007).

II. Background

A. The Gramm-Leach-Bliley Act Privacy Notices

Subtitle A of title V of the GLB Act, captioned "Disclosure of Nonpublic Personal Information,"[15] requires each financial institution to provide a notice of its privacy policies and practices to its customers who are consumers.[16] In general, the privacy notice must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties.[17] The notice also must provide a consumer a reasonable opportunity to direct the institution generally not to share nonpublic personal information[18] about the consumer (that is, to "opt out") with nonaffiliated third parties other than as permitted by the statute (for example, sharing for everyday business purposes, such as processing transactions and maintaining customers' accounts, and in response to properly executed governmental requests).[19] The privacy notice must provide, where applicable under the Fair Credit Reporting Act ("FCRA"), a notice and an opportunity for a consumer to opt out of certain information sharing among affiliates.[20]

The privacy rule requires a financial institution to provide a privacy notice to its customers no later than when a customer relationship is formed and annually thereafter for as long as the relationship continues. The notice must accurately reflect the institution's information collection and disclosure practices and must include specific information.[21]

The privacy rule does not prescribe any specific format or standardized wording for these notices. Instead, institutions may design their own notices based on their individual practices provided they comply with the law and meet the "clear and conspicuous" standard in the statute and the privacy rule.[22] The Appendix to each privacy rule contains Sample Clauses that institutions may use in privacy notices to satisfy the privacy rule.

Financial institutions were required to provide privacy notices to their customers by July 1, 2001.[23] Many notices provided to consumers were long and complex. Because the privacy rule allows institutions flexibility in designing their privacy notices, notices have been formatted in various ways and as a result have been difficult to compare, even among financial institutions with identical practices.[24] The Agencies first explored issues related to the complexity of privacy notices in a workshop held in December 2001.[25]

On December 30, 2003, the Agencies published an Advance Notice of Proposed Rulemaking to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act ("ANPR") to solicit public comment on

[15] Codified at 15 U.S.C. 6801–6809.

[16] 15 U.S.C. 6803(a). A "customer" means a consumer who has a "customer relationship" with a financial institution. Privacy rule, section __.3(h), SEC section 248.3(j), CFTC section 160.3(k), NCUA section 716.3(n). A "consumer" is "an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual." 15 U.S.C. 6809(9); privacy rule, section __.3(e), SEC section 248.3(g)(1), CFTC section 160.3(h)(1). Financial institutions are required to provide an initial notice to their customers and a notice annually thereafter for as long as the customer relationship continues. 15 U.S.C. 6803(a); Privacy rule, sections __.4 and __.5. Institutions are also required to provide to their non-customer consumers a notice if the institution discloses nonpublic personal information outside the exceptions in sections __.14 and __.15 before any such disclosure is made. 15 U.S.C. 6802(a); privacy rule, sections __.4.

[17] 15 U.S.C. 6803(a)–(c).

[18] "Nonpublic personal information" is generally defined as personally identifiable financial information provided by a consumer to a financial institution, resulting from any transaction or any service performed for the consumer, or otherwise obtained by the financial institution. *See* 15 U.S.C. 6809(4); privacy rule, sections __.3(n) and (o), SEC sections 248.3(t) and (u), CFTC sections 160.3(t) and (u).

[19] 15 U.S.C. 6802; privacy rule, sections __.14 and __.15.

[20] 15 U.S.C. 1681a(d)(2)(A)(iii) (FCRA); 15 U.S.C. 6803(c)(4) (GLB Act).

[21] *See* sections __.4, __.5, and __.6 of the privacy rule.

[22] 15 U.S.C. 6802, 6803; privacy rule, section __.3(b), SEC section 248.3(c), CFTC section 160.3(b)(1).

[23] *See*, e.g., Privacy of Consumer Financial Information, 65 FR 35162 (June 1, 2000). The CFTC was added by Section 5g of the Commodity Exchange Act, 7 U.S.C. 7b-2 (as amended by the Commodity Futures Modernization Act of 2000), on December 21, 2000, and privacy notices were required to be delivered to consumers by March 31, 2002. Privacy of Consumer Financial Information, 66 FR 21236 (Apr. 27, 2001).

[24] *See* Rulemaking Petition from Public Citizen, *et al.*, at 4 (July 26, 2001) (available at *http://www.ftc.gov/bcp/workshops/glb/comments/nader.pdf*) ("Public Citizen Petition") (stating that notices were "dense," "complicated," and written by those trained in obfuscation rather than to express ideas clearly).

[25] *See* Get Noticed: Writing Effective Financial Privacy Notices, Interagency Public Workshop (Dec. 4, 2001) ("Get Noticed Workshop"). Workshop transcripts and other supporting documents are available at *http://www.ftc.gov/bcp/workshops/glb/index.html*. The Get Noticed Workshop, discussed in the preamble to the Proposed Rule, *supra* note 4 at n.14, provided a public forum to consider how financial institutions could provide more useful privacy notices to consumers.

a wide range of issues related to improving privacy notices.[26] The ANPR stated that the Agencies expected that consumer testing would be a key component in the development of any specific proposals.[27]

During January and February 2004, the Agencies met with a number of interested groups and individuals to discuss the issues raised in the ANPR and subsequently received forty-four comments in response to the ANPR.[28] While commenters expressed a variety of views on the questions posed in the ANPR, many commenters agreed that the Agencies should conduct consumer testing before proposing any alternative privacy notice.

B. Development of the Proposed Model Privacy Form

Over the years during which GLB Act privacy notices have been delivered to consumers, the Agencies have observed wide variations in these notices. Today, privacy notices vary considerably—not just in format, presentation, language, length, style, or tone—but also in how they inform consumers of their rights to limit certain sharing of personal information. For example, the Agencies have found the following variations in current privacy notices. Some institutions incorporate privacy notices into lengthy terms and conditions statements, making it harder for consumers to find information about the institution's privacy practices, and raising questions about whether such notices comply with the requirement that they be clear and conspicuous. Institutions also use messages in their notices' opening statements about how they value privacy and strive to "protect" personal information, thus providing assurances to consumers that imply their personal information is not shared broadly, while obscuring or directing attention away from the required disclosures of actual information sharing practices. Finally, the Agencies have seen a number of institutions employ the statement in their privacy policy "We do not sell your information to third parties" in a context that raises concerns about misrepresentations.[29]

These examples illustrate the need to make disclosure of institutions' information sharing practices and consumer choices more transparent and underscore the Agencies' interest in initiating a joint consumer research project to develop an easy-to-read and understandable model privacy notice for consumers.

In the summer of 2004, six of the Agencies[30] launched a project to fund consumer research ("Notice Project"). Their goals were to identify barriers to consumer understanding of current privacy notices and to develop an alternative privacy notice, or elements of a notice, that consumers could more easily use and understand compared to current notices. The Agencies conducted the consumer research in two sequential phases.[31]

In September 2004, the Agencies selected Kleimann Communication Group, Inc. ("Kleimann") as their contractor for the phase one form development research. The research objectives of the Notice Project included designing a privacy notice that consumers could understand and use, that facilitated comparison of sharing practices and policies across institutions, and that addressed all relevant legal requirements of the GLB Act and FCRA.

The form development phase culminated in an extensive research report prepared by Kleimann and released by the Agencies in March 2006 (the "Kleimann Report").[32] The Kleimann Report details the process by which the Agencies and Kleimann developed an alternative privacy notice. The structure, content, ordering of the text information, and title of the proposed model form all reflect the research findings from the qualitative consumer testing.

In October 2006, Congress passed the Regulatory Relief Act, which directed the Agencies to propose a model form based on standards similar to the Notice Project research goals. On March 29, 2007, the Agencies issued for public comment the proposed model form as produced in the form development phase with some minor revisions.

C. Overview of Comments Received

The Agencies collectively received approximately 110 unique comments from a variety of banks, thrifts, credit unions, credit card companies, securities firms, insurance companies, and industry trade associations, as well as from consumer and other advocacy groups, the National Association of Attorneys General ("NAAG"), the National Association of State Insurance Commissioners ("NAIC"), and individual consumers.[33]

A number of institutions expressed support for the model form. Some stated that they are either already using it (submitting copies of their notices) or intend to use it once it is finalized. One industry association conducted an informal poll of its community bank members and found that many are likely to use the model form and that most found the new form more consumer-friendly than the Sample Clauses. These commenters commended the Agencies for proposing simpler language and making the disclosure terms more understandable and accessible to consumers.

Consumer and other advocacy groups, the NAIC, NAAG, and individual consumers generally supported the Agencies' proposal and the clearer language and omission of extraneous information in the proposed model form. These commenters stated that the proposal could be strengthened in certain respects, for example, by making

[26] *See* Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, 68 FR 75164 (Dec. 30, 2003), available at *http://www.ftc.gov/os/2003/12/031223anprfinalglbnotices.pdf*. The Agencies sought, for example, comment on issues associated with the format, elements, and language used in privacy notices that would make the notices more accessible, readable, and useful, and whether to develop a model privacy notice that would be short and simple.

[27] *Id.* at text following n.5.

[28] Summaries of the outside meetings and public comments to the ANPR are available at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*.

[29] In some cases, the Agencies have identified notices that violate the privacy rule. For example, one institution's privacy notice did not include an opt-out form, but provided that consumers could only obtain an opt-out form by visiting a bank office, in violation of sections __.7(h), __.9(a), and __.10(a)(1) of the privacy rule. Another notice provided that consumers could only opt out by writing a letter to the institution, in violation of section __.7(a)(1) of the privacy rule. Offering only these very restrictive methods of obtaining an opt-out form and opting out also is not supported by the examples in the privacy rule. *See* sections __.7(a)(2), __.9(b), and __.10(a)(3) of the privacy rule.

[30] The six agencies that initially sponsored the Notice Project were the Board, FDIC, FTC, NCUA, OCC, and SEC. The OTS joined the Notice Project for the phase two quantitative testing. Information related to the Notice Project is available at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*.

[31] The first phase was designed as qualitative testing or form development research. This research involved a series of in-depth individual consumer interviews to develop an alternative privacy notice that would be easier for consumers to use and understand. The second phase was designed as quantitative testing, to test the effectiveness of the alternative privacy notice developed in phase one among a larger number of consumers.

[32] *See* Kleimann Communication Group, Inc., Evolution of a Prototype Financial Privacy Notice: A Report on the Form Development Project (Feb. 28, 2006) ("Kleimann Report"). For a copy of the full report, go to *http://www.ftc.gov/privacy/privacyinitiatives/ftcfinalreport060228.pdf*. For the executive summary, go to *http://www.ftc.gov/privacy/privacyinitiatives/FTCFinalReportExecutiveSummary.pdf*.

[33] Comments received by all the Agencies are available at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*. Many commenters sent copies of the same letter to more than one agency. Some association commenters sent several letters, both individually and jointly with other associations.

the default opt-in rather than opt-out and creating a one-stop opt-out repository similar to the National Do Not Call Registry.

There was general support by many commenters for additional consumer research and testing. While some industry commenters provided substitute language or submitted alternate forms of the notice, none submitted other research findings. However, the NAIC submitted a consumer study on notices with research findings that the Agencies did consider.

Most industry commenters, however, objected to several key aspects of the proposal. The most significant areas of concern raised by industry commenters related to: The standardized approach; the format of the proposed model form; the limited examples of types of personal information collected and shared; the disclosure table; incorporation of state law information; and revocation of the Sample Clauses. The thrust of many industry comments was that the proposed form was overly simplistic and not nuanced enough to describe precisely what the various laws permit or to allow accurate descriptions of more complex information sharing policies and practices. One commenter expressed concern that the form would lead to consumer confusion because of inaccurate disclosures on sharing practices and result in high opt-out rates, discouraging use of the form. Many industry commenters expressed concern about liability under state unfair or deceptive practice laws relating to privacy disclosures. At the same time, many institutions urged flexibility to allow inclusion of other information—such as describing the benefits of sharing, or providing marketing messages or privacy tips such as on identity theft and fraud prevention. One institution proposed allowing institutions to pick and choose which elements of the notice to use and still receive a safe harbor.

D. Quantitative Research

Following publication of the model form proposal in March 2007 and subsequent review of the comments, the Agencies revised the proposed model form for further testing.[34] In the fall of 2007, the Agencies turned their attention to developing the research protocol and methodology for conducting the second phase of the research: The quantitative consumer testing. In August 2006, prior to enactment of the Regulatory Relief Act, the Agencies had selected Macro International Inc. ("Macro") to conduct the quantitative research study.

In the spring of 2008, Macro conducted a survey of approximately 1,000 consumers using a mall-intercept methodology. The selected participants for the study reflected a range of demographic characteristics for gender, age, and educational level. The testing was conducted in five shopping mall locations—Baltimore, MD; Dallas, TX; Detroit, MI; Los Angeles, CA; and Springfield, MA—over a period of five weeks during March and April 2008.[35]

The test objectives were to evaluate the effectiveness of the revised proposed model form[36] developed by Kleimann ("Table Notice") for comprehension and usability as compared to three other styles or formats of notices. The other notice formats were: (1) The prose version of the prototype table notice also developed and tested by Kleimann ("Prose Notice"); (2) a current version of a common notice used by financial institutions ("Current Notice"); and (3) a notice comprised solely of the Sample Clauses found in the appendix to the privacy rule ("Sample Clause Notice"). Within each format, there were three different notices, each reflecting a different level of sharing. Each level of sharing had a common fictional bank name across the four notice formats: Mars Bank had a low level of sharing; Mercury Bank had a medium level of sharing; and Neptune Bank had the highest level of sharing. Both Mercury and Neptune Banks offered opt-out choices; however, the pattern of sharing was such that after exercising all available opt-outs, Neptune Bank continued to share more broadly than Mercury Bank and Mercury Bank continued to share more than Mars Bank. This design was intentional for the comparison testing.[37]

On December 15, 2008, two expert advisors to the Agencies, Dr. Alan Levy and Dr. Manoj Hastak, submitted a report to the Agencies analyzing the research data provided by Macro (the "Levy-Hastak Report").[38] The Levy-Hastak Report confirmed the overall effectiveness of the proposed model form (as modified) as against the three alternative notice formats. On April 15, 2009, the SEC published the Levy-Hastak Report, along with the Macro Report and test data, for public comment. The SEC received nine comments.[39]

The Levy-Hastak Report examined two measures on how effectively the notices communicated information: (1) Judgment quality; and (2) perceptual accuracy.[40] According to the Report, judgment quality focused on the extent to which study participants could provide logical, defensible reasons for choosing one bank over the other based solely on the notice. Perceptual accuracy focused on the ability of the participants to recognize accurately the differences between the banks in information collection and sharing practices, in opt-out choices, and in relative sharing after all opt-out choices were exercised.[41]

The Levy-Hastak Report concluded that, overall, the Table Notice outperformed the other notices.[42] The Table Notice performed particularly well on difficult tasks[43] while the Current Notice performed poorly on all measures. While the Sample Clause Notice performed well on simple tasks,

[34] *See* Mall Intercept Study of Consumer Understanding of Financial Privacy Notices: Methodological Report, submitted by Macro International Inc. ("Macro Report"), Appendix C, for copies of the test notices. The Macro Report is available at: *http://www.ftc.gov/privacy/privacyinitiatives/Macro-Report-on-Privacy-Notice-Study.pdf*. *See also infra* section III for a discussion about the changes made to the final model form since the Proposed Rule was issued for comment.

[35] Macro provided the test data to the Agencies in the summer of 2008 and its research methodology report in September. The study data and codebook are available at: *http://www.ftc.gov/privacy/privacyinitiatives/Privacy-Notice-Study-Dataset.pdf* and *http://www.ftc.gov/privacy/privacyinitiatives/Privacy-Notice-Study-Codebook.pdf*.

[36] The proposed model form was revised based on the comments received, and a version of that revised form was used in the quantitative testing.

[37] Study participants were randomly assigned to see one of the four notice formats. Each participant read three privacy notices in the same format and was asked a series of questions, first about one pair of notices, and next about a second pair of notices, with one of the three notices used twice in each round. The order and repetition of the notices were rotated among the participants so that the same notice was not always viewed twice. Participants answered additional questions about the notices and their attitudes on information sharing. The interview sought information about participants' choice of a bank based solely on the notice content; responses to factual questions, such as which of two banks shared more or whether any of the banks offered an opportunity to limit or opt out of sharing; performance of a task, such as determining which bank shared more after exercising all options to limit or opt out of sharing; and responses to questions about their attitudes toward the use and sharing of their information. *See* Macro Report, *supra* note 34, Appendix A.

[38] *See http://www.ftc.gov/privacy/privacyinitiatives/Levy-Hastak-Report.pdf*.

[39] *See http://www.sec.gov/comments/s7-09-07/s70907.shtml*.

[40] Levy-Hastak Report at 7–14.

[41] *Id.* at 4–5.

[42] *Id.* at 16.

[43] *Id.* at 17. According to the Report, an example of a difficult task was: Participants were asked to assume that they had limited or opted out of all possible sharing for both banks; based on that assumption, respondents were asked whether one bank shared more personal information than the other or whether both banks shared information equally. An example of an easy task was: Using the notice, participants were asked to identify how they could tell the bank that they wanted to limit or opt out of sharing personal information.

about equal to the Table and Prose notices, it performed significantly less well than the Table Notice on measures of judgment quality.[44] The Report concluded that the table format is likely a key explanation for the improvement in comprehension demonstrated by the study participants who saw the Table Notice as compared to those who saw the other notice styles—especially for difficult perceptual accuracy tasks.[45]

While the notice format significantly affected participants' ability to comprehend and compare the notices, the testing showed that participants' general attitudes about the sharing of their personal information were not affected by the notices they saw.[46] Following the two rounds of questions on the content of, and comparison between, the notices, the study participants were asked to rate their attitudes in general toward information sharing, for example, sharing with affiliated banks and with nonaffiliated banks. The results showed that participants' attitudes were about the same across the four notice formats.[47]

The Levy-Hastak Report analyzed two specific areas where the Table Notice seemed to perform less well than the other notices. First, the Report described an anomaly with respect to responses to the question [Q. 19/30]: "Which of these two banks gives you the opportunity to limit or to opt out of the sharing of your personal information?" [48] Generally participants identified the bank or banks that provided an opt-out. However, some participants who saw the Table and Prose notices selected Mars Bank, the one that shared the least and offered no opt-out option. Because answering "Mars Bank" was identified as an incorrect answer, the Current and Sample Clause notices out-performed the Table and Prose notices on this question.

In contrast, the Table and Prose notices out-performed the other two notices on the most difficult task in the test. In this task, participants were asked to assume that they had exercised all possible options to limit or to opt out of sharing and then to identify which bank shared more. Here, the Table and Prose notices significantly out-performed the other notices. More participants who saw the Table and Prose notices correctly gave as their answer the higher sharing bank. This result suggests that participants who saw the Table and Prose notices did understand which bank(s) offered an opportunity to limit or to opt out of their sharing.

In analyzing this discrepancy, the Levy-Hastak Report observed that the simpler question had two different, yet accurate, responses, depending on how participants interpreted the question. Some of the participants might have understood the question to apply at the point of *choosing between* the two bank notices; those participants selected the lower sharing bank. In contrast, other participants might have understood the question to mean: Which bank lets me opt out of sharing personal information once I am doing business with the bank. The second interpretation was the intended meaning of the question. Drs. Levy and Hastak hypothesized that some participants who saw the Table and Prose notices understood the question to have the first meaning, while other participants, particularly those who saw the Sample Clause and Current notices, understood the question to have the second meaning.[49]

To test this hypothesis, Drs. Levy and Hastak examined the pattern of factual mistakes that participants made when they answered a separate set of questions.[50] There, study participants were asked in Q. 16/27 why they preferred one bank over the other, based solely on the notice. Some participants who selected a bank that shared relatively little information and did not offer an opt-out stated that this bank offered more opportunity to limit or to opt out of sharing than the higher sharing bank, which was labeled a "false opt-out mistake" in the Report. The Report found that participants who saw the Table and Prose notices were on average almost three times as likely to make the false opt-out mistake as those who saw the Current and Sample Clause notices.[51]

This finding supports the hypothesis that users of the Table and Prose notices who selected the lower sharing bank in response to Q. 19/30 understood the question in its first meaning: They selected a bank that gave them an opportunity to limit or opt out of sharing at the time of *choosing between* the two bank notices. Under that interpretation, these participants could limit sharing by selecting the bank that shared less information. Thus the Levy-Hastak Report's analysis of the false opt-out mistake pattern in Q. 16/27 is consistent with their hypothesis regarding the responses to Q. 19/30. In addition, the Report found that the educational level of the study participants produced a significant effect only on the responses to the opt-out question, with better educated participants more likely to answer the question in the intended manner.[52] This finding is also consistent with the Report hypothesis that participants who saw the Table and Prose notices understood the question in two different, yet equally correct ways, unlike those who saw the Sample Clause and Current notices.

The Table Notice also seemed to perform less well in a second, unrelated area. Specifically, all the test notices provided only two methods for consumers to opt out of or limit sharing: Use of a toll-free telephone number or access to the opt-out on the institution's Web site. When study participants were asked to identify which contact modes were identified in the notice as ways to limit or opt out of sharing, they correctly identified the two modes more frequently when using the Sample Clause Notice than the Table, Prose, and Current notices.

Noting that this type of question appears to invite skimming the notice to find the answer quickly and easily, the Levy-Hastak Report examined the great variability in notice length and found that the Sample Clause Notice was significantly shorter than any of the other notices. The Levy-Hastak Report observed that the shortness of the Sample Clause Notice may have made it easier for participants to scan the notice and find the answer to this question. The Report opined that notice length likely has an effect on scanability and reading ease.[53]

[44] Levy-Hastak Report at 9–10.

[45] Levy-Hastak Report at 17.

[46] *Id.* at 15.

[47] *Id.* Study participants generally did not like their information being shared with either affiliates or with nonaffiliates.

[48] *See id.* at 12–14.

[49] Significantly, unlike the Sample Clause and Current notices, neither the Table nor the Prose notice uses the word "opt-out" in the model form; rather, these forms refer to "limiting sharing." This word choice was intentional to help consumers understand that some sharing is necessary and that consumers cannot stop all sharing—a concept that consumers who knew the term equated with "opt-out." *See* Kleimann Report, *supra* note 32, at 101–108. Because the Table and Prose notices did not use the word "opt-out," participants using these notices did not have that word as a visual "cue" when they were asked the question.

[50] The Report also examined a second mistake: Where participants selected the lower sharing bank when they were asked to identify which bank shared more (labeled a "false sharing mistake"). *See* Levy-Hastak Report at 9. In that case, there was not an unusual pattern in the distribution of responses. Rather, the Report found that the study participants who made this mistake were equally distributed across all four notice styles. *Id.* at 13.

[51] *Id.*

[52] *Id.* at 13–14.

[53] Levy-Hastak Report at 14. In addition, the use of check boxes in the design of the opt-out section of the Table and Prose notices (a carry-over from the original mail-in format of the proposed model form) appeared to confuse some participants when they were asked this question. The responses recorded for these two notices reflected a somewhat higher

Continued

While the Levy-Hastak Report findings confirmed the overall effectiveness of the Table Notice,[54] the Report's analysis prompted the Agencies to consider a further refinement to the proposed model form. The change, discussed in more detail later, was to modify the opt-out section of the model form to place the opt-out information on page one directly following the disclosure table so that all the key information appears on that page. [55] The Agencies considered this change to facilitate quick scanning for important information without sacrificing the model form's performance in other respects. To ensure that locating the opt-out information on page one worked from a usability perspective, the Agencies decided to conduct validation testing which led to separate formats for the telephone and Internet opt-out and for the mail-in opt-out that the Agencies are adopting.

E. Public Comments on the Quantitative Test Data

Nine commenters representing insurance, securities, and financial services associations, a bank, and two investment advisers submitted comments in response to the SEC's solicitation for public comments on the quantitative testing. Most of the commenters re-stated their earlier general objections to the proposed model form. These concerns are addressed in section III.

All but one of these commenters made general observations about the quantitative test methodology and the Levy-Hastak Report. Five commenters observed that the test notices were designed for banks and not for insurance companies or securities firms (*i.e.*, broker-dealers, investment companies, or SEC-registered investment advisers), thereby omitting a significant portion of the financial services industry that provide these notices.[56] Two commenters opined that the study participants' demographic characteristics did not reflect those consumers who will receive financial privacy notices.[57] One expressed concern about the demographic diversity in the mall selections and questioned whether there was consistent coding of the open-ended responses.[58] One commented that the testing criteria ruled out non-English speaking participants.[59]

Some of the commenters disagreed with the Levy-Hastak Report's conclusion that the Table Notice outperformed the other notice formats. They opined that the Report's conclusion is flawed because: (1) The Sample Clause Notice did better on simpler tasks than the Table Notice; [60] (2) the anomalies discussed in the Levy-Hastak Report may be due to other explanations; [61] and (3) while the Table Notice's overall performance was better than the other notices, actual performance accuracy was relatively low.[62] Several commented that the overly simplified and inflexible format of the Table Notice is not a true test of consumers' understanding of institutions' actual collection and disclosure practices.[63] In addition, all commenters on the quantitative testing urged retention of the Sample Clauses and related safe harbor.

The test notices for the quantitative study were created for fictitious banks, even though the model form can be used by any financial institution subject to the GLB Act and the privacy rule. Because the vast majority of consumers are familiar with or have experience with a bank, the Agencies used a notice designed for a bank to increase the likelihood that most of the test participants could readily understand the terms in the notice, such as "account balances," "income," or "credit history," which describe information collected and shared by many banks, as well as by many other financial institutions.

The Macro Report presented data on the demographic characteristics of the study participants recruited for the study. Participants at each mall were pre-selected for a representative mix based on gender, age, and education levels, and information on participants' race/ethnicity, income, and household size was obtained at the end of each interview.[64] Since a significant majority of consumers in America receive a financial privacy notice—including from banks, credit unions, securities firms, insurance companies, auto dealers, debt collectors, and payday lenders—the Agencies wanted to ensure that a representative cross-section of consumers be included in the study.

The Agencies hired Macro as an outside independent expert to handle all aspects of the collection and reporting of the study data. Macro conducted all training of field staff, implemented a series of checks to ensure greater accuracy of the study data, reviewed, on an ongoing basis, all daily downloads of data from the field, and coded all of the open-end responses.[65]

With respect to the comment that the accuracy of the study participants' responses overall was relatively low, the commenter cited the judgment quality measure of the participants' fact-based reasons for choosing the lower sharing bank.[66] While the results showed that most consumers likely have a limited

number of "other" responses, even though all the notices offered the same two options. Macro reported anecdotally that a number of participants who viewed the Table and Prose notices reported "check this box" as one of the methods offered to opt out or limit sharing—a response that was recorded as "other."

[54] *Id.* at 17.

[55] Some commenters had urged the Agencies to consolidate the model form on two sides of a single piece of paper, and a few suggested that the Agencies consider moving the opt-out to page one. *See*, e.g., comment letters of Securities Industry and Financial Markets Ass'n (May 29, 2007); World's Foremost Bank (May 25, 2007); World Financial Network National Bank (May 29, 2007); World Financial Capital Bank (May 25, 2007).

[56] *See* comment letters of American Council of Life Insurers (May 20, 2009), National Ass'n of Mutual Insurance Cos. (May 20, 2009), American Insurance Ass'n (May 20, 2009), Investment Adviser Ass'n (May 20, 2009), The Financial Services Roundtable and BITS (May 20, 2009).

[57] *See* comment letters of National Ass'n of Mutual Insurance Cos. (May 20, 2009); The Financial Services Roundtable and BITS (May 20, 2009).

[58] *See* comment letter of The Financial Services Roundtable and BITS (May 20, 2009).

[59] *See id.* The Agencies used a single form, printed in English, for simplicity in conducting the testing. We recognize that institutions can and do provide notices in a variety of other languages when their customers are non-English speaking. We anticipate that those institutions that use the final model form will continue to provide their notices in other languages to ensure that their non-English speaking customers can read and use the form. *See also* Transcript of Get Noticed Workshop, available at *http://www.ftc.gov/bcp/workshops/glb/GLBtranscripts.pdf*, comments of Irene Etzkorn (recognizing that banks do provide financial privacy notices in languages other than English); comments of Tena Friery (noting that the Privacy Rights Clearinghouse promotes notices and educational materials in other languages and that 80–100 different languages are spoken in Los Angeles alone).

[60] *See* comment letters of American Insurance Ass'n (May 20, 2009); National Ass'n of Mutual Insurance Cos. (May 20, 2009). While some commenters find greater virtue in the better performance of the Sample Clause Notice on only the simpler tasks or disagree with the Levy-Hastak Report's analyses, the evidence is compelling that the Table Notice performed better overall across all comprehension and comparison measures. *See* Levy-Hastak Report at 6.

[61] *See* comment letter of American Council of Life Insurers (May 20, 2009).

[62] *Id.*

[63] *See*, e.g., comment letter of The Financial Services Roundtable and BITS (May 20, 2009).

[64] Macro Report, *supra* note 34, at 3 & Appendix B; Levy-Hastak Report at 2.

[65] Macro Report, *supra* note 34, at 3–4.

[66] The commenter looked to the Table Notice score of 40.6% in Table 1 of the Levy-Hastak Report. Levy-Hastak Report at 12. This data evaluated how well study participants could explain their reasons for preferring one bank notice over another where they selected, as their preferred bank, the lower sharing bank. While the commenter pointed to a single measure in the Levy-Hastak Report, the Report relied on a number of accuracy measures that varied in difficulty level. *See*, e.g., *id.*, Table 3 at 12.

understanding of information sharing practices after a brief exposure to any of the notice styles, nevertheless the Levy-Hastak Report confirms that overall the Table Notice out-performed the other notices and is the most effective notice of all the privacy notices tested.

Finally, two commenters requested that if both the model privacy form and the SEC's proposed amendments to its privacy rule, Regulation S–P, were adopted, the SEC should coordinate the compliance dates so as to minimize the compliance burden and the potential for multiple revisions of an institution's privacy notice.[67] The SEC appreciates institutions' desire to minimize revisions to their privacy notices and reduce the costs of compliance with its rules. However, the model privacy form the Agencies are adopting today is just that—a model—and no institution is required to use the model form. A financial institution that intends to use the model privacy notice and minimize potential costs, if any, related to revising its privacy notices in light of amendments to Regulation S–P could begin to use the model form after the compliance date of any final amendments to Regulation S–P.

F. Validation Testing

In revising the model form based on public comments and findings from the Levy-Hastak Report, the Agencies streamlined the form to consolidate the information on the front and back sides of a single piece of paper and moved the opt-out information to the bottom of page one. In December 2008, the Agencies engaged Kleimann to conduct validation testing to confirm that these changes would not affect the comprehension, usability, and design integrity of the model form. In particular, Kleimann's new research focused on the placement of the opt-out information on page one. Kleimann conducted targeted in-depth interviews in January and February 2009 to test, revise, and re-test the model form. On February 12, 2009, Kleimann submitted a report to the Agencies, "Financial Privacy Notice: A Report on Validation Testing Results," with a revised opt-out form recommendation ("Kleimann Validation Report").[68]

The validation testing examined various formats for displaying opt-out information where the opt-out methods are by toll-free telephone number,[69] the Internet, or a mail-in form. The validation testing confirmed the usability of the following changes to the proposed model form: (1) inserting a new box titled "To limit our sharing" below the disclosure table to inform consumers how they can limit sharing, such as by a toll-free telephone number or online; (2) replacing the "Contact Us" box with a box titled "Questions" following the "To limit our sharing" box; and (3) as applicable, inserting a mail-in form at the bottom of the page, which would require a longer piece of paper.[70]

III. The Final Model Privacy Form

A. Standardization

Like the proposed model privacy form, the final model form uses a standardized format. Some industry commenters expressed support for the standardized format, with one noting that standardized notices would serve as an effective means of allowing consumers to understand in a simple manner companies' information practices.[71] Another commenter pointed to the success of the "Schumer box," a standardized format that makes the disclosure of credit card terms more accessible to consumers.[72]

Privacy and advocacy groups and NAAG supported the proposed standardized format, recognizing the important findings of the research and the model form's structure—in particular the elements on page one—as benefiting both consumers and companies by making the disclosure information accessible.[73]

A number of industry commenters, however, objected to the standardized form, asserting variously that: It causes confusion; because it is an abrupt change in the way information-sharing practices are disclosed, it could cause consumers to believe that the institution is changing its policies; because the model form has too much boilerplate, it detracts from the ability to compare policies; and it makes the notice less clear. Others stated that the standardized form is too inflexible and does not accurately reflect institutions' financial practices or accurately describe the scope of consumers' rights. Several stated that the model form language does not adequately capture the complex privacy policies and practices of many institutions.

Based on the statutory requirement that the Agencies propose "a model form," the final model privacy form utilizes a standardized format.[74] Moreover, as more fully discussed in the preamble to the Proposed Rule, the Agencies' research supports uniform disclosures to help consumers better understand companies' information sharing practices.[75] We reaffirm that use of the model form is voluntary; institutions are not required to use it.

B. Instructions for Use

The General Instructions to the Model Privacy Form require that no additional information—other than what is specifically permitted—may be included in the model form in order to obtain the benefit of the safe harbor.[76]

A number of industry commenters objected to the Agencies' statement in the preamble to the Proposed Rule that the model form should not be incorporated into any other document.[77]

---

[67] *See* Part 248–Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Personal Information, Securities Exchange Act Release No. 57427, Investment Company Act Release No. 28718 (Mar. 4, 2008) [73 FR 13692 (Mar. 13, 2008)]. *See also* comment letters of American Council of Life Insurers (May 20, 2009) and Investment Advisers Ass'n (May 29, 2007).

[68] *http://www.ftc.gov/privacy/privacyinitiotives/validation.pdf.*

[69] *See* section __.7(a)(2)(ii)(D) of the privacy rule.

[70] Kleimann Validation Report, Appendix E. The Kleimann Validation Report found that the information for telephone or Internet options could be readily displayed on a standard 8½ x 11-inch page, but the addition of a mail-in form required a longer piece of paper.

[71] Comment letter of The Direct Marketing Ass'n (May 29, 2007) (commenting that it has an automated software program that allows companies to create a customized privacy notice in a standardized format).

[72] *See* comment letter of Capital One Financial Corporation (May 29, 2007); *see also* 12 CFR 226.5a(a)(2)(i)–(ii).

[73] *See, e.g.*, comment letters of Center for Democracy and Technology (May 29, 2007); National Ass'n of Attorneys General (June 14, 2007); Privacy Rights Clearinghouse (May 16, 2007). *See also* The Center for Information Policy Leadership (May 29, 2007) (recognizing that the proposed model form addresses the requirements of the GLB Act and that the research provided insight into what effectively communicates to consumers, including "important information about how people learn about privacy, about the use of tables to facilitate comparisons across companies, and about the need to inform consumers about why they are receiving a privacy notice").

[74] *Cf.* Press Release, U.S. House of Representatives, Committee on Financial Services, Financial Services Committee Democrats Call for Simplified Privacy Notices, (July 25, 2003) available at: *http://finonciolservices.house.gov/pr062503.html.*

[75] *See* Proposed Rule, *supra* note 4 at text accompanying n.30. *See also* Janice Tsai, Serge Egelman, Lorrie Cranor, and Alessandro Acquisti, "The Effect of Online Privacy Information on Purchasing Behavior: An Experimental Study," The 6th Workshop on the Economics of Information Society (WEIS) (June 2007) *http://weis2007.econinfosec.org/papers/57.pdf* (more accessible privacy information reduces information asymmetry between the merchant and the consumer as to the use of consumers' personal information; aids consumers in making informed choices; and demonstrates that consumers tend to purchase from merchants offering more privacy protection, including paying a premium for such a purchase).

[76] *See* Instruction C to the Model Privacy Form.

[77] *See, e.g.*, comment letters of American Council of Life Insurers (May 29, 2007); Investment Company Institute (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007).

Some expressed concern that this would require the notice to be mailed separately.[78] Several commenters stated that a private label or co-branded credit card application incorporates the lender's privacy policy into a brochure with a tear-off application to make it easier for the store clerks to provide all required information in a single document.[79] Others observed that the privacy notice is typically included in a single document with other important reference information.

Recognizing these concerns, the Agencies agree that institutions may incorporate the model form into another document, but they must do so in a way that meets all the requirements of the privacy rule and the model form instructions, including that: The model form must be presented in a way that is *clear and conspicuous;*[80] it must be *intact* so that the customer can retain the content of the model form;[81] and it must retain the same *page orientation, content, format, and order* as provided for in this Rule.

C. Format of the Notice

In response to numerous comments relating to the format of the proposed model form, the Agencies have revised certain of the requirements relating to paper size, orientation, number of pages, type size, and color and logo placements, as discussed below.

Paper Size: To allow institutions greater flexibility, the final model privacy form may be printed on paper the size of which must be sufficient to meet the layout and minimum font size requirements with sufficient white space on the top, bottom, and sides of the content.[82] Many industry commenters objected to the proposed requirement that the model form appear on 8½ by 11-inch size paper.[83] Commenters stated that the proposed model form would require significant materials, postage, and production costs. Industry commenters explained that institutions use a variety of sizes and styles to present their privacy notices. Some institutions—particularly credit card institutions—enclose their privacy notices with a billing or periodic statement or a bankcard carrier. Envelopes for certain of these statements or for multi-panel formats are smaller than 8½ inches and may not accommodate the proposed size.

The Agencies have reviewed numerous financial institution privacy notices over the past eight years, many of which are printed on smaller-sized paper in a multi-panel, multi-fold display. The density of the small-font text, in addition to the complex legal language, make these notices very difficult to read or understand.[84] The final requirement for paper size is designed to provide financial institutions with some flexibility, while prohibiting a paper size that is too small to accommodate the font and orientation requirements in the model form set forth below.

Orientation: Like the proposed model form, the final model privacy form must be printed in "portrait" orientation. Some institutions objected to this orientation, suggesting instead that institutions be permitted to design their own model form in other orientations, such as the commonly-used multi-fold display.[85] According to these commenters, this landscape format has three or more "pages" of text visible on each side of the paper when the notice is fully opened. The size of the paper varies considerably, with some as small as approximately 7 by 11 inches before it is folded. In such a display, each "page" is approximately 3⅓ by 7 inches—considerably smaller than can accommodate the model form.[86]

The design of the model form does not lend itself to a multi-panel display. The utility of the form's design for reading ease depends in large measure on both larger, more readable type size and how the content is presented. While one commenter objected to the "significant empty space" in the model form,[87] the guidance from communications experts and form designers is that appropriate white space between the text and margins, as well as the use of headings and bullets, make a more effective, readable notice.[88] The table—the heart of the model form—cannot be squeezed into a tighter space or so reduced in size as to make it virtually unreadable. For these reasons, the Agencies do not agree that the orientation of the model form should be altered to accommodate a multi-panel display.

Number of Pages: In response to numerous commenters, the instructions to the final model privacy form permit the form to be printed on two sides of a single piece of paper or on two single-sided sheets.[89] By incorporating the opt-out information on the bottom of page one, the revised model form may now appear on the front and back of a single piece of paper.

Industry commenters generally objected to the proposed requirement that the model form be printed only on one side of a page.[90] Many raised environmental concerns and the increased costs associated with printing the notice on multiple pages.

While the proposed single-sided model form was based on the initial

[78] *See, e.g.*, comment letters of American Bankers Ass'n (May 25, 2007); American Insurance Ass'n (May 29, 2007) Visa U.S.A., Inc. (May 29, 2007).

[79] *See, e.g.*, comment letters of Consumer Bankers Ass'n (May 29, 2009); National Retail Federation (May 29, 2007).

[80] The term "clear and conspicuous" is defined in the privacy rule at section __.3(b), SEC section 248.3(c), and includes as a requirement that the notice be designed to call attention to the nature and significance of the information in the notice. In addition, the privacy rule requires that consumers should reasonably be expected to receive the notice. *See* section __.9 of the privacy rule.

[81] Institutions that incorporate the model privacy form into other documents must take care that the customer's execution of other forms in the document will leave the model form intact.

[82] See Instruction B to the Model Privacy Form. The Agencies understand that most privacy policies provide for opting out by toll-free telephone or on the Internet. The paper size for those policies will likely be about 8½ x 11 inches. However, for those institutions that provide a mail-in opt-out form, the paper size will likely need to be longer, around 8½ x 14 inches, in order to accommodate the mail-in form.

[83] *See*, e.g., comment letters of Consumer Bankers Ass'n (May 29, 2007); American Bankers Ass'n (May 25, 2007); Bank of America Corporation (May 29, 2007); Independent Community Bankers of America (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); Investment Company Institute (May 29, 2007); National Retail Federation (May 29, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007); Credit Union National Ass'n (May 29, 2007).

[84] *See supra* notes 24–25 and *infra* note 95.

[85] *See, e.g.*, comment letters of National Retail Federation (May 29, 2007); Investment Advisers Ass'n (May 20, 2009); American Bankers Ass'n (May 25, 2007); Credit Union National Ass'n (May 29, 2007). Some of these commenters pointed to the preamble language in the final privacy rule which states: "The Agencies believe that in most cases the initial and annual disclosure requirements can be satisfied by disclosures contained in a tri-fold brochure." 65 FR 33646, 33662 (May 24, 2000) (FTC); 65 FR 35162, 35175 (June 1, 2000) (banking agencies); (Regulation S–P) 65 FR 40334, 40347 (June 29, 2000) (SEC). This statement was written in 2000 before the Agencies or institutions had any experience with the GLB Act privacy notices. In the intervening period, both the Agencies and institutions have learned much through their own testing about improved notice design and consumer comprehension. The impetus for the Agencies' consumer research, borne out by the research findings, is that the current notices, including those utilizing multi-fold formats, are not effective. Moreover, the important information on page one of the model form—including the context information and disclosure table—could not be appropriately displayed in such a cramped format and still comply with the minimum space and font requirements of the model form.

[86] Examples provided by commenters included: 3.5 x 7.5 inches, printed double sided; 3.5 x 8; 7 ×10.812 inches folded to 7 x 3.625 inches; 7 x 3.5 inches (finished folded size). *See, e.g.*, comment letter of National Retail Federation (May 29, 2007).

[87] See comment letter of Consumer Bankers Ass'n (May 29, 2007).

[88] *See supra* note 25.

[89] See Instruction B.2 to the Model Privacy Form.

[90] *See, e.g.*, comment letters of American Insurance Ass'n (May 29, 2007); Bank of America Corporation (May 29, 2007); Citigroup Inc. (May 30, 2007); National Retail Federation (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007).

consumer research and testing, the Agencies believe that the concerns expressed by commenters justify double-sided printing. Moreover, the Agencies used double-sided printed notices in the quantitative and validation testing, with no demonstrable loss in effectiveness relative to the single-sided notice.[91]

D. Appearance of the Model Privacy Form

The Regulatory Relief Act requires that the model form "use an easily readable type font." While a number of factors affect the readability of a document, as in the proposal, the final model privacy form must use: (1) 10-point font as the minimum font size (unless otherwise specified in the Instructions) and (2) sufficient spacing between the lines of type (leading).[92]

The Agencies separately provided optional guidance in the preamble to the Proposed Rule on readable type styles and other formatting suggestions for institutions. This optional guidance is not required; it was to assist institutions that want to provide more readable and attractive privacy notices to consumers. The Agencies are republishing this optional guidance in section III.E to assist interested institutions.

Type Size: A number of commenters expressed various concerns about the proposed 10-point minimum font requirement.[93] A few commenters noted that the proposed model form included several different type sizes for various parts of the model form and were confused about what type size(s) the Agencies proposed as a requirement.[94] Other commenters raised concerns that a minimum type size requirement for the model form would conflict with state law mandated requirements. A few stated that a minimum font size is not legally required for the model form.

Many of the criticisms about current notices are, in part, about the tiny print that make these notices so difficult for consumers to read.[95] Based on the statutory directive, as well as the findings elicited from the Agencies' consumer research and expert views, the Agencies believe that the model form should have a minimum 10-point font. Requiring a minimum 10-point font is consistent with state law mandates for consumer disclosures.[96]

Leading: Leading is the spacing between lines of type, measured in points. If the line spacing is too narrow, the type is hard to read. In these circumstances, the ascenders (such as the upward line in the letter "h") and descenders (such as the downward line in a "g") may touch, blending the lines of type and making it much harder to distinguish the letters on the page. The final instructions to the model form require only that the leading used allow for sufficient spacing between the lines, but do not mandate a specific amount.

E. Optional General Guidance for Easily Readable Type

The Proposed Rule included optional guidance on readable type styles and other formatting suggestions for institutions that want to provide privacy notices that are more readable and attractive to consumers, as well as those that want to develop their own model privacy form.[97] A number of commenters were concerned by this guidance for easily readable type, and in some cases, they assumed the guidance would be mandatory. The Agencies expressly state that the guidance in this section III.E. is not mandatory and is not a requirement for proper use of the model form.

In more closely examining the statutory directive for "easily readable type," the Agencies determined that a number of type-related factors can greatly affect the readability of a form. Type size, type style, leading, x-height, serif versus sans serif,[98] upper and lower case type, along with the page layout—together play an important role in designing a typeface that is highly readable. Therefore, in considering these various factors for the design of an easily readable type font, institutions that elect to use the model form may voluntarily consider this additional guidance for an easily readable appearance to the notice.

Leading: Research on the legibility of typography indicates that people read faster when text is set with 1 to 4 points of leading.[99] Institutions may, but are not required to, consider these general recommendations for use with the model form: 10- or 11-point type should have between 1 and 3 points of leading. Twelve-point type should have between 2 and 4 points of leading.[100]

Type style and "x"-height: The readability of type size is highly dependent on the selection of the type style. Some styles in 10-point font are more readable than others in 12-point font and appear larger because of their design.

Experts differ on the question of the most desirable type style. The model form uses sans serif and "monoweight" type, and upper and lower case lettering in the body of the form.[101]

Larger x-height[102] makes a font appear larger and thus more readable, and fonts with larger x-heights are better for smaller text. Research shows that our eyes "scan the top of the letters' x-heights during the normal reading process, so that is where the primary identification of each letter takes place."[103] Generally, a font with an

[91] See Levy-Hastak Report at 15.

[92] While a variety of type styles would be suitable for the model notice, the Agencies caution institutions that use of idiosyncratic fonts or highly stylized typefaces will not meet the model form safe harbor standard. See Instruction B.3(a) to the Model Privacy Form.

[93] See, e.g., comment letters of American Council of Life Insurers (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); National Retail Federation (May 29, 2007); Financial Services Roundtable and BITS (May 29, 2007).

[94] The type size information in Example 3 in the preamble to the Proposed Rule identified the five type sizes used in various elements of the proposed form. This example was intended solely to show how key features of the form—such as headings—can be distinguished by using different font sizes to make the form more visually appealing. Contrary to some commenters' assumption, the different sizes were not a proposed requirement for users of the model form.

[95] See Kleimann Report, *supra* note 32, at 33. See also, e.g., Public Citizen Petition, *supra* note 24 at 7 ("[S]mall font sizes * * * deprive consumers of their right to prevent financial institutions from sharing private information."); "UNDERSTANDING THE FINE PRINT: How to make sure the gotcbas don't get you," Consumer Reports Money Adviser (Oct. 2008) ("Fine print is everywbere—contracts: retail Web sites; sales receipts; print, broadcast, and Internet offers; prospectuses; privacy notices; product manuals; and manufacturer warranties."); David Colker, "Stopping junk mail for living and dead; Opt-outs can slow the torrent of solicitations to computer and postal mailboxes and phones;" Los Angeles Times, July 22, 2007, at C3 ("[B]y law, financial institutions bave to offer an opt-out if they are making this data available to non-affiliated businesses. The problem is that their guides to opting out are often contained in their privacy notices—in small print.").

[96] See, e.g., Cal. Fin. Code div. 1.2 § 4053(d)(1)(B) (requiring 10-point minimum font).

[97] See Proposed Rule, *supra* note 4, at section II.F.

[98] Serif typeface has small strokes at tbe ends of the lines that form each letter. Sans serif typeface does not bave those small strokes.

[99] Karen A. Schriver, Dynamics In Document Design ("Schriver") 274 (1997).

[100] *Id.* at 262; see also James Hartley, Designing Instructional Text (1994); and Barbara Chaparro *et al.*, Reading Online Text: A Comparison of Four White Space Layouts 6(2) (2004).

[101] While much of the printed material in the United States and western Europe uses serif styles, Web designers are increasingly using sans serif type, as they have found tbat serif type is harder to read online. Tbese cbanges in Web design are also beginning to affect font styles in printed materials. Some typograpby designers are now using sans serif typefaces, as well as type witb a uniform thickness throughout the letter (monoweight typeface), finding these typefaces easier to read than those with variable tbickness.

[102] The "x-height" is the beight of the lower-case "x" in relation to full height letters, such as a capital G. X-height is critical to type legibility.

[103] Erik Spiekermann & E.M. Ginger, Stop Stealing Sheep & Find Out How Type Works 93 (1993).

x-height ratio of around .66 is easier to read.[104]

While not mandating a particular type style or x-height, the Agencies are providing these general guidelines for type style in the model form: For typefaces with a smaller x-height, 11- or 12-point font should be used; for typefaces with a larger x-height, a 10-point font would be sufficient.[105]

For ease of reference, the following table summarizes the optional guidance discussed here. None of the standards in the table below is mandatory; rather, the information in the table is offered only as suggestions for institutions that design their own forms.

If	Then use	And use	And use font with
Font is 10-point	1–3 points leading	Monoweight typeface	Large x-height sans serif (around .66 ratio).
Font is 11-point	1–3 points leading	Monoweight typeface	Smaller x-height is acceptable; either serif or sans serif (less than .66 ratio is acceptable).
Font is 12-point	2–4 points leading	Monoweight or variable typeface	Smaller x-height is acceptable; either serif or sans serif (less than .66 ratio is acceptable).

F. Printing, Color, and Logos

We are adopting the requirements for printing, color, and logos in the final model form as proposed. Commenters generally commended the Agencies' support for the use of color and company logos on the model form.[106] A few industry commenters expressed concern about the background shading in certain headers smudging in high-speed printing operations.[107] Some commenters sought clarification as to whether logos can use more than one color.

The Agencies agree that the distinguishing features of company logos along with color are important to ensure that an institution's documents have a distinctive look that consumers may readily recognize. As the Agencies proposed, a financial institution that uses the model form may include its corporate logo on any of the pages, so long as the logo design does not interfere with the readability of the model form or space constraints of each page. Institutions using the model form should use white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color is permitted to achieve visual interest to the model form, so long as the color contrast is distinctive and the color does not detract from the form's readability. The Agencies are not prohibiting the use of more than one color in a logo.

Other commenters asked for greater flexibility to include "markings" or "graphics" or other "visual effects" or to include a "branding phrase" or "advertising slogan."[108] The Agencies observe that few institutions' privacy policies include advertising slogans. We note that some include pictures or other large designs that occupy the front cover. The Agencies believe that these designs or slogans would distract from the content of the model form and that slogans would be inconsistent with the standardized language throughout the form. For these reasons, the final model form does not permit institutions to include slogans or images (other than logos) on the model form.

G. Jointly-Provided Notices

The final model privacy form includes a new FAQ at the top of page two: "Who is providing this notice?" Many commenters representing larger institutions observed that the proposed model form did not provide sufficient space to identify multiple entities that jointly provide a privacy notice, as permitted by the privacy rule.[109] Some suggested the Agencies provide extra space for this information either in the body of the notice or as a footnote. The new FAQ is not required where only a single financial institution is providing the notice and that institution is identified in the title. As discussed in section III.J.1, space is provided for the institution's response.

H. Use of the Form by Differently-Regulated Entities

A number of commenters sought clarification as to whether institutions regulated by different Agencies could together provide a single joint notice to consumers.[110] Insurance companies and their associations in particular expressed concern that the form did not allow for insurance-specific terminology and potentially put these institutions—regulated by the states—at some risk.[111]

[104] *See, e.g.*, Hewlett-Packard Corporation, Panose Classification Metrics Guide (2006), available at *http://www.monotypeimaging.com/productsservices/pan2.aspx*.

[105] *See* Schriver, *supra* note 99, at 264; *see also id.* at 258–59. Fonts that satisfy the type style and x-height recommendations include sans serif fonts such as Tahoma, Century Gothic, Myriad, Avant Garde, Bk Avenir Book, ITS Franklin Gothic, Arial-Helvetica, and Gill Sans, and serif fonts such as the Chaparral Pro Family, Minion Pro, Garamond, Monotype Bodoni, and Monotype Century. A number of these font styles, including Arial-Helvetica, Tahoma, Century Gothic, Garamond, and Bodoni, are preloaded in commonly used word processing applications with most new personal computers. The other font styles are commercially available as well.

[106] *See, e.g.*, comment letters of American Insurance Ass'n (May 29, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); Consumer Bankers Ass'n (May 29, 2007).

[107] *See, e.g.*, comment letters of National Business Coalition on E-Commerce and Privacy (May 30, 2007). With the modern, high-speed printing equipment readily available, the Agencies do not foresee problems with reproducing background shading, just as they see no difficulties with printing blocks of color for company logos or advertising materials. Moreover, the validation testing research found that consumers appreciated shading as a navigation guide. *See* Kleimann Validation Report at 9–10.

[108] *See, e.g.*, comment letters of Consumer Bankers Ass'n (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007).

[109] *See, e.g.*, comment letters of American Council of Life Insurers (May 29, 2007); Investment Advisers Ass'n (May 29, 2007).

[110] *See, e.g.*, comment letters of National Business Coalition on E-Commerce and Privacy (May 30, 2007); T. Rowe Price Associates, Inc. (May 29, 2007); Financial Services Roundtable and BITS (May 29, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007); Investment Company Institute (May 29, 2007).

[111] *See, e.g.*, comment letters of National Ass'n of Mutual Insurance Cos. (May 29, 2007); American Insurance Ass'n (May 29, 2007); Great-West Life & Annuity Insurance Company (May 29, 2007). In addition to including insurance-specific phrases in the menu of terms for the "What?" box on page one and the collection of information FAQ on page two, the Rule also recognizes that institutions that provide insurance products or services and elect to use this model form can use the word "policy" instead of "account" for the joint accountholder description. *See* Instructions C.2(g)(1) and C.3(a)(5) to the Model Privacy Form. The Agencies have periodically consulted with the NAIC to ensure that the final model form is sufficiently flexible to address the insurance marketplace. The NAIC is continuing to evaluate how best to proceed regarding insurance company use and implementation of the form by individual jurisdictions. This effort may include the NAIC developing a model bulletin for regulatory use or amending its model Privacy of Consumer Financial and Health Information Regulation to replace the

The Agencies fully intend that differently-regulated entities can provide a single joint notice to consumers by using the final model form. The Agencies have consulted with the NAIC, which submitted a letter with proposed modifications to certain sections of the form. The Agencies have incorporated into the final model form two menus of terms adaptable to the wide range of financial institutions. The menus include both the SEC's and the NAIC's proposals, and enable a variety of institutions, including securities firms and insurance companies, to use the model form, either individually or jointly with other types of financial institutions.

I. Page One of the Model Form

1. Title

The Agencies are adopting the title, "What Does [Name of Financial Institution] Do With Your Personal Information?," as proposed. One commenter objected to the title, preferring instead to refer to it as a privacy notice.[112] Other commenters who provided sample revised notices also used alternate headings, such as, "our privacy notice for consumers," "privacy information," "privacy statement," and "keeping your information safe and secure." [113] The research found that the terms "privacy notice" or "privacy policy" deterred consumers from reading the notice.[114] Consumers understood these terms to mean that the institution does not share personal information. The validation testing confirmed the effectiveness of the title.[115]

2. Key Frame

The Agencies are adopting the basic structure of the key frame as proposed with some language changes to address comments received. Industry commenters raised several objections to the key frame—the "Why?," "What?," and "How?" boxes. Their principal concern was the inflexible nature of the information in these boxes. Many commenters took particular issue with the list of information collected and shared, noting that not all institutions collect and share the information listed.[116] These commenters asked for greater flexibility in identifying other types of information that may better relate to their practices. Commenters raised other issues about: vocabulary; the contents and number of the boxes; and the inclusion of certain information not required by the privacy rule. Some commenters proposed moving and deleting phrases—as well as using the phrase "as permitted by law" to describe the types of sharing they can do. Some commenters raised questions about the reference to former customers.

The Agencies appreciate the various suggestions provided—particularly on vocabulary and the structure and contents of the boxes—but note that the model form was developed through consumer research with the goal of making it understandable to consumers. The Agencies have decided to retain the basic structure and content of the key frame but have made certain modifications.

The Agencies recognize that financial institutions may collect and share types of information other than those listed on the proposed form, including institutions that provide insurance or investment advice or sell securities. The Agencies have, after consulting with the NAIC and based on consideration of the comments received, provided a menu of terms, including each of the terms that was proposed, from which institutions may select to fill in the bracketed boxes.[117] Since all financial institutions collect Social Security numbers, this one term is required in all notices. The terms provided are designed to reflect the range of information typically collected by various types of institutions in language that consumers can more easily understand.

Further, the Agencies have revised the statement about former customers to: "When you are no longer our customer, we continue to share information about you as described in this notice." While some institutions objected in principle to the statement that former customers are subject to the same policy as current customers,[118] no commenters asserted that institutions actually implement a different policy for former customers.[119]

3. Disclosure Table

We are adopting the disclosure table substantially as proposed, with some minor changes. Consumer and other advocacy groups, the NAIC, NAAG, and some industry commenters appreciated the easily understood display of information in the disclosure table of the proposed model form. One commenter noted the strength of the Schumer box standardized format.[120] Others lauded the use of a tabular format to display a company's sharing practices, noting that framing one institution's practices against the industry as a whole is a useful way to inform consumers of a company's relative sharing practices and facilitates the comparison of different institutions' practices.[121]

A number of industry commenters and associations, including many small community banks and a few larger banks, also expressed support for the clarity and consumer-friendly format of the disclosure table.[122]

However, many industry commenters sought flexibility in the table design for several reasons. Some reported that it is common for a financial institution to have multiple privacy policies for different products that they offer consumers.[123] Others asserted that the table contains a bias against larger, more complex corporate structures because it is overly simplistic and may show that certain types of institutions engage in widespread sharing.[124] One opined that the table structure made it appear that the entity was reckless in its sharing practices.[125] These commenters expressed particular concern that the model form would lead to high opt-out

current sample clauses with the new model privacy form.

[112] *See, e.g.*, comment letter of MasterCard Worldwide (May 29, 2007).

[113] *See, e.g.*, comment letter of Citigroup Inc. (May 30, 2007); Wells Fargo & Company (May 29, 2007); Wachovia Corporation (May 25, 2007); Sovereign Bank (May 21, 2007).

[114] *See* Kleimann Report, *supra* note 32, at 43, 66–67.

[115] Kleimann Validation Report at 8.

[116] *See, e.g.*, comment letters of American Bankers Ass'n (May 25, 2007); Investment Company Institute (May 29, 2007); Investment Advisers Ass'n (May 29, 2007).

[117] *See* Instruction C.2(b)(2) to the Model Privacy Form. Similar to the proposal, the final model form requires institutions to provide examples that may be applicable to the institution's collection and sharing practices.

[118] *See, e.g.*, comment letters of Investment Advisers Ass'n (May 29, 2007); American Insurance Ass'n (May 29, 2007).

[119] This sentence continues to appear in the "What?" box in the model form without an opt-out. However, based on the validation testing, the opt-out versions of the model form place this sentence in the "To limit our sharing" box following the sentence describing sharing information about a new customer. *See* Kleimann Validation Report at 9–10.

[120] Comment letter of Capital One Financial Corporation (May 29, 2007).

[121] *See* comment letters of The Center for Information Policy Leadership (May 29, 2007); Independent Community Bankers of America (May 29, 2007).

[122] *See, e.g.*, comment letters of Independent Community Bankers of America (May 29, 2007); Bank of Edison (May 21, 2007); Capital One Financial Corporation (May 29, 2007); Citrus & Chemical Bank (May 24, 2007); First National Bank (Edinburg, TX) (Apr. 9, 2007); Florence Savings Bank (April 30, 2007); Iowa State Bank and Trust Company (May 22, 2007); ShoreBank (Apr. 6, 2007); Hometown Bank (May 8, 2007).

[123] *See, e.g.*, comment letters of Bank of America Corporation (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); MasterCard Worldwide (May 29, 2007).

[124] *See, e.g.*, comment letters of Citigroup Inc. (May 30, 2007); Consumer Bankers Ass'n (May 29, 2007).

[125] *See* comment letter of Consumer Bankers Ass'n (May 29, 2007).

rates.[126] Many particularly objected to listing all the categories of sharing—especially when a consumer cannot limit or opt out of certain types of sharing—and others wanted to limit the list only to those categories used by the institution.[127] Some commenters wanted to use this space to explain the benefits of certain types of sharing.[128] Others wanted to convey that, for example, they only shared information with certain types of affiliates but not others and asserted that the disclosure table did not permit them to make this distinction.[129]

As the Agencies stated in the preamble to the Proposed Rule, based on the Kleimann Report and as confirmed by the quantitative research data and the Levy-Hastak Report, the disclosure table is the heart of the model form design and its most effective feature.[130] The table provides for greater transparency of a company's sharing practices. It allows consumers to see at a glance the types of information sharing a company may engage in, whether that particular company shares in that way, and, if so, whether the consumer can limit such sharing.[131] Based on the research, the Agencies have retained the disclosure table generally unchanged in the final model form.

Addressing industry concerns about bias against larger institutions, the Agencies appreciate these institutions' concern that some of their customers may react negatively to the sharing of their information. The purpose of the model form is not to direct consumer behavior, however, but rather to provide information effectively. While the Levy-Hastak Report found that a majority of survey participants objected to the sharing of their personal information with affiliated companies, and more so with nonaffiliated companies, these objections were consistent across all the survey participants and were not affected by any particular notice format.[132] The research confirms that the notice design more clearly informs consumers about how each company shares or uses the personal information it collects.

During the course of this project, the Agencies heard from smaller institutions that their customers wanted to stop all sharing and expressly asked for opt-outs even when the institution engaged in only limited sharing under the section __.14 and __.15 exceptions.[133] The neutral design of the form, particularly through the table, explains that some sharing is necessary for an institution's "everyday business purposes" and makes clear what sharing occurs. In addition, the model form uses the term "limiting" sharing, rather than stopping sharing altogether. These small institutions commented that this more balanced presentation of sharing practices is a very important feature of the notice, and one that they welcome, as it makes all institutions' sharing practices more transparent.[134]

The strength of the table design is that it facilitates comparison by showing what a particular institution's sharing practices are as compared to what all financial institutions can legally do. For this reason, the final model form incorporates all seven reasons for sharing, with only the affiliate marketing provision—"For our affiliates to market to you"—optional for those companies that elect to incorporate that disclosure in their GLB notices.[135]

While the middle column requires institutions to answer "yes" or "no" to whether it shares for each of the reasons, some commenters expressed concern that their information sharing practices were sufficiently complex that they could not answer "yes" or "no," stating that they had different practices for different products. Institutions that elect to use the model form must answer the questions in the final model form as directed in the proposal. If an institution elects to use the model form, it must either harmonize its practices so one notice applies to all its products, or it must provide separate notices for products subject to different information sharing practices.

A few commenters opined that they may not currently share but want to reserve the right to share in the future. In such a case, the correct response in the middle column is "yes," consistent with the privacy rule.[136]

Many institution commenters objected that the proposed terms to describe sharing practices were abbreviated or incomplete and asserted that the Agencies limited sharing that is lawfully permitted. For example, commenters objected that the definition of "everyday business purposes" excluded a long list of permissible disclosures designated in sections __.14 and __.15.[137] However, as the Agencies stated in the proposal, the phrase "everyday business purposes" fully incorporates all the disclosures permitted by law under sections __.14 and __.15 of the privacy rule.[138] In addition, the Agencies have determined that service providers that do not fall under section __.14, but perform direct services to the institution such as opt-out scrubbing or market analysis or research under a section __.13 agreement, are included under this provision.[139]

The cited examples of "everyday business purposes"[140] are illustrative only, to enhance consumer understanding. While commenters urged us to include the phrase "as permitted by law" in this description, research has found that consumers are confused and concerned by this phrase; they do not know what it means or what

[126] *See, e.g.*, comment letter of Johnson Financial Group (May 14, 2007).

[127] *See*, e.g., comment letters of Huntington National Bank (May 25, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007).

[128] *See, e.g.*, comment letter of Consumer Bankers Ass'n (May 29, 2007).

[129] *See, e.g.*, comment letters of American Council of Life Insurers (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); American Insurance Ass'n (May 29, 2007); Consumer Mortgage Coalition (May 29, 2007).

[130] *See* Proposed Rule, *supra* note 4, at text preceding and accompanying n.27; *see also* Levy-Hastak Report at 17.

[131] The disclosure table in the model form provides information "at-a-glance" that facilitates the comparison of a company's information sharing practices, both as to the industry as a whole and with respect to any other specific companies. In this way, it meets the original legislative intent to easily compare companies' privacy practices. *See* H.R. Rep. No. 106–74, at 107 (1999).

[132] Levy-Hastak Report at 15.

[133] This comment was made by some of the Agencies' regulated entities at various times during the course of this project and was also discussed by members of the Board's Consumer Advisory Council during its discussions in 2007 about the Notice Project and model form proposals.

[134] *See, e.g.*, comment letter of Independent Community Bankers Ass'n (May 29, 2009).

[135] *See infra* note 142.

[136] *See* the privacy rule, section __.6(e), NCUA section 716.6(d) (notices can be based on current and anticipated policies and practices).

[137] *See, e.g.*, comment letters of American Insurance Ass'n (May 29, 2007); Consumer Bankers Ass'n (May 29, 2007); Citigroup Inc. (May 30, 2007); Securities and Financial Markets Ass'n (May 29, 2007).

[138] *See, e.g.*, comment letters of American Bankers Ass'n (May 25, 2007); American Insurance Ass'n (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007). This language substantially replaces the "as permitted by law" phrase used in the Sample Clauses, covering all permitted disclosures—along with the attendant requirements on reuse and redisclosure—found under sections __.14 and __.15 of the privacy rule. Unlike that clause, "everyday business purposes" conveys more concrete information to consumers and, importantly, helps them understand that some sharing is necessary in order to obtain financial products or services.

[139] Joint marketing with other financial institutions and section __.13 service providers contracted to do marketing for a financial institution are disclosed separately. *See* Instruction C.2(d)(3) to the Model Privacy Form.

[140] The final model form consolidates all references to "everyday business purposes" in the first reason in the disclosure table, thereby eliminating the illustrative explanation in the "How?" box on page one and the definition on page two.

"laws" it encompasses.[141] Including that phrase would be inconsistent with consumers' need for clear language to understand what their financial institution does with their information.

Because the laws governing disclosure of consumers' personal information are not easily translated into short, comprehensible phrases, the table uses more easily understandable short-hand terms to describe sharing practices. We do not believe that these short-hand terms diminish the laws' provisions, as some commenters asserted. If, as these commenters suggest, the Agencies add to the laundry list of descriptive terms to make the provisions in the table more "precise," we believe it will defeat the purpose of making this information more understandable to consumers. Thus, the Agencies have chosen not to provide detailed descriptions for each of the reasons in the table; we re-affirm that institutions' ability to share information in accordance with the statutory provisions would not be limited or otherwise modified by using the model form language.

The phrase "For our marketing purposes" captures the idea that nearly all, if not all, institutions share information to market their own products and services to their customers (for example, using a joint marketing agreement with a service provider such as a bulk mailer or data processor pursuant to section __.13 of the privacy rule) in a manner that does not trigger an opt-out right. Likewise, the phrase "nonaffiliates to market to you" does not diminish the information sharing permitted by the privacy rule, provided that institutions first provide an opportunity for consumers to opt out, as provided for in section __.10 of the privacy rule.

In all these instances, the lack of explicit references in the model form to certain of the exceptions does not mean that an institution cannot take advantage of all the exceptions provided for in the law.

4. FCRA Opt-Outs

The FCRA provisions are adopted in the model privacy form as proposed.[142] A number of industry commenters objected that the disclosure table did not provide a sufficiently complete or accurate description of the affiliate sharing provisions of the FCRA.[143] They urged the Agencies to revise these provisions to more precisely distinguish between the different types of information that can be shared with affiliates (both with and without an opt-out), to describe the applicable exceptions, and to more accurately describe the opt-out pertaining to information that can be used by affiliates for marketing.

The FCRA statutory provisions are quite complex and their legal intricacies are difficult for consumers to understand. The Agencies found through the consumer testing conducted by Kleimann that the short-hand FCRA terms used in the model form describing the types of personal information that can be shared with affiliates are sufficient to enable consumers to make informed decisions about such sharing. Again, these short-hand terms do not in any way diminish or modify the affiliate sharing provisions of the FCRA.[144] To give some meaning to the statutory term "other information," the disclosure table uses "Information about your creditworthiness"—a short-hand phrase that consumers reasonably understood. Testing also found that consumers reasonably understood the phrase "information about your transactions and experience" without further embellishment.[145]

Some institutions objected to the description of the optional affiliate marketing provision enacted under the FACT Act for which the Agencies have published final regulations.[146] These commenters are correct that this provision, unlike the others, is about the *use* of shared information for marketing. While the Agencies and Kleimann worked to ensure accuracy in the model form, it was evident at the outset that this particular provision would be very difficult to explain in a simple and clear way to consumers and be precisely true to the statutory language.

The final formulation we proposed tested sufficiently well to show that consumers understand its basic meaning.[147] Including the affiliate marketing notice and opt-out in the model form is optional. Institutions that are required to provide this notice, and elect not to include it in their GLB Act privacy notice, must separately send an affiliate marketing notice that complies fully with the affiliate marketing rule requirements.

For those institutions that elect to incorporate this provision in the model form, the Agencies believe that it is simpler and less confusing to consumers for the affiliate marketing opt-out to be of indefinite duration, consistent with the opt-out required under the GLB Act. If an institution elects to limit the time period for which the opt-out is effective, as permitted under the affiliate marketing rule, it must not include the affiliate marketing opt-out in the model form. Instead, the institution must comply separately with the specific affiliate marketing rule requirements.

5. Limiting Sharing: Opt-Out Information

In response to commenters and the results of the quantitative testing, the final model form includes opt-out information for those institutions that are required to provide an opt-out on the bottom of page one. The Agencies proposed that the information about limiting or opting out of certain sharing, as needed, would be provided on a separate third page. Many commenters objected to the use of a separate piece of paper for this information, particularly if the notice itself is quite short.[148]

---

[141] *See* Survey Research Center at the University of Georgia, National Ass'n of Insurance Commissioners Insurance Disclosure Focus Group Study ("NAIC Study"), available at *http://www.ftc.gov/os/comments/modelprivacyform/528621-00012.pdf*. *See also infra* discussion at text accompanying note 221.

[142] The table includes, as an optional disclosure, the opt-out required by section 624 of the FCRA (reason 6 in the table), 15 U.S.C. 1681s–3 (affiliate use of information for marketing), as added by section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law No. 108–159, 117 Stat. 1952. Section 624 generally provides that information that may be shared among affiliates—including transaction and experience information and certain creditworthiness information—cannot be used by an affiliate for marketing purposes unless the consumer has received a notice of such use and an opportunity to opt out, and the consumer does not opt out. Congress did not grant the CFTC rulemaking authority to implement section 624. The other Agencies have issued final regulations implementing the affiliate marketing provision of the FACT Act, 12 CFR part 41 (OCC), 12 CFR part 222 (Board), 12 CFR part 334 (FDIC), 12 CFR part 571 (OTS), 12 CFR part 717 (NCUA), 16 CFR parts 680 and 698 (FTC), 17 CFR part 248, subpart B (SEC) ("affiliate marketing rule"). Because the Agencies' affiliate marketing rules generally use consistent section numbering, relevant sections will be cited, for example, as "section __.23" unless otherwise noted. The affiliate marketing rule included language stating that the section 624 disclosure as it appears in the model form will meet the requirements of that rule. *See* 72 FR 61424, 61452 (Oct. 30, 2007) (FTC); 72 FR 62910, 62932 (Nov. 7, 2007) (banking agencies); 74 FR 40398, 40418 (Aug. 11, 2009) (SEC) ("use of the [GLB Act] model privacy form will satisfy the requirement to provide an initial affiliate marketing opt-out notice"). *See also* section __.23(b) of the affiliate marketing rule.

[143] *See, e.g.*, comment letters of Citigroup Inc. (May 30, 2007); American Bankers Ass'n (May 25, 2007); Consumer Bankers Ass'n (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); Visa U.S.A, Inc. (May 29, 2007).

[144] *See* section 603(d)(2)(A) of the FCRA relating to the sharing of "transaction and experience information" and the sharing of "other information" which triggers an opt-out notice.

[145] Kleimann Report, *supra* note 32, at 63.

[146] *See supra* note 142.

[147] Levy-Hastak Report at 15.

[148] *See, e.g.*, comment letters of American Council of Life Insurers (May 29, 2007); National

Continued

This change eliminates the extra page from the proposed model form and places this important information on the first page that the consumer sees. In addition to the model form with no opt-out, the Agencies are providing two alternate versions to be used, as appropriate, depending on whether the institution offers the option to limit information sharing by mail.[149]

Institutions using the model form must include the opt-out section in their notices only if they (1) share or use information in a manner that triggers an opt-out, or (2) choose to provide opt-outs beyond what is required by law. Financial institutions that provide opt-outs are not required to provide all the opt-out choices and methods described in the model form; they should select those that accurately reflect their practices.[150]

A number of commenters objected to the statement describing the time period before information can first be shared according to an institution's privacy policy.[151] Recognizing that institutions will provide this form both to new customers and annually to existing customers, the Agencies have modified the language accordingly.[152] The revised model form allows institutions to insert a time period that is 30 days or longer from the date the notice was sent before it can begin sharing for new customers. Some commenters opined that in certain instances they should be able to require the consumer to make an opt-out decision at the time of the in-person or electronic transaction rather than waiting 30 days. While the Agencies recognize that certain situations may warrant an immediate decision, the basic rule is to allow a "reasonable" opportunity to opt out.[153]

Telephone and online opt-outs should closely match the options provided in the form. Consistent with the direction provided in the affiliate marketing rule,[154] the Agencies also contemplate that a toll-free telephone number would be adequately designed and staffed to enable consumers to opt out in a single telephone call. In setting up a toll-free telephone number that consumers may use to exercise their opt-out rights, institutions should minimize extraneous messages directed to consumers who are in the process of opting out.

A number of industry commenters requested clarification on how joint accountholders would be treated.[155] The Agencies have addressed this question with a new FAQ, described below. Further, if an institution elects to provide a choice for the joint accountholder to apply the opt-out only to that joint accountholder, that option must be provided in the telephone or Web prompt, as well as presented in the left-hand box on the mail-in form.[156]

A number of commenters from both industry and advocacy groups addressed the question whether consumers need to provide personal information such as a Social Security number, account number, or other identification number in order to opt out. The consumer advocacy organizations, some industry commenters, and an industry association proposed omitting the account number field from the proposed form to reduce the risk of fraud.[157] These commenters expressed concerns about phishing and identity theft, and were especially concerned about institutions' use of the Social Security number to confirm an opt-out request. These commenters argued that a name and address should be sufficient to effect an opt-out from an institution's information sharing.

Many institutions argued that they needed a Social Security number or full account or policy number in order to authenticate the person who wanted to opt out or to apply the opt-out appropriately to all accounts held by the customer or only to specific accounts.[158] Some industry commenters urged limiting the information to only the last four digits of an account number as both safe for the consumer and sufficient to implement the opt-out.[159]

Having considered these comments and the context in which such sensitive information is used—to implement an opt-out for information sharing—the Agencies strongly encourage institutions to use some other form of identifier, such as a randomly generated "opt-out code" provided in the notice that consumers can use to exercise their opt-outs without jeopardizing the security of their most sensitive personal information. A random code—which some institutions currently use—both protects consumers' most sensitive information and at the same time can be used to link both the customer and account(s) to which the opt-out should apply. Such an approach would further simplify the opt-out process for consumers. If such an approach is not feasible, institutions could use a truncated account or policy number to protect sensitive information.[160] Of course, any opt-out means provided—including any information requirements imposed on consumers—must be reasonable under the privacy rule and reasonable and simple under the affiliate marketing rule.[161] Institutions should keep these requirements in mind when requesting information beyond the consumer's name and address.

A number of industry commenters objected to the inability of the model form to provide for partial opt-outs, as permitted by the privacy rule.[162] The Agencies have observed that partial opt-outs are not widely employed. Trying to incorporate partial opt-outs in this model form would be unduly complicated and confusing for consumers, so the Agencies have determined to use the default provision of the privacy rule that provides for an opt-out that applies to all information.[163] Institutions that want to

---

Automobile Dealers Ass'n (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007).

[149] Some commenters asked about providing the opt-out in an in-person transaction so that the customer could execute the opt-out at that time or could deliver the completed opt-out form in person. The privacy rule does not preclude obtaining a consumer's opt-out election in person. However, while an institution may accept an opt-out election from a consumer in person, requiring a consumer to obtain an opt-out form at a branch office as the *only* means to opt out violates the privacy rule. *See* sections __.7(h), __.9(a) and (b), and __.10(a)(1) and (a)(3) of the privacy rule.

[150] Institutions that do not include the affiliate marketing disclosure on the model privacy form must not include the affiliate marketing notice or opt-out on the model form mail-in form; that notice must be provided in accord with the affiliate marketing rule, outside the model form.

[151] *See, e.g.*, comment letters of Bank of America Corporation (May 29, 2007); Wells Fargo & Company (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); American Council of Life Insurers (May 29, 2007).

[152] The revised language states: "If you are a new customer, we can begin sharing your information [30] days from the date we sent this notice." *See also supra* note 119.

[153] *See, e.g.*, sections __.10(a)(1)(iii) and __.10(a)(3)(iii) of the privacy rule.

[154] *See* 72 FR 61424, 61448 (Oct. 30, 2007) (FTC); 72 FR 62910, 62935 (Nov. 7, 2007) (banking agencies); 74 FR 40398, 40421 (August 11, 2009) (SEC).

[155] *See*, e.g., comment letters of American Bankers Ass'n (May 25, 2007); Discover Bank (May 29, 2007).

[156] *See also* privacy rule, section __.7(d), NCUA section 716.7(d)(6).

[157] *See, e.g.*, comment letters of Center for Democracy and Technology (May 29, 2007); Privacy Rights Clearinghouse (May 22, 2007); National Automobile Dealers Ass'n (May 29, 2007.

[158] *See, e.g.*, comment letters of National Retail Federation (May 29, 2007); Citicorp (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007).

[159] *See, e.g.*, comment letters of Sun Trust Banks, Inc. (May 23, 2007); Central National Bank of Enid (May 24, 2007).

[160] *See also* The President's Identity Theft Task Force, Combating Identity Theft, at 13 (Apr. 2007) ("Consumer information is the currency of identity theft, and perhaps the most valuable piece of information for the thief is the SSN").

[161] *See* section __.7(a)(1)(iii) of the privacy rule and section __.25(a) of the affiliate marketing rule.

[162] *See, e.g.*, comment letters of American Council of Life Insurers (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007).

[163] *See* section __.10(b) of the privacy rule.

provide partial opt-outs cannot do so using the model form.

A number of commenters wanted to include in the model form the statement "If you have already told us your choice(s), you do not have to tell us again." [164] Because this statement would only be accurate if the institution has not changed its notice to include new opt-out options, the Agencies have decided not to include it in the model form. Institutions that choose to use this statement must do so outside the model form.

6. Additional Opt-Outs in the Model Form

Like the proposed form, the final model form permits institutions to provide for voluntary or state law-required opt-outs. For example, if an institution elects to offer its customers the opportunity to opt out of its marketing, it can do so by saying "yes" in the third column. Similarly, an institution can offer its customers a right to opt out of joint marketing, if it chooses.

Institutions that must comply with various state law requirements, depending on their practices and the choices they offer, may be able to do so in one of two ways using the model form. For example, Vermont law requires institutions to obtain opt-in consent from Vermont consumers for affiliate sharing. The disclosure table permits institutions to do one of two things: (1) it can provide a notice directed to its Vermont customers that answers "no" to the question about whether it shares creditworthiness information with its affiliates, or (2) it can provide a generalized notice for consumers across a number of states including Vermont and answer "yes" to the question about sharing creditworthiness information with its affiliates and include a discussion on the application of Vermont law in the "Other important information" box on page two of the form.[165]

To obtain the safe harbor for use of the proposed model form, an institution that uses the disclosure table to show any additional opt-out choices (beyond what is required under Federal law) must make that opt-out available through the same opt-out options the institution provides in the notice, whether by telephone, Internet, or a mail-in opt-out form.[166]

7. Contact Information for Questions

Like the proposed form, the final model form provides contact information at the bottom of page one. Some commenters objected that it would be confusing if an opt-out is offered or the institution wants to limit such contact to a mail option only.[167] The Kleimann Report found that consumers want a way to contact their financial institution if they have any questions.[168] The NAIC Study likewise found this to be one of the most important pieces of information that consumers want in a notice.[169] In revising the proposed model form to include the opt-out information on page one, the Agencies have modified the "Contact Us" box to label it "Questions" (to more clearly distinguish between the two) and clarified in the Instructions that this box is for customer service contact information, either by telephone or the Internet or both, at the institution's option.

Customer service contact information is for consumers who may have questions about the institution's privacy policy and may be the same contact information for consumers' questions relating to the institution's products or services. The Agencies are not requiring a separate customer service number solely to answer questions about the institution's privacy policy. The customer service contact information is different from the opt-out contact information, unless the customer service number is made available for consumers to opt out. The contact information should give consumers a way to communicate directly with the institution.[170]

8. Mail-In Opt-Out Form

The mail-in opt-out form for institutions that provide such a form is adopted with two modifications, with the changes based on comments, the quantitative testing, and the Levy-Hastak Report. The validation testing shaped the design for the opt-out information in the final model form.

As discussed in section III.I.5, the final model form displays all opt-out information, including the mail-in form, on page one, for institutions that provide an opt-out. In response to commenters, the Agencies have added information on joint accountholders to the model form by providing a new FAQ on page two. Institutions must include the joint accountholder information in the mail-in form *only* when the institution allows a joint accountholder to choose whether to apply an opt-out election only to one accountholder.[171] Otherwise, that space is blank or omitted from the mail-in form.

Finally, institutions that use the mail-in opt-out form must insert the institution's mailing address either in the right-hand box or just below the mail-in form, as shown in version 3 and optional version 4 in the Appendix and as described in the Instructions to the Model Form.

J. Page Two of the Model Form

The Agencies have modified page two of the model form to streamline the information on the page and to provide flexibility for institutions to insert certain institution-specific information.

1. Frequently Asked Questions

To address the concerns about jointly-provided notices, the Agencies have added a new FAQ at the top of page two: "Who is providing this notice?" An institution may omit this FAQ only when one financial institution is providing the notice and that institution is identified in the title. The space to the right, which is limited (for reasons of space constraints) to a maximum of four (4) lines,[172] allows institutions that are jointly providing the notice to be identified.[173] This space must be used to:

[164] See, e.g., comment letters of MasterCard Worldwide (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); Wells Fargo & Company (May 29, 2007); Wolters Kluwer Financial Services (May 24, 2007).

[165] California provides that a consumer can opt out of joint marketing. Cal. Fin. Code div. 1.2 § 4053(b)(2). Thus, an institution can provide a generalized notice offering no opt-out, with California-specific information in the "Other important information" box. Alternatively, an institution can provide a separate notice to its California customers. Institutions cannot use the model form to offer opt-in consent. See Instruction C.2(g)(5) to the Model Privacy Form.

[166] See Instruction C.2(g) to the Model Privacy Form.

[167] See, e.g., comment letters of Mastercard Worldwide (May 29, 2007); American Insurance Ass'n (May 29, 2007); American Council of Life Insurers (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007).

[168] Kleimann Report, *supra* note 32, at 35, 226.

[169] NAIC Study, *supra* note 141.

[170] See Instruction C.2(f) to the Model Privacy Form.

[171] See *also infra* section III.J.1. Section III.I.5 provides guidance on the use of sensitive personal information (such as a Social Security number or account number) to effect an opt-out. Section III.I.6 discusses how voluntary or state-required privacy law opt-outs should appear in the mail-in opt-out form. See *also* Instruction C.2(g) to the Model Privacy Form.

[172] While the Agencies are limiting the space allotted for this FAQ, we do not intend that institutions will constrain the width of the left column (with the questions) so as to make this page difficult to read. We remind institutions that design experts recommend using sufficient white space to set off features such as headings, bullets, and key information used by consumers to quickly scan a document. We note further that the ratio of the column widths of the questions to the responses in the model form is approximately 1:2.

[173] The option of creating a jointly provided notice is not limited only to financial holding companies, as one commenter observed. Instruction

Continued

1. State the common corporate name or other readily identifiable name that is also used for the title and various headings of the model form as the "name of financial institution;" and

2. Either (a) identify the entities jointly providing the notice; or (b) for institutions with a lengthy list of entities jointly providing the notice, identify the general types of entities in the response and identify the entities [174] at the end of the form following the "Other important information" box, or, if that box is not incorporated into the form, following the "Definitions" or on an additional page. The list at the end of the form must be printed in minimum 8-point font and may appear in a multi-column format.

The Agencies have deleted the FAQ on how often consumers are provided notices on an institution's sharing practices due to space constraints.[175]

A number of commenters objected to the response to the question about how personal information is protected. Some objected to the phrase "comply with federal laws." [176] The Agencies note that this phrase closely tracks current Sample Clause A–7 and is already widely used by many institutions. Several objected to the phrase "secured buildings and files," preferring "physical safeguards." [177] As explained in the Kleimann Report, the Agencies developed this text to help consumers better understand the practical meaning of physical security.[178] The Agencies have determined to retain the FAQ as proposed, with one modification. In response to commenters who asked to include more specific information,[179] such as information about cookies or online practices or limiting employee access to personal information, the Agencies are allowing institutions to add more detail, limited to describing their safeguards practices, up to a maximum of thirty (30) additional words. This doubles the space allotted for the safeguards response and provides flexibility to institutions to customize the safeguards description. The optional information must appear after the standard response for this FAQ.

A number of industry commenters objected to the inflexible nature of the description of the sources from which personal information is collected, stating that in many cases the proposed descriptions do not correlate to their practices or the practices of their particular industry.[180] As with the description of the types of information collected and shared on page one, the Agencies are providing a menu of terms from which institutions can select to fill in the bulleted lists.[181] The list is designed to include the range of information sources typically used by a variety of institutions subject to the GLB Act and the FCRA, including those in the insurance, securities, and investment advisory businesses, as well as those companies subject to FTC jurisdiction. Finally, institutions that collect information from their affiliates and/or from credit bureaus must use as the last sentence of this response: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect personal information from other companies must include the following statement: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

A number of industry commenters objected to the FAQ about limiting sharing, arguing variously that this is not required and that they should only have to include in the response those bullets that apply to their sharing practices.[182] The Agencies have determined to retain this FAQ with a revision to the bulleted list, as it helps consumers better understand what rights they have under Federal law and reinforces the message that information sharing may be limited but not stopped completely. The second bullet was revised to more closely track the provisions of the affiliate marketing rule. Finally, the Agencies have provided an optional sentence for institutions to elect to include at the end, as applicable, "See below for more on your rights under state law," a reference to the state-specific privacy law information that an institution may include in the "Other important information" box.

As discussed earlier, a number of commenters asked how an opt-out election can be applied to joint accountholders.[183] This is addressed by a new FAQ on page two. Two optional responses are provided for institutions to use: The first states that an opt-out election by any joint accountholder will be applied to everyone on the account. The second provides that the opt-out election will be applied to everyone on the account unless the customer elects to have the opt-out apply only to him. Institutions must select one or the other as the response to this question.[184]

2. Definitions

In the final model privacy form, the definition of "everyday business purposes" has been deleted as superfluous, and the description of everyday business purposes has been consolidated in the disclosure table on page one. The other three definitions remain as proposed, with one modification.

The Agencies make the following further clarification in response to some commenters.[185] First, if an institution has no affiliates or does not share with its affiliates, it does not have to describe the categories of affiliates in this definition. Applicable responses in such conditions are, respectively: "[name of financial institution] has no affiliates" or "[name of financial institution] does not share with our affiliates."

Similarly, if an institution does not share for joint marketing or with nonaffiliated third parties outside of the section __.14 and __.15 exceptions, applicable responses are: "[name of financial institution] doesn't jointly market" or "[name of financial institution] does not share with nonaffiliates so they can market to you."

The Instructions have been modified with respect to an institution's sharing with its affiliates so that an institution must provide only an illustrative list of affiliates with which it shares, and not

B.1 to the Model Privacy Form has been modified to clarify that point.

[174] See section __.9(f) of the privacy rule.

[175] While the testing found it to be helpful background, this information is not required by the privacy rule.

[176] See, e.g., comment letters of Consumer Bankers Ass'n (May 29, 2007); MasterCard Worldwide (May 29, 2007).

[177] See comment letters of American Council of Life Insurers (May 29, 2007); American Insurance Ass'n (May 29, 2007).

[178] Kleimann Report, *supra* note 32, at 125–26.

[179] See, e.g., comment letters of Iowa State Bank and Trust (May 22, 2007); PayPal (May 29, 2007); Wachovia Corporation (May 25, 2007).

[180] See, e.g., comment letters of American Council of Life Insurers (May 29, 2007); American Bankers Ass'n (May 25, 2007); Consumer Bankers Ass'n (May 29, 2007); Mastercard Worldwide (May 29, 2007); Wells Fargo & Company (May 29, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007); National Automobile Dealers Ass'n (May 29, 2007).

[181] See Instruction C.3(a)(3) to the Model Privacy Form. See *supra* note 117.

[182] See, e.g., comment letters of American Council of Life Insurers (May 25, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007).

[183] See, e.g., comment letters of American Bankers Ass'n (May 29, 2007); Discover Bank (May 29, 2007); Mastercard Worldwide (May 29, 2007); Huntington National Bank (May 25, 2007).

[184] See *also supra* discussion section III.I.8.

[185] See, e.g., comment letters of Mastercard Worldwide (May 29, 2007); Huntington National Bank (May 25, 2007); Consumer Bankers Ass'n (May 29, 2007); Wells Fargo & Company (May 29, 2007).

a complete list. As proposed, when an institution shares with nonaffiliates or with other financial institutions to do joint marketing, the institution must describe the categories of entities with which it shares.[186] While the Instructions provide illustrative examples of categories, institutions must provide examples consistent with their practices. The Instructions provide guidance on these points.[187]

3. State and International Law Provisions

To accommodate commenters' requests to incorporate state and international law provisions in the notice,[188] the Agencies have added a new optional box at the end of the final model form called "Other important information." The size of the box is not limited (except where space constraints apply in the Online Form Builder, described below), and institutions may use a third page, as necessary, for the information in this box. To qualify for the safe harbor,[189] institutions that elect to use this box can only use it for the following: (1) information about state and/or international privacy law requirements, as applicable; or (2) an acknowledgment form to create a record of having provided the notice. Certain institutions, for example, are required to include specific affiliate sharing information for Vermont residents or to meet other requirements under California law. Some insurance commenters noted that approximately 16 states have privacy laws that require insurers to provide notice of "access and correction" rights.[190] Commenters noted that other states require disclosures about medical information.[191] Some large institutions noted that they are required to provide international law information. Such information may be included in this new box. In addition, one association commenter, representing automobile dealers, specifically requested a place on the form to allow its members to obtain signatures from customers acknowledging that they had received a copy of the notice.[192]

K. Other Issues

1. Highlighting Material Changes in Privacy Practices

We sought comment on whether the model privacy form should highlight material changes in the notice. A number of industry commenters opposed this suggestion, citing consumer confusion.[193] Some stated that the GLB Act requires revised notices when the institution's policy has changed.[194] One advocacy group supported adding an extra column to the notice table highlighting specific changes made since the previous notice.[195]

After considering these comments, the Agencies determined that the simplest way to help consumers identify how recently the notice was changed is to include a "revised [month/year]" notation in the upper right-hand corner of page one of the notice. The revised date, in minimum 8-point font, is the date the policy was last revised.[196] Of course, institutions can signal material changes in their policies by, for example, use of a cover letter that describes any changes.

2. Safe Harbor

A number of industry commenters expressed concern that the safe harbor provisions do not fully extend to the GLB Act requirements or do not extend to FCRA disclosures.[197] These commenters seek broader safe harbor treatment for the use of the model form, notwithstanding the statutory provision that use of the model form will satisfy the notice requirements of the GLB Act and the privacy rule.

The Agencies agree that the model form satisfies the requirements for the content of the notice required by the GLB Act, including sections __.6 and __.7 of the privacy rule; FCRA section 603(d) as described in section __.6 of the privacy rule; and section __.23 of the affiliate marketing rule. The Agencies note that the safe harbor applies to use of the model form, but does not and cannot extend to the institution-specific information that is inserted in the model form. Proper use of the model form to comply with the privacy rule requires that institutions accurately answer the questions about their information collection and sharing practices, as well as provide to consumers, as applicable, a reasonable means and opportunity to limit sharing and honor any opt-out requests submitted.

3. Online Form Builder

Commenters generally supported the Agencies' proposal to provide a downloadable, fillable version of the model form that institutions could use to create their own customized notice.[198] Many smaller institutions were particularly supportive, noting that it simplifies adoption and reduces their development costs.

In response, the Agencies will be providing on each of their Websites a link to an Online Form Builder accessible by any institution so that the institution can readily create a unique, customized privacy notice using the model form template. The Agencies anticipate that a temporary Online Form Builder will be available in late 2009

---

[186] *See* sections __.6(a)(3), __.6(a)(5), __.6(c)(3), and __.6(c)(4) of the privacy rule. The joint marketing provisions apply to joint marketing agreements with other financial institutions, but not to other types of arrangements with section __.13 service providers.

[187] *See* Instruction C.3(b) to the Model Privacy Form.

[188] *See*, e.g., comment letters of American Bankers Ass'n (May 25, 2007); American Council of Life Insurers (May 29, 2007); Bank of America Corporation (May 29, 1007); Citigroup Inc. (May 30, 2007); Consumer Bankers Ass'n (May 29, 2007); Consumer Mortgage Coalition (May 29, 2007); Countrywide Home Loans, Inc. (May 29, 2007); Discover Bank (May 29, 2007); Financial Services Institute (May 29, 2007); Iowa Student Loan (May 22, 2007); KeyCorp (May 25, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); National Retail Federation (May 29, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007); Sovereign Bank (May 21, 2007); Wells Fargo (May 29, 2007); World's Foremost Bank (May 25, 2007); Direct Marketing Ass'n (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); World Financial Capital Bank (May 25, 2007); World Financial Network National Bank (May 29, 2007).

[189] The 10-point minimum font size applies to the contents of the "Other important information box." In addition, while the safe harbor extends to including this box at the end of the model form, it does not extend to the content of the box. Institutions are responsible for ensuring that any statements made in this box are accurate.

[190] *See*, e.g., comment letters of American Insurance Ass'n (May 29, 2007); Great-West Life & Annuity Insurance Co. (May 29, 2007).

[191] *See*, e.g., comment letters of American Council of Life Insurers (May 29, 2007); American Insurance Ass'n (May 29, 2007); Huntington National Bank (May 25, 2007).

[192] *See* comment letter of National Automobile Dealers Ass'n (May 29, 2007).

[193] *See*, e.g., comment letters of American Council of Life Insurers (May 29, 2007); Consumer Bankers Ass'n (May 29, 2007); Citigroup Inc. (May 30, 2007); Mastercard Worldwide (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007).

[194] *See* comment letters of American Council of Life Insurers (May 29, 2007); Citigroup Inc. (May 30, 2007).

[195] *See*, e.g., comment letters of Center for Democracy and Technology (May 29, 2007); *see also* New York State Consumer Protection Board (May 29, 2007).

[196] Adoption of the model form, with no change in policies or practices, would not constitute a revised notice, although institutions may elect to consider the format change as a revision, at their option. However, inserting the new affiliate marketing opt-out in the model form would be a revision of the institution's policies and practices.

[197] *See*, e.g., comment letters of American Bankers Ass'n (May 25, 2007); California Bankers Ass'n (May 25, 2007); Consumer Bankers Ass'n (May 29, 2007).

[198] *See*, e.g., comment letters of American Insurance Ass'n (May 29, 2007); Center for Democracy and Technology (May 29, 2007); Citrus and Chemical Bank (May 24, 2007); Credit Union National Ass'n (May 29, 2007); Independent Community Bankers of America (May 29, 2007); PayPal (May 29, 2007); Portage National Bank (May 1, 2007); Sovereign Bank (May 21, 2007).

and that a more robust version will be available to institutions in late 2010.

4. Web-Based Design

Many industry and advocacy group commenters supported development of an optional Web-based design, especially as more and more consumers are engaging in online activities such as online banking.[199] Some commenters asked the Agencies to test a design for usability. Some industry commenters cautioned that the Agencies should leave this task to industry as institutions are more knowledgeable and better equipped to address such a task.[200]

The Board and FTC have agreed to jointly undertake the development through consumer research of a Web-based version of the final model form. That research work will proceed independent of this rulemaking, will be reviewed by all the other Agencies, and will be made publicly available for use by all institutions. It is anticipated that the work will be completed in late 2009.

5. Electronic Delivery

A number of commenters objected to limiting the electronic posting of the model form to a PDF format.[201] Those expressing a view stated that providing the form in HTML is more compatible with their systems and easier for consumers to download and view. The Agencies agree that institutions can provide the notice electronically in either PDF or HTML format. Where consumers agree to electronic receipt of the notice, institutions can send the notice by email either by attaching the notice or providing a link to the notice.

6. Other Comments

Some commenters asked if the model form can be adopted for other languages.[202] The Agencies believe that this would be beneficial to an institution's non-English speaking customers and note that institutions currently provide such notices, consistent with the privacy rule.

Many industry commenters wanted the flexibility to add other information to the form. For example, they asked to include information on the benefits of sharing; privacy tips and identity theft information; information about fraud prevention; and marketing.[203] Some commenters asked that additional information such as seal information be included in the model form.[204]

The Agencies considered these suggestions and decided not to permit the inclusion of additional information in the final model form. While an institution may believe this information is useful or important, we believe that the addition of such information to the model form defeats the purpose of providing a clear and usable notice about information sharing practices and consumer rights. The Agencies do not preclude an institution from providing such information in other, supplemental materials, if the institution wishes to do so.

One commenter proposed requiring institutions that use the model form to also have a longer notice that complies with the privacy rule.[205] One notice is sufficient if that notice complies with the law and the privacy rule.

Commenters also raised a number of other issues that are beyond the scope of this rulemaking. These include making the default opt-in rather than opt-out; eliminating the annual notice requirement; preempting state law requirements; and establishing an opt-out repository similar to the FTC's National "Do Not Call" Registry.[206]

IV. The Sample Clauses

As proposed, the Agencies are eliminating the Sample Clauses appended to the privacy rule along with the safe harbor or for SEC-regulated entities, guidance, currently afforded entities.[207] Many industry commenters opposed the proposal.[208] Some commenters asked that we retain certain of the Sample Clauses, such as A–1, A–3, and A–7, the use of which does not implicate an opt-out.[209] Institutions expressed concern that elimination of the Sample Clauses and corresponding safe harbor would expose them to liability.[210] A few commenters asked the Agencies to improve the current Sample Clauses as an interim measure.[211] Several institutions requested that the Agencies at a minimum provide for a transition period that is longer than one year, if the Agencies determine to eliminate the Sample Clauses.[212]

Notwithstanding these comments, the Agencies are eliminating the Sample Clauses and related safe harbor (or guidance) from the privacy rule, following a transition period of one year.[213] The initial public and media complaints about the incomprehensibility of the privacy notices,[214] the plain language experts' guidance at the Get Noticed Workshop,

[199] See, e.g., comment letters of Center for Democracy and Technology (May 29, 2007); Investment Company Institute (May 29, 2007); MasterCard Worldwide (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); PayPal (May 29, 2007); Target National Bank (May 24, 2007).

[200] See, e.g., comment letters of American Bankers Ass'n (May 25, 2007); American Council of Life Insurers (May 29, 2007); The Financial Services Roundtable and BITS (May 29, 2007); Huntington National Bank (May 25, 2007); National Retail Federation (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); Wachovia Corporation (May 25, 2007).

[201] See, e.g., comment letters of Huntington National Bank (May 25, 2007); MasterCard Worldwide (May 29, 2007); PayPal (May 29, 2007); Securities Industry and Financial Markets Ass'n (May 29, 2007); Wachovia Corporation (May 25, 2007).

[202] See, e.g., comment letters of First Bank Americano (May 2, 2007); First Hawaiian Bank (May 29, 2007); National Retail Federation (May 29, 2007).

[203] See, e.g., comment letters of American Bankers Ass'n (May 25, 2007); Bank of America Corporation (May 29, 2007); Comerica Bank (May 25, 2007); Consumer Bankers Ass'n (May 29, 2007); Citigroup Inc. (May 30, 2007); First Hawaiian Bank (May 29, 2007); California Bankers Ass'n (May, 2007); Farmers & Merchants Bank (May 29, 2007); Financial Services Roundtable and BITS (May 29, 2007); Huntington National Bank (May 25, 2007); KeyCorp (May 25, 2007); Target National Bank (May 24, 2007); Wachovia Corporation (May 25, 2007); Wells Fargo & Company (May 29, 2007).

[204] See comment letters of PayPal (May 29, 2007); TrustE (May 30, 2007).

[205] See comment letter of TRUSTe (May 30, 2007).

[206] See, e.g., comment letters of America's Community Bankers (May 29, 2007); Bank of Edison (March 21, 2007); Bank of Frankewing (May 18, 2007); Central National Bank of Enid (May 24, 2007); FamilyFirst Bank (May 8, 2007); Florence Savings Bank (April 30, 2007); Glenview State Bank (May 2, 2007); Hometown Bank (May 8, 2007); Portage National Bank (May 1, 2007).

[207] The Sample Clauses were originally provided in the privacy rule to illustrate the level of detail for notices to meet the rule requirements and to minimize the compliance burden. See 65 FR 33646, 33677 (May 24, 2000) (FTC); 65 FR 35162, 35185 (June 1, 2000) (banking agencies); 65 FR 40334, 40357 (June 29, 2000) (SEC); 66 FR 21236, 21238 (Apr. 27, 2001) (CFTC).

[208] See, e.g., comment letters of American Bankers Ass'n (May 25, 2007); American Council of Life Insurers (May 29, 2007); American Insurance Ass'n (May 29, 2007); Bank of America Corporation (May 29, 2007); Consumer Bankers Ass'n (May 29, 2007); Citigroup Inc. (May 30, 2007); Direct Marketing Ass'n (May 29, 2007); Investment Adviser Ass'n (May 29, 2007); National Ass'n of Mutual Insurance Cos. (May 29, 2007); National Automobile Dealers Ass'n (May 29, 2007); National Business Coalition on E-Commerce and Privacy (May 30, 2007); T. Rowe Price Associates, Inc. (May 29, 2007); Visa U.S.A., Inc. (May 29, 2007); Wisconsin Bankers Ass'n (May 29, 2007).

[209] See, e.g., comment letter of National Automobile Dealers Ass'n (May 29, 2007). Sample Clause A–1 describes the categories of information that an institution collects. Sample Clause A–3 includes the phrase "as permitted by law" to describe the sharing that institutions are permitted to do under sections __.14 and __.15 without triggering an opt-out. Sample Clause A–7 generally states that an institution uses safeguard measures to protect the handling of the personal information it obtains.

[210] See, e.g., comment letters of Visa U.S.A., Inc. (May 29, 2007); Citigroup Inc. (May 30, 2007); Huntington National Bank (May 25, 2009).

[211] See, e.g., comment letter of Capital One Financial Corporation (May 29, 2007).

[212] See, e.g., comment letters of Direct Marketing Ass'n (May 29, 2007); Investment Adviser Ass'n (May 29, 2007).

[213] The Agencies are also making conforming amendments to sections __.2, __.6, and __.7 of the privacy rule and to the Appendix with one small change from the Proposed Rule.

[214] See, e.g., Public Citizen Petition, *supra* note 24 at 4–9; Press Release of House Committee on Financial Services, *supra* note 74.

and the launch of this Notice Project all examined the problems with institutions' privacy notices, including their extensive use of the Sample Clauses, and the need to develop a usable *consumer* notice. These same factors led the Agencies to propose eliminating the Sample Clauses. One commenter agreed that the research showed the clauses "were found wanting." [215] An association whose members generally found the model form to be more consumer-friendly than the Sample Clauses asked only that the Agencies provide a sufficient transition period before eliminating the Sample Clauses.[216]

In addition, the quantitative testing supports the Agencies' proposal to eliminate the Sample Clauses and related safe harbor. The Levy-Hastak Report confirms that a notice composed solely of the Sample Clauses promotes ease of scanning to perform simple tasks—because the notice is short and not because it is understandable—but the Sample Clauses do not do well on comprehension measures. Moreover, the testing showed that current notices—in which the Sample Clauses are typically embedded—do poorly on all measures.

The Levy-Hastak Report examined the results when study participants were asked to choose between two banks based solely on the content of the notice and to give reason(s) why they selected a particular bank. Participants who saw the Sample Clause Notice were more likely to select the higher sharing bank because it offered an opt-out.[217] When these participants were matched with their general attitudinal preferences toward sharing, the Levy-Hastak Report found that they generally favored less sharing.[218] According to the Levy-Hastak Report, the data suggested that study participants who gave as the reason for their choice the availability of opt-outs "may have mistakenly believed that this would lead them to choosing a lower sharing bank." [219] In other words, participants who saw the Sample Clause Notice and selected the higher sharing bank because it offered opt-outs did not understand that a bank offering no opt-out did so because it shared less. This finding confirmed reports by small institutions.[220]

Further, the NAIC Study,[221] conducted in March 2005, examined several different insurance disclosure forms with participants in three focus groups. One was a generic form based on the sample clauses adopted in the NAIC Model Privacy Rule and similar in content to the Sample Clause Notice used in the Agencies' quantitative testing. The NAIC Study highlighted a key finding that is consistent with the Agencies' research findings. Among the study participants, there was general misunderstanding of and concern about the language in the form, in particular the phrase "as permitted by law" found in Sample Clause A–3. Participants in all three focus groups asked: (1) What does this phrase mean?; (2) what is the law and what does it permit?; and (3) what if the law changes? Participants who viewed this form did not know what to do with it and wanted some way to contact the company to get answers to their questions.

Also, in the development of the model form, Kleimann found that consumers did not understand the language in Sample Clause A–7 regarding the safeguarding of personal information. Through consumer testing, the description was revised to improve consumer comprehension.

Finally, while many smaller institutions are most likely to engage in limited sharing and so would rely on the three Sample Clauses, A–1, A–3, and A–7, many of these institutions support the model form. They have stated that such a form would make it easier for them to demonstrate that they are less likely to share personal information, and it would allow for easier comparison of their sharing practices with those of other institutions.[222] One large association commented that an informal survey of its community bank members found that "many are likely to use the model forms" and that "[m]ost found the new forms more consumer-friendly than the existing sample clauses." [223]

To ease the compliance burden for those institutions that currently have privacy notices based on the Sample Clauses, the Agencies are implementing a transition period that begins thirty (30) days after the date of publication and ends on December 31, 2010. Financial institutions will not be able to rely on the safe harbor by using the Sample Clauses in notices delivered or posted on or after January 1, 2011.[224] Privacy notices using the Sample Clauses that are delivered to consumers (either in paper form or by electronic delivery such as e-mail) or, alternatively, are posted electronically to meet the annual notice requirement of section __.9(c) during the transition period, will have a safe harbor for one year after delivery or posting. Privacy notices using the Sample Clauses that are delivered or posted electronically after the transition period will not be eligible for a safe harbor. Since institutions are required to send notices annually to their customers, they may continue to rely on the safe harbor for annual notices that are delivered to consumers (either in paper form or by electronic delivery such as e-mail) within the transition period until the next annual privacy notice is due one year later.[225] The Sample Clauses will be removed from codification one year after the transition period ends. The SEC, whose privacy rule provides only guidance and not a safe harbor for financial institutions that use the Sample Clauses, will also remove the Sample Clauses from codification one year after the transition period ends.[226]

While the final model form would provide a legal safe harbor, institutions could continue to use other types of notices that vary from the model form, including notices that use the Sample Clauses, so long as these notices comply with the privacy rule.

The Agencies are also amending section __.6(b) of the privacy rule. The FTC is deleting the second sentence of section 313.6(b) and substituting the following new sentence, based on the model form research: "When describing the categories with respect to those

[215] See comment letter of Capital One Financial Corporation (May 29, 2007).

[216] See comment letter of Independent Community Bankers Ass'n (May 29, 2007).

[217] The Levy-Hastak Report also found that study participants who saw the Current Notice were significantly more likely to give reasons not based on any information in the notice, for example, that Bank X offered a lower interest rate. These same participants were also less likely than those who saw the other notices to give cogent reasons for choosing the lower sharing bank. Levy-Hastak Report at 9.

[218] *Id.* at 15.

[219] *Id.* at 10.

[220] See *supra* note 133 and related text.

[221] See NAIC Study, *supra* note 141.

[222] See, *e.g.*, comment letters of Florence Savings Bank (April 30, 2007); Community Bankers of America (May 29, 2007), Iowa State Bank and Trust Co. (May 22, 2007), Credit Union National Ass'n (May 29, 2007); see also *supra* note 133 and related text.

[223] See comment letter of Independent Community Bankers of America (May 29, 2007).

[224] Institutions relying on the Sample Clauses appended to the SEC's privacy rule will not be able to rely on them for guidance in notices delivered or posted on or after January 1, 2011.

[225] For example, if an institution provides a notice using the Sample Clauses on or before December 31, 2010, it could continue to rely on the safe harbor for one additional year until its next annual notice is due. If an institution provides a notice using the Sample Clauses on or after January 1, 2011, however, it could not rely on the safe harbor. Privacy notices using the Sample Clauses posted on an institution's Web site to meet the annual notice requirements of section __.9(c) of the privacy rule would no longer be able to rely on the safe harbor beginning on January 1, 2011.

[226] See SEC privacy rule, section 248.2(a). The facts and circumstances of each individual situation determine whether use of the Sample Clauses constitutes compliance with the SEC's privacy rule.

parties, it is sufficient to state that you make disclosures to other nonaffiliated companies for your everyday business purposes, such as to process transactions, maintain account(s), respond to court orders and legal investigations, and report to credit bureaus." The remaining Agencies (Board, CFTC, FDIC, NCUA, OCC, OTS, and SEC) are revising the second sentence of section __.6(b) to read as follows, based in part on the model form research: "When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies: (1) For your everyday business purposes, such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or (2) As permitted by law." [227]

V. Effective Date

The Agencies proposed that most of the provisions of the final rule would take effect on the date of publication.[228] That approach would have allowed institutions that chose to use the model privacy form to receive the safe harbor for doing so immediately upon its publication. The Agencies received no comments on providing an immediate effective date for this portion of the rule. The only comments the Agencies received concerning the effective date of the rule pertained to removal of the Sample Clauses and related Appendix, as discussed in section IV.

The final rule makes most of the provisions effective 30 days after publication. This approach allows institutions to receive, with only a minimal delay, a safe harbor for using the model privacy form and the additional, alternative language that may be used to comply with section __.6(b) of the privacy rule. The Agencies believe that few, if any, institutions would choose to implement those changes in fewer than 30 days. The 30-day delay will give institutions and the Agencies time to implement the changes properly.

VI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA") [229] requires the Agencies to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. An IRFA was published by the Agencies in their March 20, 2007, Proposed Rule regarding amendments to the rules implementing the privacy provisions of the GLB Act. The Agencies have prepared the following FRFA in accordance with 5 U.S.C. 604.

A. Need For and Objectives of Rule Amendments

The goal of the rule amendments is to satisfy the requirements of section 728 of the Regulatory Relief Act, which requires that the Agencies develop a model form that is comprehensible, clear and conspicuous, and succinct. The Act also requires that the model form enable consumers to easily identify a financial institution's sharing practices and compare those practices with others. The model form that the Agencies are adopting today will, if properly used, serve as a safe harbor for satisfying the privacy rules' requirements regarding content of privacy notices.

As indicated in section I of the preamble to this final rule, the amendments to Appendix A of the Agencies' privacy rules are adopted pursuant to the authority set forth in § 503 (as amended by section 728 of the Regulatory Relief Act) and § 504 of the GLB Act.[230]

B. Significant Issues Raised by Public Comment

The Agencies requested comments on the IRFA. We specifically requested comments on the number of small entities that would be affected by the rules' amendments, the existence or nature of the impact of the amendments on small entities, how to quantify the impact of the amendments, and possible alternatives to the amendments. Commenters were also asked whether a downloadable version of the model form would be useful for financial institutions, particularly small entities that would like to take advantage of the proposed safe harbor.

Only one commenter directly addressed the IRFA.[231] That commenter disagreed with the Agencies' analysis that some financial institutions that may wish to transition to the proposed model form might incur some small incremental costs in making the transition, but did not provide any explanation of why the analysis is incorrect or estimates regarding logistical costs that the commenter asserted would be significant. Several associations whose members include small entities, however, expressed support for the objectives of the proposed model notice.[232] In addition, one association (many of whose members are small entities) found that many of its members that participated in an informal survey are likely to use the model forms and most found the forms more consumer-friendly than the Sample Clauses.[233] Some commenters suggested that the model form is oriented to large, multi-affiliate financial institutions and does not accommodate smaller institutions.[234] These commenters stated that the information collection policies described in the model form accurately reflect the practices of certain large financial institutions but are misleading to the extent they are beyond the scope of smaller financial institutions that do not offer banking-related products and services. In response to these and similar comments, the Agencies have revised the model form to allow financial institutions to select from a menu of specific disclosures to customize the descriptions of their information collection policies.[235]

Several commenters also requested that the Agencies retain the safe harbor regarding the Sample Clauses, noting that many small entities' privacy notices currently incorporate the Sample Clauses. One commenter explained that it would be burdensome and unnecessary for small entities to change their privacy notices, especially small entities that do not share personal information other than to service their clients' accounts.[236] Another

---

[227] Institutions using option (1) in this revised sentence to section __.6(b) are required to include all applicable examples. *See* 12 CFR 40.6(b) (OCC); 12 CFR 216.6(b) (Board); 12 CFR 322.6(b) (FDIC); 12 CFR 573.6(b) (OTS); 12 CFR 716.6(b) (NCUA); 17 CFR 160.6(b) (CFTC); 17 CFR 248.6(b) (SEC).

[228] Proposed Rule, *supra* note 4, at section IV.

[229] 5 U.S.C. 601–612.

[230] The SEC is also adopting the amendments under section 23 of the Securities Exchange Act of 1934 [15 U.S.C. 78w], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and section 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–11(a)].

The CFTC also is adopting the amendments under Section 504 of the GLB Act [15 U.S.C. 6804], and Sections 5g and 8a(5) of the Commodity Exchange Act [7 U.S.C. 7b–2, 12a(5)].

[231] Comment letter of National Business Coalition on E–Commerce and Privacy (May 30, 2007).

[232] *See, e.g.*, joint comment letter of American Bankers Ass'n, America's Community Bankers, Consumer Bankers Ass'n, and The Financial Services Roundtable (May 29, 2007).

[233] *See* comment letter of Independent Community Bankers of America (May 29, 2007).

[234] *See, e.g.*, comment letters of Financial Services Institute (May 29, 2007); Financial Planning Ass'n (May 30, 2007).

[235] *See supra* sections III.I.2 and III.J.1; *see also infra*, Instructions C.2(b) and C.3(a)(3) and (4) to the Model Privacy Form.

[236] *See, e.g.*, comment letter of Investment Adviser Ass'n (May 29, 2007).

commenter argued that elimination of the safe harbor for the Sample Clauses would transform the model form from an optional elective to a burdensome regulatory requirement, particularly for small entities.[237] We note, however, that the research found that there was general misunderstanding of and concern among consumers about language in the notice based on the Sample Clauses.[238] Nevertheless, partly in response to these comments, the Agencies are allowing financial institutions one year in which they can continue to rely on the Sample Clauses for safe harbor or guidance when providing notices. In addition, as noted above, while the Agencies are eliminating the Sample Clauses and related safe harbor (or, for the SEC, guidance), institutions may continue to use notices containing these clauses, so long as these notices comply with the privacy rule.

Finally, we received a limited number of comments indicating that a downloadable fillable model form may be helpful, especially to small entities.[239] In response to these comments, the Agencies will make available an Online Form Builder. We expect the availability of this form will, in part, minimize the burden on small businesses of developing, using, and customizing the model form for their individual needs.

C. Small Entities Subject to the Rules

The amendments to Appendix A and conforming amendments to sections __.2, __.6, and __.7 of the Agencies' privacy rules may potentially affect financial institutions, including financial institutions that are small businesses or small organizations, that choose to rely on the model privacy form as a safe harbor.

1. *OCC.* The OCC estimates that 690 insured national banks, uninsured national banks and trust companies, and foreign branches and agencies are small entities for purpose of the RFA.

2. *Board.* The Board estimates that 432 state member banks are small entities for purposes of the RFA.

3. *FDIC.* The FDIC estimates that 3115 state nonmember banks are small entities for purposes of the RFA.

4. *OTS.* The OTS estimates that 377 small savings associations are small entities for purposes of the RFA.

5. *NCUA.* The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $10 million in assets). The NCUA estimates that 3,168 federally-insured, state-chartered credit unions are small entities for purposes of the RFA.

6. *FTC.* Determining a precise estimate of the number of small entities that are financial institutions within the meaning of the rule is not readily feasible. The GLB Act does not identify for purposes of the Commission's jurisdiction any specific category of financial institution. In the absence of such information, there is no way to estimate precisely the number of affected entities that share nonpublic personal information with nonaffiliated third parties or that establish customer relationships with consumers and therefore assume greater disclosure obligations.

7. *CFTC.* Section 5g of the CEA, 7 U.S.C. 7b–2, provides that any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the CFTC with respect to any financial activity, shall be treated as a financial institution for purposes of Title V of the GLB Act, regardless of size and including commodity trading advisors and commodity pool operators that are exempt from the CEA's registration requirements. The CFTC has previously established certain definitions of "small entities" and determined that futures commission merchants and commodity pool operators are not small for purposes of the Regulatory Flexibility Act. Policy Statement and Establishment of Definitions of "Small Entities," 47 FR 18,618 (Apr. 30, 1982). This rule applies to commodity trading advisors and introducing brokers of all sizes. Because use of the model privacy form is voluntary, and because its use is a form of substituted compliance with Part 160 and not a new mandatory burden, CFTC believes that the rule will not have a significant economic impact on a substantial number of small entities.

8. *SEC.* The SEC estimates that 915 broker-dealers, 212 investment companies registered with the Commission, and 781 investment advisers registered with the Commission are small entities for purposes of the RFA.[240]

Because use of the model privacy form will be entirely voluntary, the Agencies cannot estimate how many small financial institutions will use it. The Agencies expect, however, that small financial institutions, particularly those that do not have permanent staff available to address compliance matters associated with the privacy rules, will be relatively more likely to rely on the model privacy form than larger institutions. We believe that most financial institutions currently have legal counsel review their privacy notices for compliance with the GLB Act, the FCRA, and the privacy rules. We anticipate that a financial institution that uses the model form for its privacy notice will need little review by legal counsel because the rules do not permit institutions to vary the form if they wish to obtain the benefit of a safe harbor, except as necessary within narrow parameters to identify their information collection, sharing, and opt-out policies. Finally, the Agencies are providing an Online Form Builder that will enable institutions to directly create a customized model form and thus will facilitate compliance.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to the privacy rules do not impose any additional recordkeeping, reporting, disclosure, or compliance requirements. Financial institutions, including small entities, have been required to provide notice to consumers about the institution's privacy policies and practices since July 1, 2001 (or March 31, 2002, in the case of the CFTC). The amendments adopted today will not affect these requirements and financial institutions will be under no obligation to modify their current

[237] *See, e.g.*, comment letter of National Automobile Dealers Ass'n (May 29, 2007).

[238] *See supra* section IV and discussion at notes 217–219 and related text. *See also* Public Citizen Petition, *supra* note 24, at 9 ("The paragraph employs ambiguous phrases such as 'other information' (what other information?), 'unless otherwise permitted by law' (in actuality, the law almost always permits disclosure) * * *").

[239] *See, e.g.*, comment letters of Financial Planning Ass'n (May 30, 2007); Center for Democracy and Technology (May 29, 2007).

[240] For purposes of the RFA, under the Securities Exchange Act of 1934 a small entity is a broker or dealer that (i) had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year, and (ii) is not affiliated with any person that is not a small business or small organization. 17 CFR 240.0–10(c). Under the Investment Company Act of 1940, a "small entity" is an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10(a). Under the Investment Advisers Act of 1940, a small entity is an investment adviser that (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year. 17 CFR 275.0–7(a).

privacy notices as a result of the amendments. Instead, the amendments provide a specific model privacy form that a financial institution may use to comply with notice requirements under the GLB Act, the FCRA (as amended by the FACT Act), and the privacy rules.

Nonetheless, some of the financial institutions that rely on the Sample Clauses in the current privacy rules' appendixes may wish to transition to the model form and may incur some additional costs in making this transition.[241] The Agencies expect, however, that the availability of a standardized model form will minimize these costs because the form's standardized formatting and language will make it easier for institutions to prepare and revise their privacy notices.

E. Action by the Agencies To Minimize Effects on Small Entities

The RFA directs the Agencies to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

1. *Different reporting or compliance standards.* As noted above, the Regulatory Relief Act requires the Agencies to develop "a" model form that, among other things, will facilitate comparison of the information sharing practices of different financial institutions. In light of these statutory requirements, the Agencies are adopting only one model form, which includes alternative language in some places that allows a financial institution to describe its particular information collection and sharing practices. The specific model form that the Agencies are adopting today was developed as part of a careful and thorough consumer testing process designed to produce a clear, comprehensible, and comparable notice. The model form emerged as the most effective of several notice formats considered as part of this testing.

2. *Clarification, consolidation, or simplification of reporting and compliance requirements.* The Agencies believe that the model form will simplify the reporting requirements for all entities, including small entities, that choose to use the model form. We anticipate that financial institutions that choose to use the model form will spend less time preparing notices than if they had to draft one on their own. Because the model form was developed as part of a consumer testing process, further clarifying, consolidating, or simplifying the model notice would compromise the research findings.

3. *Performance rather than design standards.* Section 728 of the Regulatory Relief Act specifically requires that the Agencies develop a model form. The model form is an alternative means of providing a privacy notice that institutions may choose to use. The privacy rules do not mandate the format of privacy notices; thus, neither the privacy rules nor the amendments impose a design standard.

4. *Exempting small entities.* We believe that an exemption for small entities would not be appropriate or desirable. The Agencies note that the model form is available for use at the discretion of all financial institutions, including small institutions. Moreover, two key objectives of the model form are that (1) consumers can understand an institution's information sharing practices and (2) they may more easily compare financial institutions' sharing practices and policies across privacy notices. An exemption for small entities would directly conflict with both of these key objectives, particularly that of enabling comparison across notices.

VII. Paperwork Reduction Act

The final privacy rules governing the privacy of consumer financial information contain disclosures that are considered collections of information under the Paperwork Reduction Act (PRA).[242] Before the Agencies issued their privacy rules, they obtained approval from OMB for the collections. OMB control numbers for the collections appear below. The amendments adopted today do not introduce any new collections of information into the Agencies' privacy rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no PRA submissions to OMB are required.

OCC: Control number 1557–0216.
Board: Control number 7100–0294.
FDIC: Control number 3064–0136.
OTS: Control number 1550–0103.
NCUA: Control number 3133–0163.
FTC: Control number 3084–0121.
SEC: Control number 3235–0537.
CFTC: Control number 3038–0055.

VIII. OCC and OTS Executive Order 12866 Determination

The OCC and OTS have determined that their respective portions of the final rule are not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this rule will not have an annual effect on the economy of $100 million or more, and does not meet any of the other standards for a significant action set forth in E.O. 12866.

IX. OCC and OTS Executive Order 13132 Determination

The OCC and OTS have determined that their respective portions of the final rule do not have any federalism implications, as required by Executive Order 13132.

X. OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The inflation adjusted threshold is $133 million or more. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have each determined that their respective portions of the final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $133 million or more in any one year. Accordingly, the final rule is not subject to section 202 of the UMRA.

XI. SEC Cost-Benefit Analysis

The SEC is sensitive to the costs and benefits imposed by its rules. As discussed above, the amendments the Agencies are adopting today will replace the Sample Clauses included as guidance in Regulation S–P's Appendix A (17 CFR part 248, appendix A) with a model privacy form that financial institutions can choose to provide to consumers. The amendments are designed to implement section 728 of the Regulatory Relief Act. This Act directs the Agencies to "jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under [section 503 of the GLB Act]."

The SEC identified certain costs and benefits arising from these amendments and requested comments on all aspects of the associated cost-benefit analysis, including identification and assessment of any costs and benefits not discussed

[241] To the extent that institutions review their privacy policies annually for compliance, we estimate that the costs associated with this annual review, including professional costs, will be approximately the same as the costs to complete the model form.

[242] 44 U.S.C. 3501–3520.

in the analysis. The SEC also sought comments on the accuracy of its cost and benefit estimates and requested commenters to identify, discuss, analyze, and supply relevant data that would allow the SEC to improve its estimates. Finally, the SEC requested comments regarding the potential impact of the proposals on the U.S. economy on an annual basis.

A. Benefits

The goal of the rules is to satisfy the requirements of section 728 of the Regulatory Relief Act, which requires that the Agencies develop a model form that is comprehensible, clear and conspicuous, and succinct. The Act also requires that the model form enable consumers easily to identify a financial institution's sharing practices and compare those practices with others. The model form that the Agencies are adopting today will, if properly used, serve as a safe harbor for satisfying the privacy rule's requirements regarding the content of privacy notices.

The SEC requested comments on all aspects of the benefits of the amendments as proposed. The SEC requested specific comments on available metrics to quantify these benefits and any other benefits commenters could identify, and requested commenters to identify sources of empirical data that could be used for such metrics. The SEC did not receive any comments in response to these requests.

Use of the model form is voluntary, so a financial institution can determine for itself its costs and benefits in deciding whether using the model form would be suitable for its business and customers. However, new financial institutions will likely benefit from using the model privacy form because of the savings in time and resources that would otherwise be spent developing their own notices.

The SEC also anticipates that financial institutions regulated by the SEC may benefit from the model privacy form's standardized formatting and language. The SEC believes that institutions currently review their Regulation S–P privacy policies annually. To the extent that these institutions are required to change their policies to reflect changes in their privacy practices, they may find it easier to use the model privacy form rather than revise their existing notices.

Similarly, the SEC expects that revisions to an institution's privacy policies will be easier to record in the model form's standardized format. The SEC also anticipates that a financial institution that chooses to use the model notice will need little, if any, ongoing review by legal counsel because an institution cannot vary the form except within stated parameters as necessary to identify certain specific information collection, sharing, and opt-out policies.

Before today's amendments, Appendix A of Regulation S–P contained Sample Clauses that the SEC interpreted as providing guidance, as opposed to a legal safe harbor. Institutions will therefore benefit from the certainty that proper use of the model notice entitles them to a safe harbor for disclosures required under the GLB Act and FCRA.[243]

Consumers should also benefit from the model form through increased comprehension of and enhanced comparability among privacy policies. The model form was developed in an extensive consumer research testing process that sought to maximize consumers' ability to comprehend, use, and compare privacy notices. The model form emerged as the most effective of several notice formats considered as part of this testing. The SEC therefore anticipates that if financial institutions make widespread use of the model form, consumers' comprehension and their ability to use and compare privacy policies will be enhanced. Institutions also might benefit from consumers' enhanced ability to understand and use the notices to the extent that consumers have more trust and confidence in an institution's privacy policies because the consumers understand those policies.

B. Costs

Since the model form is optional, the SEC cannot estimate the number of institutions that will adopt it. Accordingly, we cannot estimate total overall costs to use the model form by broker-dealers, investment advisers registered with the SEC, and investment companies that may use the model form. However, in the Proposed Rule, the SEC provided estimates of certain types of costs that could result from the proposed amendments.

The SEC also sought comments on its cost estimates and the assumptions behind the estimates, as well as whether any of those costs would differ if the form were downloadable from a Web site. The majority of the comments we received predicted significant cost increases in preparation, distribution, and processing of privacy notices. Many commenters noted that the prohibition on double-sided printing and requirement of a separate third page for mail-in opt-outs, if any, would greatly increase printing costs and would result in significant environmental waste due to increased paper usage.[244] Numerous commenters also raised concerns that the 8½; x 11-inch paper size requirement, coupled with the prohibition on incorporation of the model notice into other documents, essentially mandated a separate mailing for the model notice.[245] Commenters concluded that separate mailing of privacy notices would result in significant postage costs and increase the likelihood that consumers would misplace or fail to read the notice because it no longer accompanied important documents.[246] Several commenters suggested that these costs could result in lowered adoption rates for the model form.[247] Based on these comments, the Agencies have revised the amendments to allow for double-sided printing and incorporation of the mail-in opt-out on the bottom of the first page, waiver of a mandatory 8½ x 11-inch paper size, and incorporation of the model notice into other documents. We believe these accommodations will result in greatly reducing the implementation costs commenters associated with adopting the model form.

We do not expect that financial institutions will incur additional disclosure costs in using the model privacy form because the notice requirements of Regulation S–P have been effective since July 1, 2001, and are not altered by the amendments. Moreover, financial institutions will be

[243] A number of commenters expressed concern that the safe harbor provisions might not fully extend to all GLB Act requirements or FCRA disclosures. *See, e.g.*, comment letter of Citigroup Inc. (May 30, 2007). Several commenters further suggested the safe harbor should encompass state and private enforcement. *See, e.g.*, comment letters of Consumer Bankers Ass'n (May 29, 2007); Financial Services Institute (May 29, 2007). In response to these comments, the Agencies have clarified the scope of the safe harbor. *See supra* section III.K.2.

[244] *See, e.g.*, comment letters of Investment Adviser Ass'n (May 29, 2007) (estimating additional printing and mailing costs for larger investment advisory firms of $100,000 to more than $300,000 per mailing); Securities Industry and Financial Markets Ass'n (May 29, 2007) (estimating additional printing costs of $7.5 million per billion notices).

[245] *See, e.g.*, comment letters of Investment Adviser Ass'n (May 29, 2007); Citigroup Inc. (May 30, 2007).

[246] *See, e.g.*, comment letters of Financial Services Roundtable and BITS (May 29, 2007) (estimating cost to financial services industry of printing and mailing model form of approximately $400 million per billion notices); Citigroup Inc. (May 30, 2007) (consumers "are more likely to open and read mail that contains an 'important' communication such as a billing statement than an unidentified standalone communication").

[247] *See, e.g.*, comment letter of Capital One Financial Corporation (May 29, 2007).

under no obligation to adopt the model form or modify their current privacy notices. Presumably, financial institutions will not adopt the model form without first determining that associated costs are justified by the benefits.

We anticipate that financial institutions that elect to use the model privacy form could incur some small, incremental developmental costs in making the transition from their current notices to the model form. These costs could include staff time to review the model form and its instructions and complete the model form. We expect these will be minimal because the language and format in the form are standardized and financial institutions can only customize very limited sections of the model privacy form. Institution-specific information is limited to contact information; selection from a menu of terms relating to information collection, "yes" or "no" answers and brief descriptions, as necessary, of the types of entities with which the institution shares personal information. Furthermore, the model form can be downloaded from a Web site so preparation costs should be minimal.

Similarly, we believe that a financial institution that adopts the model privacy form would need little, if any, initial or annual review by legal counsel because almost all the disclosures in the form are already mandated under the current disclosure regime. One commenter disagreed and suggested that legal counsel at each financial institution will spend at least 50 hours initially and annually ensuring that the model form accurately reflects the institution's privacy practices.[248] These estimates seem high because institutions already know their information collection and sharing practices and there is very little discretion the institution has in choosing from among a menu of terms to disclose that information on the model form. Even if those estimates are accurate, however, we believe that those legal costs would likely have been incurred with respect to any model form unless it conformed exactly to the institution's current form.

Transition costs may also include administrative, logistical, and training costs. For example, several commenters highlighted one-time costs stemming from rewriting notices, republishing brochures or notices, and revising or reprinting documents that incorporate current notices.[249] We anticipate these costs will be minimal, if any, in part because the Agencies are allowing financial institutions a transition period of one year during which they can continue to rely on the Sample Clauses for safe harbor or guidance. Although an institution may choose to replace a current privacy notice with a model privacy notice, this should not require substantial rewriting because there are few drafting choices in the model form. In addition, the SEC believes it is unlikely that many financial institutions have stockpiles of more than one year's worth of privacy notices or documents that incorporate privacy notices on hand for distribution. Several commenters also raised concerns regarding increased customer service demands and the necessity for financial institutions to proactively take steps to address customer confusion. For example, one commenter noted that financial institutions would face one-time costs associated with revising or preparing explanatory material for training employees regarding the model form, such as scripts and responses for call centers.[250] Since the amendments do not affect Regulation S–P's substantive requirements, we anticipate that any substantive questions about the institutions' privacy practices should already be addressed by existing explanatory materials. We anticipate any new explanatory material will be limited to questions regarding the revised format of the model form, which due to its standardized nature should be relatively simple to address.

Insofar as the Sample Clauses in current Regulation S–P may have some value to some financial institutions, their phase-out under the amendments to the rules may create some costs to those institutions. However, we expect those costs to be minimal. As discussed above, the Agencies are giving financial institutions a transition period of one year during which they can continue to rely on the Sample Clauses for guidance or a safe harbor, which should allow time to minimize the transition costs for any institutions that adopt the model privacy form. Moreover, as noted above, elimination of the Sample Clauses as guidance does not mean that institutions that continue to use these clauses are in violation of the SEC's privacy rule. Institutions may continue to use notices containing these clauses so long as these notices comply with the privacy rule.

Lastly, customers may experience certain costs associated with adoption of the model form. Several commenters suggested that the model form sacrifices greater consumer understanding about information sharing practices in exchange for a simplified notice format.[251] Another commenter speculated that adoption of the model form would result in customer confusion and potential loss of customer trust due to the misimpression that financial institutions are changing their privacy policies.[252] One commenter concluded that consumer confusion resulting from overly simplified disclosures would lead to unacceptably high opt-out rates and discourage use of the model form by financial institutions.[253] As discussed above, the model form was developed in an extensive consumer research testing process that sought to maximize consumers' ability to comprehend, use, and compare privacy notices. The model form emerged as the most effective of several notice formats considered as part of this testing. Consequently, the SEC believes that any customer confusion that results from adoption of the model form will be minimal. Furthermore, we expect that any such confusion will be rapidly dissipated if financial institutions make widespread use of the model privacy form and consumers become more familiar with its contents.

Although the SEC cannot determine aggregate costs because of the unknown number of financial institutions that will adopt the model form, we expect each financial institution choosing to adopt the model form to incur minimal, if any, costs. As discussed above, we do not anticipate that financial institutions will incur additional disclosure costs in using the model privacy form because the substantive notice requirements of Regulation S–P have been effective since July 1, 2001, and are not altered by the amendments. We expect notice development and transition costs to be minimal because the language and format in the model form are standardized and financial institutions can only customize a few sections of the model form by selecting from among a menu of specific terms. Furthermore, the model form can be downloaded from a Web site so preparation costs should be minimal. Moreover, the Agencies are giving financial

[248] *See* comment letter of Securities Industry and Financial Markets Ass'n (May 29, 2007).

[249] *See* comment letter of T. Rowe Price Associates, Inc. (May 29, 2007).

[250] *See* comment letter of Investment Adviser Ass'n (May 29, 2007).

[251] *See, e.g.*, comment letter of Bank of America Corporation (May 29, 2007).

[252] *See* comment letter of Visa U.S.A. Inc. (May 29, 2007).

[253] *See* comment letter of Financial Services Institute (May 29, 2007).

institutions one year in which they can continue to rely on the Sample Clauses for safe harbor or guidance, which should allow time to minimize the transition costs for any institution that adopts the model privacy form.

Similarly, the SEC expects any aggregate costs to consumers that may result from adoption of the model form to be minimal, if any. As discussed above, the model form emerged as the most effective of several notice formats in an extensive consumer research testing process that sought to maximize consumers' ability to comprehend, use, and compare privacy notices. We anticipate that any initial costs to consumers in the form of confusion or reduced understanding will be short-lived as increasing numbers of financial institutions use the model privacy form and consumers become more familiar with its contents and can use the form to compare notices more easily.

XII. SEC Consideration of Burden on Competition

Securities Exchange Act Section 23(a)(2) requires the SEC, in adopting rules under that Act, to consider the impact that any such rule will have on competition.[254] Section 23(a)(2) also prohibits the SEC from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act.

As discussed above, the amendments to Regulation S–P, including the model form, are designed to comply with section 728 of the Regulatory Relief Act, mandating that the Agencies develop a model form that is comprehensible, clear and conspicuous, and succinct. SEC-regulated institutions will be able to use the model form in order to comply with the notice requirements under the GLB Act, the FCRA, and Regulation S–P.

The SEC does not expect the amendments to have a significant impact on competition. Use of the model form will be voluntary, permitting a financial institution to determine whether using the model form will enhance its competitive position. All brokers and dealers, investment companies, and registered investment advisers will be able to use the model form and take advantage of the safe harbor. Other financial institutions will be able to use the form and take advantage of the safe harbor under comparable rules adopted by the other Agencies. Under the Regulatory Relief Act, the Agencies have worked in consultation in order to ensure the consistency and comparability of the amendments. Therefore, all financial institutions will have the same opportunity to use the model form and rely on the safe harbor.

Further, if financial institutions choose to use the model form, the amendments could promote competition by enabling consumers more easily to understand and compare competing institutions' privacy policies. The SEC also anticipates that the model form's standardized formatting may reduce the relative burden of compliance on smaller financial institutions, allowing them to compete more effectively with larger institutions that are more likely to have a dedicated compliance staff. As such, the SEC expects any impact on competition caused by the amendments would not be significant.

XIII. NCUA: The Treasury and General Government Appropriations Act, 1999–Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

XIV. CFTC Cost-Benefit Analysis

Section 15 of the Commodity Exchange Act requires the CFTC to consider the costs and benefits of its action before issuing a new regulation under the Act. The CFTC understands that, by its terms, section 15 does not require the CFTC to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Nor does it require that each rule be analyzed piecemeal or in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15 simply requires the CFTC to "consider the costs and benefits" of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the CFTC could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The CFTC has considered the costs and benefits of the model form as a totality. The form provides a non-mandatory means of complying with existing requirements of the privacy provisions of the GLB Act and section 5g of the CEA, and thus imposes no mandatory new costs. The CFTC believes that the model form should benefit futures industry consumer customers in better understanding a financial institution's privacy policies, and may facilitate customers in comparing the privacy policies of financial institutions.

List of Subjects

12 CFR Part 40

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 216

Banks, banking, Consumer protection, Foreign banking, Holding companies, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 332

Banks, banking, Consumer protection, Foreign banking, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 573

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 716

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

16 CFR Part 313

Consumer protection, Credit, Privacy, Reporting and recordkeeping requirements, Trade practices.

17 CFR Part 160

Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

17 CFR Part 248

Brokers, Consumer protection, Investment companies, Privacy, Reporting and recordkeeping requirements, Securities.

[254] *See* 15 U.S.C. 78w(a)(2).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the joint preamble, part 40 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 40—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 1. The authority citation for part 40 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 6801 *et seq.*

■ 2. Revise § 40.2 to read as follows:

§ 40.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 40.6 and 40.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 3. In § 40.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 40.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 40.14 and 40.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 40.4 and 40.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 40.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

■ 4. In § 40.7, add paragraph (i) to read as follows:

§ 40.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 40.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 5. Redesignate Appendix A to part 40 as Appendix B to part 40.

■ 6. Add new Appendix A to part 40 to read as follows:

Appendix A to Part 40—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%

Version 1: Model Form With No Opt-Out.

Rev. [Insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why? Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What? The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

How? All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing

- Call [phone number]—our menu will prompt you through your choice(s)
- Visit us online: [website] or
- Mail the form below

Please note:

If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions? Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name _____

Address _____

City, State, Zip _____

Mail to:

[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form		
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.	
	Name	
	Address	
	City, State, Zip	

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 6750–01–P 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–33–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 40.6 and 40.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 40.14 and 40.15 and with service providers pursuant to § 40.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 40.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 40.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 41, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 40.7 and 40.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: In the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) FCRA Section 624 opt-out. If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) Nonaffiliate opt-out. If the financial institution shares personal information pursuant to § 40.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) Additional opt-outs. Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." or "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 40.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 40.6(a)(3) of this part, where *[affiliate information]* appears, the financial institution must:

(i) If it has no affiliates, state: *"[name of financial institution] has no affiliates;"*

(ii) If it has affiliates but does not share personal information, state: *"[name of financial institution] does not share with our affiliates;"* or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies;] nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 40.6(c)(3) of this part, where *[nonaffiliate information]* appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: *"[name of financial institution] does not share with nonaffiliates so they can market to you"*; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 40.13 of this part, where *[joint marketing]* appears, the financial institution must:

(i) If it does not engage in joint marketing, state: *"[name of financial institution] doesn't jointly market"*; or

(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include [list categories of companies such as credit card companies]."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 7. Amend newly redesignated Appendix B to part 40 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 40.

Appendix B to Part 40—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * *

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board amends part 216 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 216—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 8. The authority citation for part 216 continues to read as follows:

Authority: 15 U.S.C. 6801 *et seq.*

■ 9. Revise § 216.2 to read as follows:

§ 216.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 216.6 and 216.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 10. In § 216.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 216.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 216.14 and 216.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 216.4 and 216.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as *[include all that apply]* to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 216.2(a) of this part, a model privacy

form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

■ 11. In § 216.7, add paragraph (i) to read as follows:

§ 216.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 216.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 12. Redesignate Appendix A to part 216 as Appendix B to part 216.

■ 13. Add new Appendix A to part 216 to read as follows:

Appendix A to Part 216—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P. 12.5%, 7535–01–P 12.5%

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [ ] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affilintes' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name _____

Address _____

City, State, Zip _____

Mail to:
[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form		
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.	
	Name	
	Address	
	City, State, Zip	

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 6750–01–C 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–33–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 216.6 and 216.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 216.14 and 216.15 and with service providers pursuant to § 216.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 216.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 216.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 222, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 216.7 and 216.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Website; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [website] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: In the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 216.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." *or* "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 216.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies."

Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 216.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: *"[name of financial institution] has no affiliates"*; or

(ii) If it has affiliates but does not share personal information, state: *"[name of financial institution] does not share with our affiliates"*; or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies;] and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 216.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: *"[name of financial institution] does not share with nonaffiliates so they can market to you"*; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 216.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: *"[name of financial institution] doesn't jointly market"*; or

(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include [list categories of companies such as credit card companies]."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 14. Amend newly redesignated Appendix B to part 216 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 216.

Appendix B to Part 216—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * *

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, part 332 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 332—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 15. The authority citation for part 332 continues to read as follows:

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 15 U.S.C. 6801 *et seq.*

■ 16. Revise § 332.2 to read as follows:

§ 332.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 332.6 and 332.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 17. In § 332.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 332.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 332.14 and 332.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 332.4 and 332.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 332.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

■ 18. In § 332.7, add paragraph (i) to read as follows:

§ 332.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 332.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 19. Redesignate Appendix A to part 332 as Appendix B to part 332.

■ 20. Add new Appendix A to part 332 to read as follows:

Appendix A to Part 332—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing

- Call **[phone number]**—our menu will prompt you through your choice(s) or
- Visit us online: **[website]**

Please note:

If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions? Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

☐ Apply my choices only to me]

Mark any/all you want to limit:

☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

☐ Do not allow your affiliates to use my personal information to market to me.

☐ Do not share my personal information with nonaffiliates to market their products and services to me.

Name

Address

City, State, Zip

Mail to:

[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form		
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.	
	Name	
	Address	
	City, State, Zip	

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 6750–01–C 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–01–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 332.6 and 332.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 332.14 and 332.15 and with service providers pursuant to § 332.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 332.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 332.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: The institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 334, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 332.7 and 332.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: Telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: In the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 332.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." *or* "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 332.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account–unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 332.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: "[*name of financial institution*] *has no affiliates*";

(ii) If it has affiliates but does not share personal information, state: *"[name of financial institution] does not share with our affiliates"*; or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 332.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: *"[name of financial institution] does not share with nonaffiliates so they can market to you"*; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 332.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: *"[name of financial institution] doesn't jointly market"*; or

(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include [list categories of companies such as credit card companies]."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 21. Amend newly redesignated Appendix B to part 332 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 332.

Appendix B to Part 332—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * * * *

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set forth in the joint preamble, part 573 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 573—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 22. The authority citation for part 573 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828; 15 U.S.C. 6801 *et seq.*

■ 23. Revise § 573.2 to read as follows:

§ 573.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 573.6 and 573.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 24. In § 573.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 573.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 573.14 and 573.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 573.4 and 573.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 573.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

■ 25. In § 573.7, add paragraph (i) to read as follows:

§ 573.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 573.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 26. Redesignate Appendix A to part 573 as Appendix B to part 573.

■ 27. Add new Appendix A to part 573 to read as follows:

Appendix A to Part 573—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–01–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing

- Call [phone number]—our menu will prompt you through your choice(s)
- Visit us online: [website] or
- Mail the form below

Please note:

If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions? Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

☐ Apply my choices only to me]

Mark any/all you want to limit:

☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

☐ Do not allow your affiliates to use my personal information to market to me.

☐ Do not share my personal information with nonaffiliates to market their products and services to me.

Name

Address

City, State, Zip

Mail to:

[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 4. Optional Mail-in Form.

Mail-in Form	
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 6750–01–C 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–01–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 573.6 and 573.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 573.14 and 573.15 and with service providers pursuant to § 573.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 573.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 573.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: The institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 571, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 573.7 and 573.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: Telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note," institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 573.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." or "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 573.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the "Other important information" box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 573.6(a)(3) of this part, where *[affiliate information]* appears, the financial institution must:

(i) If it has no affiliates, state: "*[name of financial institution] has no affiliates;*"

(ii) If it has affiliates but does not share personal information, state: *"[name of financial institution] does not share with our affiliates";* or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 573.6(c)(3) of this part, where *[nonaffiliate information]* appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: "*[name of financial institution] does not share with nonaffiliates so they can market to you*"; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 573.13 of this part, where *[joint marketing]* appears, the financial institution must:

(i) If it does not engage in joint marketing, state: "*[name of financial institution] doesn't jointly market*"; or

(ii) If it shares personal information for joint marketing, state, as applicable: "*Our joint marketing partners include [list categories of companies such as credit card companies].*"

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 28. Amend newly redesignated Appendix B to part 573 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 573.

Appendix B to Part 573—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * *

* * * * *

National Credit Union Administration

12 CFR Chapter V

Authority and Issuance

■ For the reasons set forth in the joint preamble, part 716 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 716—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 29. The authority citation for part 716 continues to read as follows:

Authority: 12 U.S.C. 1751 *et seq.;* 15 U.S.C. 6801 *et seq.*

■ 30. Revise § 716.2 to read as follows:

§ 716.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 716.6 and 716.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 31. In § 716.6:

■ A. Revise the section heading and paragraph (b), and add paragraphs (f) and (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 716.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 716.14 and 716.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 716.4 and 716.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as *[include all that apply]* to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 716.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

■ 32. In § 716.7, add paragraph (i) to read as follows:

§ 716.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 716.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 33. Redesignate Appendix A to part 716 as Appendix B to part 716.

■ 34. Add new Appendix A to part 716 to read as follows:

Appendix A to Part 716—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%;

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [blank] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below Please note: If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name

Address

City, State, Zip

Mail to:

[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form	
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 6750–01–C 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–33–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%;

B. General Instructians

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 716.6 and 716.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681—1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type fant.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and arientatian.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Calar.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Infarmatian Required in the Madel Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions far the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructians far the disclasure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 716.14 and 716.15 and with service providers pursuant to § 716.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 716.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 716.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 717, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 716.7 and 716.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 716.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." *or* "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 716.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 716.6(a)(3) of this part, where *[affiliate information]* appears, the financial institution must:

(i) If it has no affiliates, state: *"[name of financial institution] has no affiliates"*;

(ii) If it has affiliates but does not share personal information, state: *"[name of financial institution] does not share with our affiliates*; or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies;] and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 716.6(c)(3) of this part, where *[nonaffiliate information]* appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: *"[name of financial institution] does not share with nonaffiliates so they can market to you"*; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 716.13 of this part, where *[joint marketing]* appears, the financial institution must:

(i) If it does not engage in joint marketing, state: *"[name of financial institution] doesn't jointly market"*; or

(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include [list categories of companies such as credit card companies]."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 35. Amend newly redesignated Appendix B to part 716 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 716.

Appendix B to Part 716—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * *

* * * * *

Federal Trade Commission

16 CFR Chapter I

■ For the reasons set forth in the joint preamble, the Federal Trade Commission amends part 313 of chapter I of title 16 of the Code of Federal Regulations as follows:

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 36. The authority citation for part 313 continues to read as follows:

Authority: 15 U.S.C. 6801 *et seq.*

■ 37. Revise § 313.2 to read as follows:

§ 313.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 313.6 and 313.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 38. In § 313.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 313.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 313.14 and 313.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 313.4 and 313.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies for your everyday business purposes, such as to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus.

* * * * *

(f) *Model privacy form.* Pursuant to § 313.2(a) of this part, a model privacy form that meets the notice content

requirements of this section is included in Appendix A of this part.

(g) *Sample clauses and description of nonaffiliated third parties subject to exceptions.*

(1) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

(2) *Description of nonaffiliated third parties subject to exceptions.* For a privacy notice provided on or before December 31, 2010, if you disclose nonpublic personal information to third parties as authorized under §§ 313.14 and 313.15, when describing the categories with respect to those parties, it is sufficient to state, as an alternative to the language in the second sentence of paragraph (b) of this section, that you make disclosures to other nonaffiliated third parties as permitted by law.

■ 39. In § 313.7, add paragraph (i) to read as follows:

§ 313.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 313.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 40. Redesignate Appendix A to part 313 as Appendix B to part 313.

■ 41. Add new Appendix A to part 313 to read as follows:

Appendix A to Part 313—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below Please note: If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name

Address

City, State, Zip

Mail to:
[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Version 4. Optional Mail-in Form.

Mail-in Form	
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 6750–01–C 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–33–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%,

B. General Instructions

1. How the Model Privacy Form is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 313.6 and 313.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce an easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 313.14 and 313.15 and with service providers pursuant to § 313.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 313.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 313.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 16 CFR parts 680 and 698 with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 313.7 and 313.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: In the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 313.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." *or* "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 313.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hald jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 313.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: "[*name of financial institution*] *has no affiliates*";

(ii) If it has affiliates but does not share personal information, state: "*[name of financial institution] does not share with our affiliates*"; or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies;] and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 313.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: "*[name af financial institution] does not share with nonaffiliates so they can market to yau*"; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categaries of companiés such as mortgage companies, insurance campanies, direct marketing campanies, and nonprofit arganizatians]."*

(3) *Joint Marketing.* As required by § 313.13 of this part, where [*jaint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: "*[name of financial institution] doesn't jointly market*"; or

(ii) If it shares personal information for joint marketing, state, as applicable: "*Our joint marketing partners include [list categories of companies such as credit card campanies].*"

(c) *General instructions for the "Other important informatian" bax.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 42. Amend newly redesignated Appendix B to part 313 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 313.

Appendix B to Part 313—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * *

* * * * *

Commodity Futures Trading Commission

17 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the joint preamble, part 160 of chapter I of title 17 of the Code of Federal Regulations is amended as follows:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 43. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C. 6801 *et seq.*

■ 44. Revise § 160.2 to read as follows:

§ 160.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 160.6 and 160.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

■ 45. In § 160.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 160.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 160.14 and 160.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 160.4 and 160.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as *[include all that apply]* to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 160.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before December 31, 2010, to the extent applicable, constitutes compliance with this part.

■ 46. In § 160.7, add paragraph (i) to read as follows:

§ 160.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 160.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

■ 47. Redesignate Appendix A to part 160 as Appendix B to part 160.

■ 48. Add new Appendix A to part 160 to read as follows:

Appendix A to Part 160—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%,

Version 1: Model Form With No Opt-Out.

Rev. [Insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below Please note: If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

☐ Apply my choices only to me]

Mark any/all you want to limit:

☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

☐ Do not allow your affiliates to use my personal information to market to me.

☐ Do not share my personal information with nonaffiliates to market their products and services to me.

Name

Address

City, State, Zip

Mail to:

[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form	
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.
Name	
Address	
City, State, Zip	

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 160.6 and 160.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

BILLING CODE 6750–01–C12.5%, 6351–01–C12.5%, 6720–01–C12.5%, 6714–01–C12.5%, 4810–33–C12.5%, 6210–01–C12.5%, 8011–01–C12.5%, 7535–01–C12.5%,

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 160.14 and 160.15 and with service providers pursuant to § 160.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 160.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 160.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form. **Note:** The CFTC's Regulations do not address the affiliate marketing rule.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 160.7 and 160.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Website; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [website] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 160.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." or "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 160.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 160.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: "[*name of financial institution*] *has no affiliates*";

(ii) If it has affiliates but does not share personal information, state: "*[name of financial institution] does not share with our affiliates*"; or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 160.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: "*[name of financial institution] does not share with nonaffiliates so they can market to you*"; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 160.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: "*[name of financial institution] doesn't jointly market*"; or

(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include [list categories of companies such as credit card companies]."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 49. Amend newly redesignated Appendix B to part 160 as follows:

■ A. Add a new sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to part 160.

Appendix B to Part 160—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * *

* * * * *

Securities and Exchange Commission

Statutory Authority

■ The Commission is amending Regulation S–P pursuant to authority set forth in section 728 of the Regulatory Relief Act [Pub. L. 109–351], section 504 of the GLB Act [15 U.S.C. 6804], section 23 of the Securities Exchange Act [15 U.S.C. 78w], section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and section 211 of the Investment Advisers Act [15 U.S.C. 80b–11].

Text of Amendments

■ For the reasons set forth in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 248—REGULATIONS S–P AND S–AM

■ 50. The authority citation for part 248 continues to read as follows:

Authority: 15 U.S.C. 78q, 78q–1, 78w, 78mm, 80a–30, 80a–37. 80b–4, 80b–11, 1681s–3 and note, 1681w(a)(1), 6801–6809, and 6825.

■ 51. Revise § 248.2 to read as follows:

§ 248.2 Model privacy form: rule of construction.

(a) *Model privacy form.* Use of the model privacy form in Appendix A to Subpart A of this part, consistent with the instructions in Appendix A to Subpart A, constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part provide guidance concerning the rule's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example, to the extent practicable, constitutes compliance with this part.

(c) *Substituted compliance with CFTC financial privacy rules by futures commission merchants and introducing brokers.* Except with respect to § 248.30(b), any futures commission merchant or introducing broker (as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, *et seq.*)) registered by notice with the Commission for the purpose of conducting business in security futures products pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)(A)) that is subject to and in compliance with the financial privacy rules of the Commodity Futures Trading

Commission (17 CFR part 160) will be deemed to be in compliance with this part.

■ 52. In § 248.6:

■ A. Revise paragraphs (b) and (f), and add paragraph (g) to read as set forth below.

■ B. Effective January 1, 2012, remove paragraph (g).

§ 248.6 Information to be included in privacy notices.

* * * * *

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 248.14 and 248.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 248.4 and 248.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

* * * * *

(f) *Model privacy form.* Pursuant to § 248.2(a) and Appendix A to Subpart A of this part, Form S–P meets the notice content requirements of this section.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B to Subpart A of this part. The sample clauses in Appendix B to Subpart A of this part provide guidance concerning the rule's application in ordinary circumstances in a privacy notice provided on or before December 31, 2010. The facts and circumstances of each individual situation, however, will determine whether compliance with a sample clause constitutes compliance with this part.

■ 53. In § 248.7, add paragraph (i) to read as follows:

§ 248.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 248.2(a) and Appendix A to Subpart A of this part, Form S–P meets the notice content requirements of this section.

■ 54. Add Appendix A to Subpart A to read as follows:

Appendix A to Subpart A—Forms

A. Any person may view and print this form at: *http://www.sec.gov/about/forms/secforms.htm.*

B. Use of Form S–P by brokers, dealers, and investment companies, and investment advisers registered with the Commission constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part.

FORM S–P—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%,

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below Please note: If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name

Address

City, State, Zip

Mail to:

[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form

Leave Blank OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ **Apply my choices only to me]**

Mark any/all you want to limit:

❑ **Do not share information about my creditworthiness with your affiliates for their everyday business purposes.**

❑ **Do not allow your affiliates to use my personal information to market to me.**

❑ **Do not share my personal information with nonaffiliates to market their products and services to me.**

Name	
Address	
City, State, Zip	

Mail To: **[Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]**

BILLING CODE 6750–01–C 12.5%, 6351–01–C 12.5%, 6720–01–C 12.5%, 6714–01–C 12.5%, 4810–33–C 12.5%, 6210–01–C 12.5%, 8011–01–C 12.5%, 7535–01–C 12.5%,

B. General Instructions

1. How the Model Privacy Form is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 248.6 and 248.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table ("Reasons we can share your personal information").

(5) "To limit our sharing" box, as needed, for the financial institution's opt-out information.

(6) "Questions" box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions ("Who we are" and "What we do").

(3) Definitions.

(4) "Other important information" box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) *General instructions for the "What?" box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for

sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. See paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 248.14 and 248.15 and with service providers pursuant to § 248.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 248.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 248.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 17 CFR part 248, subpart B, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 248.7 and 248.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note" institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (see version 3); or below the form (see version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "☐ Do not allow your affiliates to use my personal information to market to me."

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 248.10(a) of this part, it must include in the mail-in opt-out form the following statement: "☐ Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "☐ Do not share my personal information to market to me." *or* "☐ Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "☐ Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 248.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the "Other important

information" box; or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does [name of financial institution] protect my personal information?"* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *"How does [name of financial institution] collect my personal information?"* Institutions must use five (5) of the following terms to complete the bulleted list for this question: open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *"Why can't I limit all sharing?"* Institutions that describe state privacy law provisions in the *"Other important information"* box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account—unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 248.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: *"[name of financial institution] has no affiliates;"*

(ii) If it has affiliates but does not share personal information, state: *"[name of financial institution] does not share with our affiliates;"* or

(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies;] and others, such as [insert illustrative list]."*

(2) *Nonaffiliates.* As required by § 248.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: *"[name of financial institution] does not share with nonaffiliates so they can market to you;"* or

(ii) If it shares with nonaffiliated third parties, state, as applicable: *"Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."*

(3) *Joint Marketing.* As required by § 248.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: *"[name of financial institution] doesn't jointly market;"* or

(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include [list categories of companies such as credit card companies]."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

■ 55. Amend Appendix B to Subpart A of part 248 as follows:

■ A. Add a sentence to the beginning of the introductory text as set forth below.

■ B. Effective January 1, 2012, remove Appendix B to Subpart A of part 248.

Appendix B to Subpart A of Part 248—Sample Clauses

This Appendix only applies to privacy notices provided before January 1, 2011.

* * * * *

Dated: October 1, 2009.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 27, 2009.

Robert deV. Frierson,

Secretary of the Board.

By Order of the Board of Directors.

Dated at Washington, DC, this 23rd day of October, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 28, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

By the National Credit Union Administration Board on November 10, 2009.

Mary Rupp,

Secretary of the Board.

The Federal Trade Commission.

Dated: September 25, 2009.

By Direction of the Commission.

Donald S. Clark,

Secretary.

Dated: September 21, 2009.

David A. Stawick,

Secretary of the Commodity Futures Trading Commission.

Dated: November 16, 2009.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27882 Filed 11–30–09; 8:45 am]

BILLING CODE 6750–01–P 12.5%, 6351–01–P 12.5%, 6720–01–P 12.5%, 6714–01–P 12.5%, 4810–33–P 12.5%, 6210–01–P 12.5%, 8011–01–P 12.5%, 7535–01–P 12.5%

Federal Register

Tuesday,
December 1, 2009

Part III

Environmental Protection Agency

40 CFR Part 450
Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[EPA–HQ–OW–2008–0465; FRL–9086–4]

RIN 2040–AE91

Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is publishing final regulations establishing Clean Water Act (CWA) technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development (C&D) point source category. EPA expects compliance with this regulation to reduce the amount of sediment and other pollutants discharged from construction and development sites by approximately 4 billion pounds per year.

DATES: This final rule is effective on February 1, 2010, 60 days after publication in the **Federal Register.**

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2008–0465. 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., 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 Office of Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's rule, contact Mr. Jesse W. Pritts at 202–566–1038 (*pritts.jesse@epa.gov*). For economic information contact Mr. Todd Doley at 202–566–1160 (*doley.todd@epa.gov*). For information regarding environmental benefits, contact Ms. Ashley Allen at 202–566–1012 (*allen.ashley@epa.gov*).

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Industry	Construction activities required to obtain NPDES permit coverage and performing the following activities:	
	Construction of buildings, including building, developing and general contracting	236
	Heavy and civil engineering construction, including land subdivision	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 450.10 of today's final rule and the definition of "storm water discharges associated with industrial activity" and "storm water discharges associated with small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular site, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

Several key documents support the final regulation:

1. "Development Document for Final Effluent Guidelines and Standards for the Construction and Development Category," EPA–821–R–09–010. ("Development Document") This document presents EPA's methodology and technical conclusions concerning the C&D category.

2. "Economic Analysis for Final Effluent Guidelines and Standards for the Construction and Development Category," EPA–821–R–09–011. ("Economic Analysis") This document presents the methodology employed to assess economic impacts of the rule and the results of the analysis.

3. "Environmental Impact and Benefits Assessment for Final Effluent Guidelines and Standards for the Construction and Development Category," EPA–821–R–09–012 ("Environmental Assessment"). This document presents the methodology to assess environmental impacts and benefits of the rule and the results of the analysis.

You can obtain electronic copies of this preamble and final rule as well as the technical and economic support documents for today's rule at EPA's Web site for the C&D rule, *http://www.epa.gov/waterscience/guide/construction.*

Overview

This preamble describes the terms, acronyms, and abbreviations used in this document; the background documents that support these final regulations; the legal authority of this final rule; a summary of the final rule; background information; and the technical and economic methodologies used by the Agency to develop this final regulation.

Table of Contents

I. Legal Authority

EPA is promulgating these regulations under the authorities of sections 101, 301, 304, 306, 308, 402, 501 and 510 of the Clean Water Act (CWA), 33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1341, 1342, 1361 and 1370 and pursuant to the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*

II. Purpose & Summary of the Final Rule

EPA is today promulgating effluent limitations guidelines (ELG) and new source performance standards (NSPS) for the C&D point source category. EPA is promulgating a series of non-numeric effluent limitations, as well as a numeric effluent limitation for the pollutant turbidity. All construction sites will be required to meet the series of non-numeric effluent limitations. Construction sites that disturb 10 or more acres of land at one time will be required to monitor discharges from the site and comply with the numeric effluent limitation. EPA is phasing in the numeric effluent limitation over four years to allow permitting authorities adequate time to develop monitoring requirements and to allow the regulated community time to prepare for compliance with the numeric effluent limitation. Construction sites that disturb 20 or more acres at one time will be required to conduct monitoring of discharges from the site and comply with the numeric effluent limitation beginning 18 months after the effective date of the final rule. Construction sites that disturb 10 or more acres at one time will be required to conduct monitoring of discharges from the site and comply with the numeric effluent limitation beginning four years after the effective date of the final rule.

The total pollutant reductions, once fully implemented, will be approximately 4 billion pounds per year. The final rule will result in an extensive range of benefits. For some of those benefits EPA was able to estimate a monetized value of approximately $369 million per year, once fully implemented. EPA could not monetize the value of some benefit categories, such as increases in property value near water bodies, reduced flood damage, and reduced cost of ditch maintenance. For other benefits categories, such as swimming and fishing, EPA was able to partially monetize the benefits. The costs of the final rule in 2010, which is the first year in which the rule must be incorporated into National Pollutant Discharge Elimination System (NPDES) permits, are estimated to be $8 million. Costs in 2011 are estimated to be $63 million. Since this regulation will be implemented over time due to the schedule by which EPA and states will be issuing new or reissued permits, the annual cost of the rule will be $810 million after all states have incorporated the requirements of the final rule into their NPDES permits in 2014. EPA

expects that after the rule is fully incorporated into EPA and state NPDES permits after the industry has returned to normal levels of construction activity, the annual cost of the rule will be $953 million.

The goal of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. CWA section 101, 33 U.S.C. 1251. Despite substantial improvements in the nation's water quality since the inception of the Clean Water Act, many of the nation's surface waters continue to be impaired. EPA's Assessment TMDL Tracking and Implementation System (ATTAINS) provides information on water quality conditions reported by the states to EPA under Sections 305(b) and 303(d) of the Clean Water Act. According to ATTAINS (as of September 17, 2009), 49 percent of assessed river and stream miles, 66 percent of assessed lake area, and 63 percent of assessed bay and estuary area is impaired by a wide range of sources. Improper control of stormwater discharges associated with construction activity is a contributor of sediment, turbidity, nutrients and other pollutants to surface waters in the United States. Sediment (both suspended and deposited) and turbidity are common construction site pollutants and are significant causes of surface water quality impairment. According to ATTAINS (as of September 17, 2009), turbidity contributes to impairment of 26,278 miles of assessed rivers and streams, 1,008,276 acres of assessed lakes, and reservoirs, and 240 square miles of assessed bays and estuaries. These figures probably underestimate the extent of turbidity impairment since many waters have not yet been assessed. EPA's *Wadeable Streams Assessment* (2006) is a statistical survey of the smaller perennial streams and rivers that comprise 90 percent of all perennial stream miles in the coterminous United States. According to the survey, excess streambed sedimentation is one of the most widespread stressors, with 25 percent of streams in "poor" streambed sediment condition.

The sediment, turbidity, and other pollutants entrained in stormwater discharges associated with construction activity contribute to aquatic ecosystem degradation, increased drinking water treatment costs, and impairment of the recreational use and aesthetic value of impacted waters. Sediment can also accumulate in rivers, lakes, and reservoirs, leading to the need for dredging or other mitigation in order to prevent reduced water storage or navigation capacity.

Construction activity typically involves site selection and planning, and land-disturbing tasks such as clearing, excavating and grading. Disturbed soil, if not managed properly, can be easily washed off-site during storm events. Stormwater discharges during construction activities containing sediment and turbidity can cause an array of physical, chemical and biological impacts on receiving waters. In addition to sediment and turbidity, a number of other pollutants (e.g., metals, organic compounds and nutrients) are preferentially absorbed or adsorbed onto mineral or organic particles found in fine sediment. These pollutants can cause an array of chemical and biological water quality impairments. The interconnected processes of erosion (i.e., detachment of soil particles by water), sediment transport, and delivery to receiving waters are the primary pathways for the addition of pollutants from construction and development sites (hereinafter C&D sites; construction sites; or sites) into aquatic systems.

A primary concern at most C&D sites is the erosion and transport process related to fine sediment because rain splash, rills (small channels typically less than one foot deep) and sheetwash (thin sheets of water flowing across a surface) encourage the detachment and transport of sediment to water bodies. Although streams and rivers naturally carry sediment loads, discharges associated with construction activity can elevate these loads to levels above those in undisturbed watersheds. In addition, discharges from C&D sites can increase the proportion of silt, clay and colloidal particles in receiving streams because these fine-grained particles may not be effectively managed by conventional erosion and sediment controls utilized at C&D sites that rely on simple settling.

Existing national stormwater regulations at 40 CFR 122.26 require dischargers engaged in construction activity to obtain NPDES permit coverage and to implement control measures to manage discharges associated with construction activity. This category is the largest category of dischargers in the NPDES program. However, there are currently no national performance standards or monitoring requirements for this category of dischargers. Today's regulation establishes a technology-based "floor" or minimum requirements on a national basis. This rule constitutes the nationally applicable, technology-based ELG and NSPS applicable to all dischargers currently required to obtain a NPDES permit pursuant to 40 CFR 122.26(b)(14)(x) and 122.26(b)(15). This rule focuses on discharges composed of stormwater but the ELGs and NSPSs also apply to other discharges of pollutants from C&D sites, such as discharges from dewatering activities. CWA section 301(a). The ELGs and NSPSs would require stormwater discharges from most C&D sites to meet effluent limitations designed to reduce the amount of sediment, turbidity, Total Suspended Solids (TSS) and other pollutants in stormwater discharges from the site.

EPA acknowledges that many state and local governments have existing programs for controlling stormwater and wastewater discharges from construction sites. Today's ELGs and NSPS are intended to work in concert with these existing state and local programs and in no way does EPA intend for this regulation to interfere with existing state and local requirements that are more stringent than this rule or with the ability of state and local governments to promulgate new and more stringent requirements. Today's regulation requires all permittees to implement a range of erosion and sediment controls and pollution prevention measures at regulated construction sites. Today's regulation also establishes a numeric effluent limitation for turbidity in discharges from C&D sites that disturb ten or more acres of land at one time. Permittees would be required to sample stormwater discharges from the site and report the levels of turbidity present in the discharges to the permitting authority. These effluent limitations would, for many sites, require an additional layer of management practices and/or treatment above what most state and local programs are currently requiring. Permitting authorities are required to incorporate these turbidity limitations into their permits and permittees are required to implement control measures to meet a numeric turbidity limitation in discharges of stormwater from their C&D sites. EPA is not dictating that specific technologies be used to meet the numeric limitation, but is specifying the maximum daily turbidity level that can be present in discharges from C&D sites. EPA's limitations are based on its assessment of what specific technologies can reliably achieve. Permittees have the flexibility to select management practices or technologies that are best suited to site-specific conditions present on each individual C&D site if they are able to consistently meet the limitations and if they are consistent with requirements established by the permitting authority.

Permittees also have the ability to phase their construction activities to limit applicability of the monitoring requirements and turbidity limitation.

EPA expects that today's regulation will result in reductions in pollutant discharges and substantial improvements in receiving water quality nationally in areas where construction activities are occurring and downstream of areas where construction activities are occurring. In addition, the monitoring requirements contained in today's rule will significantly increase transparency and accountability for the largest category of NPDES dischargers and provide permittees, permitting authorities and the public with an important mechanism for gauging compliance with the regulations and standards.

III. Background on Existing Regulatory Program

A. Clean Water Act

Congress passed the Federal Water Pollution Control Act of 1972 (Pub. L. 92–500, October 18, 1972) (hereinafter the Clean Water Act or CWA), 33 U.S.C. 1251 *et seq.*, with the stated objectives to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA provides that "the discharge of any pollutant by any person shall be unlawful" except in compliance with other provisions of the statute. CWA section 301(a). 33 U.S.C. 1311. The CWA defines "discharge of a pollutant" broadly to include "any addition of any pollutant to navigable waters from any point source." CWA section 502(12). 33 U.S.C. 1362(12). EPA is authorized under CWA section 402(a) to issue a NPDES permit for the discharge of any pollutant from a point source. These NPDES permits are issued by EPA regional offices or NPDES authorized state or tribal agencies. Since 1972, EPA and the states have issued NPDES permits to thousands of dischargers, both industrial (e.g., manufacturing, energy and mining facilities) and municipal (e.g., sewage treatment plants). As required under Title III of the CWA, EPA has promulgated ELGs and standards for many industrial point source categories, and these requirements are incorporated into the permits. The Water Quality Act (WQA) of 1987 (Pub. L. 100–4, February 4, 1987) amended the CWA, adding CWA section 402(p), requiring implementation of a comprehensive program for addressing stormwater discharges. 33 U.S.C. 1342(p).

B. Clean Water Act Stormwater Program

Prior to the WQA of 1987, there were numerous questions regarding the appropriate means of regulating stormwater discharges within the NPDES program due to the serious water quality impacts of stormwater, the variable nature of stormwater, the large number of stormwater point sources and permitting agency resources. EPA undertook numerous regulatory actions, which resulted in extensive litigation, in an attempt to address these unique discharges. Congress, with the addition of section 402(p), established a structured and phased approach to address stormwater discharges and fundamentally altered the way stormwater is addressed under the CWA as compared with process wastewater or other discharges of pollutants. Section 402(p)(1) created a temporary moratorium on NPDES permits for point source stormwater discharges, except for those listed in section 402(p)(2), including dischargers already required to have a permit and discharges associated with industrial activity. In 1990, pursuant to section 402(p)(4), EPA promulgated the Phase I stormwater regulations for those stormwater discharges listed in 402(p)(2). 55 FR 47990 (November 16, 1990). The Phase I regulations required NPDES permit coverage for discharges associated with industrial activity and from "large" and "medium" municipal separate storm sewer systems (MS4s). CWA section 402(p)(2). As part of that rulemaking, the Agency interpreted stormwater "discharges associated with industrial activity" to include stormwater discharges associated with "construction activity" as defined at 40 CFR 122.26(b)(14)(x). As described in the Phase I regulations, dischargers must apply for and obtain authorization to discharge (or "permit coverage"), and a permit is required for discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- Will result in the disturbance of five acres or greater; or
- Will result in the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.

See 40 CFR 122.26(b)(14)(x) and (c)(1). These discharges associated with "large" construction activity are one of the categories of stormwater dischargers EPA defined as associated with industrial activity. See 40 CFR 122.26(b)(14).

Section 402(p)(6) established a process for EPA to evaluate potential sources of stormwater discharges not included in the Phase I regulations and designation of those discharges for regulation in order to protect water quality. Section 402(p)(6) instructs EPA to "issue regulations * * * which designate stormwater discharges, other than those discharges described in [section 402(p)(2)], to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources." In 1999, pursuant to the broad discretion granted to the Agency under section 402(p)(6), EPA promulgated the Phase II stormwater regulations which designated discharges associated with "small" construction activity and "small" MS4s. 64 FR 68722 (December 8, 1999). An NPDES permit is required for discharges associated with small construction activity, including clearing, grading, and excavation, if the construction activity:

- Will result in land disturbance of equal to or greater than one acre and less than five acres; or
- Will result in disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

See 40 CFR 122.26(b)(15).

EPA continues to have the authority to use section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA in order to protect water quality. See 40 CFR 122.26(a)(9)(i)(C)–(D); see also *Envt Defense Ctr.* v. *EPA*, 344 F.3d 832, 873–76 (9th Cir. 2003).

In addition, as stated above, the Phase I and Phase II regulations require NPDES permits for "large," "medium," and "small" MS4s. Operators of these MS4s, typically local governments, must develop and implement a stormwater management program, including a requirement to address stormwater discharges associated with construction activity and discharges after construction activity. More details on the requirements of MS4 programs are described in section III.B.2.

1. NPDES Permits for Stormwater Discharges Associated With Construction Activity

The NPDES regulations provide two options for obtaining authorization to discharge or "permit coverage": General permits and individual permits. A brief description of these types of permits as they apply to C&D sites follows.

a. General NPDES Permits

The vast majority of discharges associated with construction activity are covered under NPDES general permits. EPA, states and tribes use general permits to cover a group of similar dischargers under one permit. See 40 CFR 122.28. General permits simplify the process for dischargers to obtain authorization to discharge, provide permit requirements for any discharger that files a notice of intent to be covered, and reduce the administrative workload for NPDES permitting authorities. General permits, including a fact sheet describing the rationale for permit conditions, are issued by NPDES permitting authorities after an opportunity for public review of the proposed general permit. Typically, to obtain authorization to discharge under a construction general permit, a discharger (the owner or operator of the C&D sites; typically, a developer, builder, or contractor) submits to the permitting authority a Notice of Intent (NOI) to be covered under the general permit. A NOI is not a permit or a permit application, see *Texas Independent Producers and Royalty Owners Ass'n* v. *EPA*, 410 F.3d 964, 977–78 (7th Cir. 2005), but by submitting the NOI, the discharger acknowledges that it is eligible for coverage under the general permit and agrees to the conditions in the published general permit. Discharges associated with the construction activity are authorized consistent with the terms and conditions established in the general permit.

EPA regulations allow NPDES permitting authorities to regulate discharges from small C&D sites under a general permit without the discharger submitting an NOI if the permitting authority determines an NOI is inappropriate and the general permit includes language acknowledging that an NOI is unnecessary (40 CFR 122.28(b)(2)(v)). To implement such a requirement, the permitting authority must specify in the public notice of the general permit any reasons why an NOI is not required. In these instances, any stormwater discharges associated with small construction activity are automatically covered under an applicable general permit and the discharger is required to comply with the terms, conditions and effluent limitations of such permit.

Similarly, EPA, states and tribes have the authority to notify a C&D site operator that it is covered by a general permit, even if that operator has not submitted an NOI (40 CFR 122.28(b)(2)(vi)). In these instances, the operator is given the opportunity to request coverage under an individual permit. Individual permits are discussed in section III.B.1.d.

b. EPA Construction General Permit

Since 1992, EPA has issued a series of "national" Construction General Permits (CGP) that cover areas where EPA is the NPDES permitting authority. At present, EPA is the permitting authority in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all other U.S. territories with the exception of the Virgin Islands, federal facilities in four states (Colorado, Delaware, Vermont, and Washington), most Indian lands and a couple of other specifically designated activities in specific states (e.g., oil and gas activities in Texas and Oklahoma). EPA's current CGP became effective on June 30, 2008 (see 74 FR 40338). EPA has proposed to modify the expiration date of the current 2008 CGP for one year, to June 30, 2011, in order to allow EPA adequate time to incorporate the ELGs and NSPS in this final rule and provide any necessary guidance to the regulated industry (see 74 FR 53494). At that time, EPA will issue a new CGP that includes the requirements of this final rule.

The key components of EPA's current CGP are non-numeric effluent limitations and "best management practices" (BMP) that require the permittee to minimize discharges of pollutants in stormwater discharges using control measures that reflect best engineering practices based on EPA's best professional judgment. Dischargers must minimize their discharge of pollutants in stormwater using appropriate erosion and sediment controls and control measures for other pollutants such as litter, construction debris, and construction chemicals that could be exposed to stormwater and other wastewater. The 2008 EPA CGP requires dischargers to develop and implement a stormwater pollution prevention plan (SWPPP) to document the steps they will take to comply with the terms, conditions and effluent limitations of the permit. EPA's guidance manual, "Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites," (EPA 833/R–060–04, May 2007; available on EPA's Web site at *http://www.epa.gov/npdes/stormwater*) describes the SWPPP process in detail. As detailed in EPA's CGP, the SWPPP must include a description of the C&D site with maps showing drainage patterns, discharge points, and locations of discharge controls; a description of the control measures used; and inspection procedures. A copy of the SWPPP must be kept on the construction site from the date of project initiation to the date of final stabilization. The CGP does not require permittees to submit a SWPPP to the permitting authority; however, a copy must be readily available to authorized inspectors during normal business hours. Other requirements in the CGP include conducting regular inspections and reporting releases of reportable quantities of hazardous substances.

c. State Construction General Permits

Whether EPA, a state or a tribe issues the general permit, the CWA and EPA regulations require that NPDES permits must include technology-based effluent limitations. 40 CFR 122.44. In addition, where technology-based effluent limitations are insufficient for the discharge to meet applicable water quality standards, the permit must contain water quality-based effluent limitations as necessary to meet those standards. See sections 301, 304, 303, 306, and 402 of the CWA. *PUD No. 1 of Jefferson County* v. *Washington Department of Ecology*, 511 U.S. 700, 704–705 (1994).

For the most part, state-issued general permits for stormwater discharges associated with construction activity have followed EPA's CGP format and content, starting with EPA's first CGP issued in 1992 (57 FR 41176; September 9, 1992). Over time, some states have changed components of their permits to better address the specific conditions encountered at construction sites within their jurisdiction (e.g., soil types, topographic or climatic characteristics, or other relevant factors). For example, the States of Washington, Oregon, Georgia and Vermont's CGPs include discharge monitoring requirements for C&D sites applicable to all or a subset of construction sites. In addition, the State of California's current CGP contains monitoring requirements as well as numeric effluent limitations for a subset of construction sites within the state.

d. Individual NPDES Permits

A permitting authority may require any C&D site to apply for an individual permit rather than using the general permit. Likewise, any discharger may request to be covered under an individual permit rather than seek coverage under an otherwise applicable general permit (40 CFR 122.28(b)(3)). Unlike a general permit, an individual permit is intended to be issued to one permittee, or a few co-permittees. Individual permits for stormwater discharges from construction sites are

rarely used, but when done so, are most often used for very large projects or projects located in sensitive watersheds. EPA estimates that fewer than one half of one percent (< 0.5%) of all construction sites are covered under individual permits.

2. Municipal Stormwater Permits and Local Government Regulation of Stormwater Discharges Associated With Construction Activity

Many local governments, as MS4 permittees, have a role to play in the regulation of construction activities. This section provides an overview of MS4 responsibilities associated with controlling stormwater discharges associated with construction activity.

a. NPDES Requirements

A municipal separate storm sewer system (MS4) is generally a conveyance or system of conveyances owned or operated by a public body that discharges to waters of the United States and is designed or used for collecting or conveying stormwater. These systems are not combined sewers and not part of a Publicly Owned Treatment Works (POTW). See 40 CFR 122.26(b)(8) for an exact definition. An MS4 is all large, medium, and small municipal storm sewers or those designated as such under EPA regulations. See 40 CFR 122.26(b)(18). The NPDES stormwater regulations require many MS4s to apply for permits. In general, the 1990 Phase I rule requires MS4s serving populations of 100,000 or more to obtain coverage under an MS4 individual permit. See 40 CFR 122.26(a)(3). The 1999 Phase II rule requires most small MS4s located in urbanized areas also to obtain coverage. See 40 CFR 122.33. Regardless of the type of permit, MS4s are required to develop stormwater management programs that detail the procedures they will use to control discharges of pollutants in stormwater from the MS4.

The Phase II regulations also provide permitting authorities or the EPA Regional Administrator with the authority to designate any additional stormwater discharges for permit coverage where he or she determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDL) that address pollutants of concern or that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. 40 CFR 122.26(9)(a)(i)(C) and (D).

Both the Phase I and II rules require regulated municipalities to develop stormwater management programs which include, among other elements, the control of discharges from construction sites. The Phase I regulations require medium and large MS4s to implement and maintain a program to reduce pollutants in stormwater discharges associated with construction activities, including procedures for site planning, requirements for structural and non-structural BMPs, procedures for identifying priorities for inspecting sites and enforcing control measures, and development and dissemination of appropriate educational and training materials. In general, the Phase II regulations require small MS4s to develop, implement, and enforce a program to control pollutants in stormwater discharges associated with construction activities which includes developing an ordinance to require implementation of erosion and sediment control practices, to control waste and to have procedures for site plan review and site inspections. Thus, as described above, both the Phase I and Phase II regulations specifically anticipate a local program for controlling stormwater discharges associated with construction activity. See 40 CFR 122.26(d)(2)(iv)(D) for Phase I MS4s and 40 CFR 122.34(b)(4) for Phase II MS4s. EPA has provided guidance materials to the NPDES permitting authorities and MS4s that recommend components and activities for a well-operated local stormwater management program.

EPA promulgated two provisions intended to minimize potential duplication of requirements or inconsistencies between requirements. First, 40 CFR 122.35 provides that a small MS4 is allowed to rely on another entity's program to satisfy its NPDES permit obligations, including construction site control, provided the other entity implements a program that is at least as stringent as the corresponding NPDES permit requirements and the other entity agrees to implement the control measures on the small MS4's behalf. Thus, for example, where a county implements a construction site stormwater control program already, and that program is at least as stringent as the controls required by a small MS4's NPDES permit, the MS4 may reference that program in the Notice of Intent to be covered by a general permit, or in its permit application, rather than developing and implementing a new program to require control of construction site stormwater within its jurisdiction.

Similarly, EPA or the state permitting authority may substitute certain aspects of the requirements of the EPA or state permit by incorporating by reference the requirements of a "qualifying local program" in the EPA or state CGP. A "qualifying local program" is an existing sediment and erosion control program that meets the minimum requirements as established in 40 CFR 122.44(s). By incorporating a qualifying local, state or tribal program into the EPA or state CGP, construction sites covered by the qualifying program in that jurisdiction would simply follow the incorporated local requirements in order to meet the corresponding requirements of the EPA or state CGP.

b. EPA Guidance to Municipalities

EPA developed several guidance documents for municipalities to implement the NPDES Phase II rule.

- National Menu of BMPs (*http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm*). This document provides guidance to regulated MS4s as to the types of practices they could use to develop and implement their stormwater management programs. The menu includes descriptions of practices that local programs can implement to reduce impacts of stormwater discharges from construction activities.
- Measurable Goals Guidance for Phase II MS4s (*http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm*). This document assists small MS4s in defining performance targets and includes examples of goals for practices to control stormwater discharges from construction activities.
- Stormwater Phase II Compliance Assistance Guide (EPA 833–R–00–002, March 2000). The guide provides an overview of compliance responsibilities for MS4s, small construction sites, and certain other industrial stormwater discharges affected by the Phase II rule.
- Fact Sheets on various stormwater control technologies, including hydrodynamic separators (EPA 832–F–99–017), infiltrative practices (EPA 832–F–99–018 and EPA 832–F–99–019), modular treatment systems (EPA 832–F–99–044), porous pavement (EPA 832–F–99–023), sand filters (EPA 832–F–99–007), turf reinforcement mats (EPA 832–F–99–002), vegetative covers (EPA 832–F–99–027), swales (EPA 832–F–99–006) and wet detention ponds (EPA 832–F–99–048). (Available at *http://www.epa.gov/npdes/stormwater/*; click on "Publications.")

C. Other State and Local Stormwater Requirements

States and municipalities may have other requirements for flood control, erosion and sediment control, and in

many cases, stormwater management. Many of these provisions were enacted before the promulgation of the EPA Phase I stormwater rule although many have been updated since. EPA found that all states have laws for erosion and sediment control measures, with these laws implemented by state, county, or local governments. A summary of existing state requirements is provided in the Development Document.

D. Technology-Based Effluent Limitations Guidelines and Standards

Effluent limitations guidelines and new source performance standards are technology-based effluent limitations required by CWA sections 301 and 306 for categories of point source discharges. These effluent limitations, which can be either numeric or non-numeric, along with water quality-based effluent limitations, if necessary, are incorporated into NPDES permits. ELGs and NSPSs are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Title III of the CWA and outlined below.

1. Best Practicable Control Technology Currently Available (BPT)

In establishing effluent limitations guidelines for a point source category, the CWA requires EPA to specify BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In doing so, EPA is required to determine what level of control is technologically available and economically practicable. CWA section 301(b)(1)(A). In specifying BPT, the CWA requires EPA to look at a number of factors. EPA considers the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application. The Agency also considers the age of the equipment and facilities, the process employed and any required process changes, engineering aspects of the application of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the category of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in a category if the Agency determines that the technology can be practicably applied. See e.g., *American Frozen Foods Inst.* v. *Train*, 539 F.2d 107, 117 (D.C. Cir. 1976).

EPA assesses the cost-reasonableness of BPT limitations by considering the cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology. This "limited cost-benefit analysis" is intended to "limit the application of technology only where the additional degree of effluent reduction is wholly out of proportion to the costs of achieving such marginal level of reduction." See *EPA* v. *National Crushed Stone Ass'n*, 449 U.S. 64 71 (1980). Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027, 1051 (3rd Cir. 1975).

In balancing costs against the effluent reduction, EPA considers the volume and nature of the expected discharges after application of BPT and the cost and economic impacts of the required level of pollution control. In past effluent limitation guidelines, BPT cost-reasonableness comparisons ranged from $0.26 to $41.44 per pound removed (in 2008 dollars). This range is not inclusive of all categories regulated by BPT, but nonetheless represents a very broad range of cost-reasonableness values. About half of the cost-reasonableness values represented by this range are less than $2.99 per pound (in 2008 dollars).

2. Best Available Technology Economically Achievable (BAT)

BAT effluent guidelines are applicable to toxic (priority) and nonconventional pollutants. EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. 40 CFR 401.15 and 40 CFR part 423, Appendix A. In general, BAT represents the best available performance of facilities through application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives within the point source category. CWA section 304(b)(2)(A). The factors EPA considers in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, the engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. CWA section 304(b)(2)(B). The Agency retains considerable discretion in assigning the weight to be accorded to these factors. *Weyerhaeuser Company* v. *Costle*, 590 F.2d 1011, (D.C. Cir. 1978). An additional factor, derived from the statutory phrase best available technology economically achievable, is "economic achievability." CWA section 301(b)(2)(A). EPA may determine the economic achievability of an option on the basis of the overall effect of the rule on the industry's financial health. See *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112, 129 (1977); *American Frozen Food Inst.* v. *Train*, 539 F.2d 107, 131 (D.C. Cir. 1976). The Agency may base BAT limitations upon effluent reductions attainable through changes in a facility's processes and operations. *See Texas Oil & Gas Ass'n* v. *EPA*, 161 F.3d 923, 928 (5th Cir. 1998) (citing "process changes" as one factor EPA considers in determining BAT); see also, *American Meat Institute* v. *EPA*, 526 F.2d 442, 464 (7th Cir. 1975). As with BPT, where existing performance is uniformly inadequate, EPA may base BAT upon technology transferred from a different subcategory or from another category. See *CPC International Inc.* v. *Train*, 515 F.2d 1032, 1048 (8th Cir. 1975) (established criteria EPA must consider in determining whether technology from one industry can be applied to another); see also, *Tanners' Council of America, Inc.* v. *Train*, 540 F.2d 1188 (4th Cir. 1976). In addition, the Agency may base BAT upon manufacturing process changes or internal controls, even when these technologies are not common industry practice. See *American Frozen Foods Inst.* v. *Train*, 539 F.2d 107, 132 (D.C. Cir. 1976); *Reynolds Metals Co.* v. *EPA*, 760 F.2d 549, 562 (4th Cir. 1985); *California & Hawaiian Sugar Co.* v. *EPA*, 553 F.2d 280 (2d Cir. 1977).

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing point sources. BCT is not an additional limitation, but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in CWA section 304(b)(4)(B), the Act requires that EPA establish BCT limitations after consideration of a two-part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986. 51 FR 24974 (July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. 40 CFR 401.16. The Administrator designated oil and grease as an additional conventional pollutant. 44 FR 44501 (July 30, 1979).

4. Best Available Demonstrated Control Technology (BADT) for New Source Performance Standards (NSPS)

NSPS apply to all pollutants and reflect effluent reductions that are achievable based on the BADT. New sources, as defined in CWA section 306, have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology. In establishing NSPS, CWA section 306 directs EPA to take into consideration similar factors that EPA considers when establishing BAT, namely the cost of achieving the effluent reduction and any non-water quality, environmental impacts and energy requirements.

5. Pretreatment Standards

The CWA also defines standards for indirect discharges, i.e. discharges into publicly owned treatment works (POTWs). These standards are known as Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS), and are promulgated under CWA section 307(b). EPA has no data concerning the discharge of pollutants from construction sites to POTWs and POTW treatment plants. Therefore, EPA did not propose PSES or PSNS for the C&D category and is not promulgating PSES or PSNS for the C&D category. EPA determined that the majority of construction sites discharge either directly to waters of the U.S. or through MS4s. In some urban areas, construction sites may discharge to combined sewer systems (i.e., sewers carrying both stormwater and domestic sewage through a single pipe) which lead to POTW treatment plants. Sediment and turbidity, which are the primary pollutants associated with construction site discharges, are susceptible to treatment in POTWs, using technologies commonly employed such as primary clarification. EPA has no evidence that construction site discharges to POTWs would cause interference, pollutant pass-through or sludge contamination.

6. EPA Authority to Promulgate Non-Numeric Effluent Limitations

The regulations promulgated today include non-numeric effluent limitations that will control the discharge of pollutants from C&D sites. It is well established that EPA has the authority to promulgate non-numeric effluent limitations in addition to, or in lieu of, numeric limitations. The CWA does not mandate the use of numeric limitations and EPA's position finds support in the language of the CWA. The definition of "effluent limitation" means "*any* restriction * * * on quantities, rates, and concentrations of chemical, physical, biological, and other constituents * * *" CWA section 502(11) (emphasis added). EPA regulations reflect the Agency's long standing interpretation that the CWA allows for non-numeric effluent limitations. EPA regulations explicitly allow for non-numeric effluent limitations for the control of toxic pollutants and hazardous substances from ancillary industrial activities; for the control of storm water discharges; when numeric effluent limitations are infeasible; or when the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. See 40 CFR 122.44(k).

Federal courts have recognized EPA's authority under the CWA to use non-numeric effluent limitations. In *Citizens Coal Council* v. *U.S. EPA*, 447 F3d 879, 895–96 (6th Cir. 2006), the Sixth Circuit, in upholding EPA's use of non-numeric effluent limitations, agreed with EPA that it derives authority under the CWA to incorporate non-numeric effluent limitations for conventional and non-conventional pollutants. See also, *Waterkeeper Alliance, Inc.* v. *U.S. EPA*, 399 F.3d 486, 496–97, 502 (2d Cir. 2005) (EPA use of non-numerical effluent limitations in the form of best management practices are effluent limitations under the CWA); *Natural Res. Def. Council, Inc.* v. *EPA*, 673 F.2d 400, 403 (D.C. Cir. 1982) ("section 502(11) [of the CWA] defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction.").

7. CWA Section 304(m) Litigation

EPA identified the C&D point source category in its CWA section 304(m) plan in 2000 as an industrial point source category for which EPA intended to conduct rulemaking. 65 FR at 53008 and 53011 (August 31, 2000). On June 24, 2002, EPA published a proposed rule that contained several options for the control of stormwater discharges from construction sites, including ELGs and NSPSs. (67 FR 42644; June 24, 2002). On April 26, 2004, EPA chose to rely on the range of existing programs, regulations, and initiatives that already existed at the federal, state and local level and withdrew the proposed ELGs and NSPSs. (69 FR 22472; April 26, 2004). On October 6, 2004, the Natural Resources Defense Council, Waterkeeper Alliance and the states of New York and Connecticut filed a complaint in federal district court alleging that EPA's decision not to promulgate ELGs and NSPSs for the C&D point source category violated a mandatory duty under the CWA. The district court, in *NRDC* v. *EPA*, 437 F.Supp.2d 1137, 1139 (C.D. Cal. 2006), held that CWA section 304(m) imposes on EPA a mandatory duty to promulgate ELGs and NSPSs for new industrial point source categories named in a CWA section 304(m) plan. At that time EPA argued that the district court should enter an order providing for a four-year schedule for EPA to promulgate the ELGs and NSPSs in order to allow the Agency the opportunity to collect additional data on the construction industry, additional data on stormwater discharges associated with construction activity, and to be able to have the time to solicit additional data based on comments received on the proposed regulation. The district court rejected EPA's proposed schedule, forcing the Agency to proceed under an accelerated schedule by enjoining EPA in an order to propose and publish ELGs and NSPSs for the C&D industry by December 1, 2008 and to promulgate and publish ELGs and NSPSs as soon as practicable, but in no event later than December 1, 2009. See *NRDC, et al.* v. *EPA*, No CV–0408307 (C.D. Cal.) (Permanent Injunction and Judgment, December 5, 2006). On appeal, the Ninth Circuit in *NRDC* v. *EPA*, 542 F.3d 1235 (9th Cir. 2008) affirmed the district court's decision. Consistent with the district court order, EPA published proposed ELGs and NSPSs on November 28, 2008 (see 73 FR 72562) and is publishing final ELGs and NSPSs today.

IV. Overview of the Construction Industry and Construction Activities

The C&D point source category covers firms classified by the Census Bureau into two North American Industry Classification System (NAICS) codes.

- Construction of Buildings (NAICS 236) includes residential, nonresidential, industrial, commercial and institutional building construction.
- Heavy and Civil Engineering Construction (NAICS 237) includes utility systems construction (water and

sewer lines, oil and gas pipelines, power and communication lines); land subdivision; highway, street, and bridge construction; and other heavy and civil engineering construction.

Other types of entities not included in this list could also be regulated.

A single construction project may involve many firms from both subsectors. The number of firms involved and their financial and operational relationships may vary greatly from project to project. In typical construction projects, the firms identifying themselves as "operators" under a construction general permit are usually general building contractors or developers. While the projects often engage the services of specialty contractors such as excavation companies, these specialty firms are typically subcontractors to the general building contractor and are not separately identified as operators in stormwater permits. Other classes of subcontractors such as carpentry, painting, plumbing and electrical services typically do not apply for, nor receive, NPDES permits. The types and numbers of firms in the construction industry are described in more detail in the Economic Analysis.

Construction activity on any size parcel of land almost always calls for a remodeling of the earth. Therefore, actual site construction typically begins with site clearing and grading. Earthwork activities are important in site preparation because they ensure that a sufficient layer of organic material (ground cover and other vegetation, especially roots) is removed. The size of the site, extent of water present, the types of soils, topography and weather determine the types of equipment that will be needed during site clearing and grading. Material that will not be used on the site may be hauled away. Clearing activities involve the movement of materials from one area of the site to another or complete removal from the site. When grading a site, builders typically take measures to ensure that new grades are as close to the original grade as possible to reduce erosion and stormwater runoff, which can result in discharge of sediment, turbidity and other pollutants. Proper grade also ensures a flat surface for development and is designed to attain proper drainage away from the constructed buildings. A wide variety of equipment is often used during excavation and grading. The type of equipment used generally depends on the functions to be performed and on specific site conditions. Shaping and compacting of the earth is an important part of site preparation. Earthwork activities might require that fill material be used on the site. In such cases, the fill must be spread in uniform, thick layers and compacted to a specific density. An optimum moisture content must also be reached. Graders and bulldozers are the most common earth-spreading machines, and compaction is often accomplished with various types of rollers. If rock is to be removed from the site, the contractor must first loosen and break the rock into small pieces using various types of drilling equipment or explosives. (Adapted from Peurifoy, Robert L. and Oberlender, Garold D. (1989). Estimating Construction Costs (4th ed.). New York: McGraw Hill Book Company.)

Once materials have been excavated and removed and the ground has been cleared and graded, the site is ready for construction of buildings, roads, and/or other structures. During construction activity, the disturbed land can remain exposed without vegetative cover for a substantial period of time. Where the soil surface is unprotected, soil particles and other pollutants are particularly susceptible to erosion and may be easily washed away by rain or snow melt and discharged from the site. Permittees typically use a combination of erosion and sediment control measures designed to prevent mobilization of the soil particles and capture of those particles that do mobilize and become entrained in stormwater. In some cases permittees treat a portion of the discharge using filtration or other treatment technologies. Common erosion and sediment control measures and treatment technologies are described further in the Development Document.

V. Summary of the Proposed Regulation

EPA published proposed regulations for the C&D category on November 28, 2008. 73 FR 72562. The proposed rule contained several options. One option (Option 1), which is based on the requirements similar to those contained in past EPA CGPs, would have established a set of non-numeric effluent limitations requiring dischargers to provide and maintain effective erosion control measures, sediment control measures, and other pollution prevention measures to minimize, control or prevent the discharge of pollutants in stormwater and other wastewater from construction sites. In addition, reflecting current requirements in the EPA CGP, sediment basins would have been required for common drainage locations that serve an area with 10 or more acres disturbed at one time to contain and settle sediment from stormwater runoff before discharge. Option 1 would have required minimum standards of design for sediment basins; however, alternatives that control sediment discharges in a manner equivalent to sediment basins would have been authorized where approved by the permitting authority.

Another option (Option 2) would have incorporated the same provisions as Option 1 and for sites of 30 or more acres located in areas of the country with the annual Revised Universal Soil Loss Equation (RUSLE) R-factor greater than 50 and that contained more than 10% by mass of soil particles smaller than 2 microns, discharges of stormwater from the site would have been required to monitor and meet a numeric effluent limitation on the allowable level of turbidity. The numeric turbidity limitation proposed was 13 nephelometric turbidity units (NTUs). The technology basis for Option 2 was active or advanced treatment systems (ATS), which consisted of polymer-assisted clarification followed by filtration. A third option (Option 3) was similar to Option 2, except that it would have applied the 13 NTU limitation to all construction sites of 10 or more acres, regardless of location or soil type.

In addition, the proposal presented and solicited comment on another option that would require compliance with a higher numeric turbidity effluent limitation (e.g., 50 to 150 NTU, or some other value) based on passive treatment technologies instead of ATS (see 73 FR 72562, 72580–72582, 72610–72611). Passive treatment technologies include conventional erosion and sediment controls, polymer addition to sediment basins, fiber check dams with polymer addition, and other controls. At proposal, EPA sought additional data on the performance of passive treatment systems, and the cost and pollutant loading reductions that would be attainable from such an option.

In the proposed rule, EPA selected Option 1 as the basis of BPT and BCT, and Option 2 as the basis of BAT and NSPS. At the time of proposal, EPA defined a "new source" as any source from which there will be a discharge associated with construction activity that will result in a building, structure, facility, or installation subject to new source performance standards elsewhere under 40 CFR subchapter N.

A summary of the costs, estimated pollutant reductions, cost effectiveness and monetized environmental benefits of the proposed options are contained in the **Federal Register** notice for the proposed rule, in the support

documents for the proposed rule and in the record.

VI. Summary of Major Comments Received

EPA received numerous comments on the proposed rule. The majority of comments centered on EPA's selection of ATS as the technology basis for BAT and NSPS and the data and assumptions used to estimate the numeric limitation, costs and pollutant load reductions of the proposed BAT and NSPS. ATS is no longer the technology basis for BAT and NSPS in the final rule.

Some commenters argued that EPA's data used to estimate costs of the proposed option based on ATS did not accurately consider all of the costs, particularly for projects of longer duration. In response, EPA revised the model project analysis to consider projects of longer duration and utilized a unit-cost approach based on data contained in the record for the proposal.

Some commenters argued that EPA's analysis of the amount of construction activity underestimated actual levels of construction activity, since EPA's estimates were based on land use change estimates from 1992 to 2001 using the National Land Cover Dataset (NLCD). In response, EPA revised estimates of annual acres subject to the regulation using industry economic data instead of the NLCD data.

Some commenters argued that EPA's data and assumptions used to estimate loading reductions of the regulatory options did not accurately account for current controls in place nationwide. In response, EPA revised the assumptions used in the model to account for baseline controls. EPA also used data at the watershed level for some modeling parameters.

Some commenters requested that numeric limitations be based on, or consider, the background levels of sediment and turbidity in receiving streams when establishing a turbidity limitation. EPA notes that BAT and NSPS are based on the capabilities of technology, not receiving water quality. It would not be appropriate in establishing technology based effluent limitations pursuant to CWA sections 301 and 306 for EPA to consider the water quality of specific water bodies. See *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1040–1044 (D.C. Cir. 1978). Permitting authorities have the ability to develop water-quality based effluent limitations to address receiving water concerns. Some states have set limitations for specific projects considering the background turbidity of the receiving waters. Commenters further argued that discharges of low turbidity water to streams that are naturally high in turbidity could contribute to stream instability. EPA does not agree with this comment. The particles contained in stormwater discharges from construction sites are primarily fine-grained, since sediment controls remove the bulk of the coarser particles. These fine-grained particles are not beneficial from a stream stability standpoint. Therefore, removal of these particles from the stormwater discharge would not be expected to further contribute to stream instability, if the receiving stream was already unstable. It is plausible that discharge of a large volume of stormwater over a short period of time to a small stream with a high natural sediment load could contribute to instability. If this condition were to exist, it could be alleviated simply by controlling the rate of discharge or by dispersing runoff to vegetated areas on site, if available (see also, comment by Dr. Britt Faucette, EPA–HQ–OW–2008–0465–0527 in the rulemaking record).

Some commenters argued that some of the data EPA used to determine the numeric effluent limitation based on ATS should not be used because EPA lacked specific information on factors, such as type of construction project or treatment system configuration. Commenters also argued that the data was not representative, since these data were primarily from the Northwest United States. EPA does not agree with these comments. The data represent a variety of project types. Although EPA may not have detailed information about specific aspects of some projects (such as project size and treatment system flow rate), EPA has conducted an engineering review of the data and determined that the data is representative. EPA has excluded data, where appropriate, to account for factors such as treatment system startup and variation outside of the range that EPA would consider indicative of proper operation. Details of the engineering review of the data can be found in the Development Document. In addition, EPA received additional information on some of the data, such as project type and treatment configuration. EPA also received data from additional projects, including projects in New York and North Carolina. More details on the data can be found in the administrative record.

Some commenters were concerned about the non-numeric effluent limitations proposed, and specifically questioned whether some of the proposed requirements could be implemented on all construction sites. EPA generally agrees that some of the requirements, as proposed, could not be implemented on all sites and made revisions to the non-numeric effluent limitations to make them applicable to all sites. For certain controls, EPA included "unless infeasible" to recognize that there may be some sites where a particular control measure cannot be implemented, thus allowing flexibility for permittees. (See Section X.B.)

Some commenters questioned the stringency of the proposed soil stabilization requirements, and were concerned about the costs and feasibility of initiating stabilization of disturbed area "immediately" when final grade is reached or any clearing, grading, excavating or other earth disturbing activities have temporarily or permanently ceased and will not resume for a period exceeding 14 calendar days. EPA disagrees that this requirement is not feasible. Given the importance of soil stabilization techniques (see Chapter 5 of the Technical Development Document (TDD)), and the influence of soil cover on soil erosion rates, EPA has determined that initiating soil stabilization measures immediately is an important non-numeric effluent limitation. EPA sees no compelling reason why permittees cannot take action immediately to stabilize disturbed soils on their sites. Erosion control measures, such as mulch, are readily available and permittees need only plan accordingly to have appropriate materials and laborers present when needed. EPA has, however, modified this requirement for clarity (see the final requirement at § 450.21(b).

EPA received comments concerning applicability of the final rule to linear construction projects, including the numeric effluent limitation. EPA considered the unique characteristics of linear projects in determining the appropriate technology based effluent limitations for those sites. The final rule, in part based on the considerations of linear projects, no longer contains a requirement to install a sediment basin (See Section VII.A), the technology basis for the numeric effluent limitation is no longer ATS (See Section X.G.3), and revisions were made to the non-numeric effluent limitations based on comments concerning the feasibility at linear projects. (See Section X.B.2). EPA disagrees with comments that suggested EPA should either exempt all linear projects from the final rule or from the numeric effluent limitation. EPA has determined that numeric effluent limitations are feasible for linear projects and passive treatment systems provide flexibility to linear projects to

take into account site specific considerations. (See the TDD for specific examples of the utilization of passive treatment systems at linear projects). Additionally, EPA believes that the permitting authority should exercise discretion when determining the monitoring locations and monitoring frequency for linear construction projects. (See Section XIX.A).

Based on the unique regulatory circumstances of interstate natural gas pipeline construction projects EPA has chosen not to have the numeric limitation and monitoring requirements at 40 CFR 450.22(a) apply to the discharges associated with the construction of natural gas pipelines. This exemption only applies to discharges associated with construction of interstate natural gas pipelines that are under the jurisdiction of the Federal Energy Regulatory Commission (FERC). EPA determined this was appropriate due to the comprehensive regulatory program that FERC requires and enforces for the construction of these projects. Through its program, FERC requires a variety of erosion and sediment controls to be implemented during construction, some of which are more stringent than those contained in today's rule. FERC conducts site-specific reviews to establish the allowable area of disturbance for project construction and dictates the manner in which construction of these projects can proceed. Typical requirements would include minimizing the amount of time that soils are allowed to be exposed, managing the discharges from trench dewatering, limiting the amount of vegetation that can be cleared adjacent to streams and wetlands, and requiring successful revegetation of project areas. FERC has been requiring these projects to implement its erosion and sediment control program since 1989. Thus, it is a well-developed regulatory program that includes stringent requirements, oversight, public participation, and onsite inspection. EPA does not want to limit the flexibility of FERC to implement its program by imposing numeric limitations on these unique projects.

EPA received comments encouraging the Agency to include controls in the final rule on stormwater discharges that occur after construction activity has ceased or what they call "post-construction" stormwater discharges. These discharges are outside the scope of the final rule; however the Agency understands that there is a need to address discharges from newly developed and redeveloped sites, such as commercial buildings, roads, or parking lots, in order to protect the water quality of our nation's waters. As the urban, suburban and exurban human environment expands, there is an increase in impervious landcover and stormwater discharges. This increase in impervious landcover on developed property reduces or eliminates the natural infiltration of precipitation. The resulting stormwater flows across roads, rooftops and other impervious surfaces, picking up pollutants that are then discharged to our nation's waters. In addition, the increased volume of stormwater discharges results in the scouring of rivers and streams; degrading the physical integrity of aquatic habitats, stream function and overall water quality. In July 2006, EPA commissioned the National Research Council (NRC) to review the Agency's program for controlling stormwater discharges under the CWA and recommend steps the Agency should take to make the stormwater program more effective in protecting water quality. The NRC Report *Urban Stormwater Management in the United States* (DCN 42101) states that stormwater discharges from the built environment remain one of the greatest challenges of modern water pollution controls, "as this source of contamination is a principal contributor to water quality impairment of waterbodies nationwide." The NRC report found that the current regulatory approach by EPA under the CWA is not adequately controlling all sources of stormwater discharges that are contributing to waterbody impairment. NRC recommended that EPA address stormwater discharges from impervious landcover and promote practices that harvest, infiltrate and evapotranspirate stormwater to prevent it from being discharged, which is critical to reducing the pollutant loading to our nation's waters.

EPA has committed to and begun a rulemaking addressing stormwater discharges from newly developed and redeveloped sites under CWA section 402(p). EPA has published a draft Information Collection Request, 74 FR 56191 (October 30, 2009) for public comment that will seek information and data to support the rulemaking, and plans to complete this rule in the fall of 2012.

Some commenters argued that turbidity is not a "pollutant" under the CWA. EPA disagrees with the commenters as turbidity is a "pollutant" under the CWA and an indicator for other pollutants and is the appropriate pollutant in this rule to control, under the appropriate levels of technology, for discharges from C&D sites. In this rule, turbidity is being regulated as a nonconventional pollutant and as an indicator pollutant for the control of other pollutants in discharges from C&D sites including metals and nutrients. By providing a measure of sediment and other pollutants in discharges, turbidity is an indicator of the degree to which sediment and other pollutants found in discharges are reduced. Turbidity is also a more effective measure of the presence of fine silts and clays and colloids, which are the particles in stormwater discharges that EPA is primarily targeting in today's rule.

Turbidity is a pollutant as that term is defined in the CWA. See *e.g., Conservation Law Foundation* v. *Hannaford Bros. Co.*, 327 F.Supp.2d 325, 326 (D.Vt. 2004), aff'd 139 Fed.Appx. 338 (2d.Cir. 2005). The CWA defines "pollutant" broadly to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste." CWA section 502(6). *See NRDC* v. *EPA*, 822 F.2d 104, 109 (D.C.Cir. 1987) ("The term 'pollutant' is broadly defined..."); *U.S.* v. *Hamel*, 551 F.2d 107, 110 (6th Cir. 1977) (noting that the definition is set forth in "broad generic terms."). EPA describes "turbidity" as "an expression of the optical property that causes light to be scattered and absorbed rather than transmitted with no change in direction of flux level through the sample caused by suspended and colloidal matter such as clay, silt, finely divided organic and inorganic matter and plankton and other microscopic organisms." 40 CFR 136.3; 72 FR 11200, 11247 (March 12, 2007). Turbidity fits easily into the broad definition of pollutant. The definition of pollutant is not limited to those terms that are specifically listed in the statute at section 502(6). See *NWF* v. *Gorsuch*, 693 F.3d 156, 174 n.56 (D.C. Cir. 1982); *Sierra Club* v. *Cedar Point Oil Co.*, 73 F.3d 546, 565 (5th Cir. 1996).

Turbidity is also an indicator or measurement of other pollutants in the water body; however merely because turbidity measures other pollutants or can be an expression of the condition of the water body, does not mean it is not itself a "pollutant" under the CWA. There are numerous other pollutants, some that Congress explicitly included in the CWA, that are also indicators or measurements of other pollutants. For example, the CWA lists biochemical oxygen demand (BOD) and pH as pollutants. CWA section 304(a)(4). BOD is the measure of the amount of oxygen required by bacteria for stabilizing

material that can be decomposed under aerobic conditions and pH is a measure of how acidic or basic a substance is. Additionally, chemical oxygen demand (COD) is a pollutant and a measurement of other pollutants. See *BASF Wyandotte* v. *Costle,* 598 F.2d 637, 651 (1st Cir. 1979). Even total suspended solids (TSS) are a measure of the organic and inorganic particulate matter in wastewater. Like turbidity, there is no question BOD, pH, COD and TSS are pollutants and there is no conflict between a pollutant being a measurement of other pollutants and a pollutant itself under the CWA.

One commenter argued that turbidity is a direct representation of TSS, thus, if anything, turbidity can only be used as a surrogate for TSS, and thus a conventional pollutant. In 1978 EPA interpreted "suspended solids," at section 304(a)(4), as "total suspended solids (non-filterable) (TSS)." EPA defined TSS as "a laboratory measure of the organic and inorganic particulate matter in wastewater which does not pass through a specified glass filter disk." See 40 CFR 401.16; 43 FR 32857, 32858 (July 28, 1978). The terms turbidity and TSS are related to sediment and are analogous, but they are not synonymous pollutants or measures of water quality. TSS and turbidity are measured differently, as turbidity is a measure of the light scattering properties of the sample measured as NTU and TSS is generally a measure of the concentration (i.e., milligrams per liter). The size, shape, and refractive index of suspended particulate matter are not directly related to the concentration and specific gravity of the suspended matter. Therefore, measurements of TSS and turbidity are not interchangeable. Pollutants that are not identified as either toxic or conventional pollutants are nonconventional pollutants under the CWA. See CWA section 301(b)(2)(F); 304(a)(4); 40 CFR 401.16; *Rybacheck* v. *EPA,* 904 F. 2d 1276, 1291–92 (9th Cir. 1990). CWA section 304(a)(4) identifies what pollutants are conventional pollutants under the CWA, namely biochemical oxygen demand, suspended solids, fecal coliform, and pH, with EPA adding oil and grease. See also, 40 CFR 410.16; 44 FR 44501 (July 30, 1979). Turbidity is not identified as a conventional pollutant in the CWA or been identified as one by EPA. In the proposal, EPA cited to *Rybachek* v. *EPA,* 904 F.2d at 1291–92, to demonstrate an analogous situation where it was argued that "settleable solids" were a component of TSS, or in other words, they are the same pollutant, thus EPA should have classified settleable solids as a conventional pollutant rather than a nonconventional pollutant. Id. at 1291. The Ninth Circuit, agreeing with EPA's analysis in that case and the discussion above, concluded that "because settleable solids were not designated by Congress as either conventional or a toxic pollutant, they should be considered a nonconventional pollutant under [section 301(b)(2)(F)]." Id. at 1292. EPA applied a similar analysis to turbidity to conclude that it is a nonconventional pollutant under the CWA.

Commenters' focus on arguing that turbidity is not a pollutant, or at the very least a conventional pollutant, may be based on a desire for a different technology standard applied to this rulemaking (*i.e.,* BCT). However, even if EPA did agree that turbidity is not a pollutant or is a conventional pollutant, TSS and turbidity are not the only pollutants of concern in discharges from C&D sites. Metals, nutrients, and other toxic and nonconventional pollutants are naturally present in soils, and can be contributed during construction activity or by activities that occurred at the site prior to the construction activity (see, *e.g.,* comment from Dr. Britt Faucette, EPA–HQ–OW–2008–0465–0527 in the rulemaking record. EPA recognizes that its understanding of the nature of stormwater discharges associated with construction activity has evolved. However, as early as 1990, in the Phase I stormwater rulemaking EPA identified nonconventional and toxic pollutants of concern in discharges from construction sites stating "[c]onstruction sites can also generate other pollutants such as phosphorus, nitrogen, and nutrients from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes." 55 FR at 48033. The National Academy of Sciences agrees with EPA and the NRC report states "[t]he pollutant parameters of concern in stormwater discharges from construction activity are TSS, settleable solids, turbidity, and nutrients from erosion; pH from concrete and stucco; and a wide range of metallic and organic pollutants from construction materials, processes, wastes, and vehicles and other motorized equipment." NRC at 541. EPA is making clear in this final rule that while conventional pollutants are a concern in discharges from construction sites, there are also nonconventional and toxic pollutants of concern in discharges from these sites. Many of these pollutants are present as particulates and will be removed with other particles. Dissolved forms of pollutants are often absorbed or adsorbed to particulate matter and can also be removed along with the particulates (i.e., sediment). See the Environmental Assessment document for additional discussion about pollutants found in discharges from C&D sites.

Additionally, stormwater discharges from C&D sites in their entirety are "industrial waste," a nonconventional pollutant under the CWA, thus EPA is not obligated to single out specific constituents or parameters in the discharge. See *Northern Plains Resource Council* v. *Fidelity Exploration and Development Co.,* 325 F.3d 1155 (9th Cir. 2003). Due to stormwater discharges being, or including, nonconventional or toxic pollutants, EPA is statutorily obligated to promulgate a BAT level of control for these point source discharges. CWA section 301(b)(2)(A). EPA is also statutorily obligated to promulgate a best available demonstrated control technology (BADT) for NSPS for *all* pollutants from new sources, even if the only pollutants from C&D sites were conventional pollutants.

Some commenters urged EPA to establish numeric effluent limitations for pollutants other than turbidity (such as pH). While EPA agrees there are other pollutants of concern that are discharged from construction sites the Agency determined it is not necessary to establish any other numeric effluent limitations at this time. Many of the pollutants of concern are sediment-bound pollutants, such as metals and nutrients. The non-numeric effluent limitations in the final rule will address the mobilization of sediment and the discharge of these sediment-bound pollutants. The final rule includes a non-numeric effluent limitation that prohibits the discharge of wastewater from washout of concrete, unless managed by an appropriate control. 40 CFR 450.21(3)(1). This requirement was included to specifically address concerns with pH. Additionally, the numeric effluent limitation, in addition to controlling the discharge of turbidity, will control the discharge of some of these other pollutants of concern. If permitting authorities have concerns regarding the discharge of other pollutants they may be addressed with numeric effluent limitations on case-by-case basis through NPDES permits.

Some commenters noted that they believed there may be environmental risks of applying polymers during construction activity to control discharges of pollutants from C&D sites due to what commenters believed was the potential for the polymers to cause fish kills or otherwise cause an adverse

effect in the receiving waters. At proposal EPA had no specific examples of the use of treatment chemicals causing fish kills or aquatic toxicity, although anecdotal evidence did exist (see DCN 41110). In the proposal, EPA specifically requested information and data that quantified the number of instances where overuse of polymers occurred, the circumstances resulting in such overuse, and the actual or potential environmental impacts associated with such events. 73 FR at 72573; see also 73 FR at 72610. EPA received one specific comment regarding a fish kill associated with the use of ATS (see EPA–HQ–OW–2004–0465–1287 in the rulemaking record) and one comment that referenced "significant environmental harm" resulting from the use of chitosan or other chemicals, although specific details were not provided (see EPA–HQ–OW–2008–0465–0973 in the rulemaking record). One commenter also stated that during pilot testing of two ATS systems that "chemical overuse and poor operation never purposefully occurred, but happened anyway." This commenter also noted, when comparing ATS usage during this pilot testing to ATS that is used in Washington State that "the treatment system used on the Idaho site was missing many features that made it easier and environmentally safer to operate. The operator did not have the level of training required in Washington. DEQ did not come close to the amount of staff time Washington spends overseeing the operation of these systems and DEQ did not have any staff trained to assess if the system was being operated correctly." (see EPA–HQ–OW–2008–0465–1269 in the rulemaking record.

A number of coagulant and flocculants, including polymers, are available on the market and are in wide use for the control of pollutants, not only on construction sites, but to reduce sediment from agricultural fields and to reduce pollutants in discharges from wastewater treatment plants to name a few. While successful in reducing sediment and turbidity in conveyance systems, polymers and other additives should be carefully utilized in passive treatment systems. Several states have approved specific formulations for use on construction sites and EPA will work with the permitting authorities and the construction industry to ensure the proper application of polymers and other additives, if necessary, before owners and operators of construction sites are required to meet the numeric effluent limitation. Knowledge from toxicity studies suggest that polymers are highly variable as to their toxic effects on aquatic organisms (see discussion of toxicity in the Environmental Assessment). States have approved the use of polymers and other additives at construction sites, for example, Washington State has approved chitosan, a cationic polysaccharide biopolymer, for certain uses and has seen wide use in water and stormwater treatment. Therefore, the use of specific compounds should be considered by the permitting authority and owners and operators of construction sites in light of various environmental influences. While EPA recognizes that there is the potential for problems due to improper application of polymers, EPA has determined that when properly used, environmental impacts from polymers or flocculants should not occur through the use of passive treatment systems. The dose ranges where polymers are utilized on construction sites are well below the chronic toxicity levels. The utilization of polymers on construction sites has occurred for a significant period of time and they are currently being used on construction sites throughout the nation. EPA recognizes the merits of ensuring that polymers or other chemical additives, if necessary, are properly used. Permitting authorities should carefully consider the appropriateness of usage of these materials where there are sensitive or protected aquatic organisms in the receiving waters, including threatened or endangered species and their critical habitat. NPDES permitting authorities may establish controls on dosage and usage, protocols for residual toxicity testing, require prior approval before the use of particular polymers, training requirements for site operators or other measures they deem appropriate. In addition, permittees can also specify, and permittees may choose to utilize, on-site infiltration or dispersion to vegetated areas in combination with, or in place of, polymer-based systems. See 73 FR 72562, 72573–74. Based on the information in the record EPA has determined that when polymers are properly applied the risks of toxicity to aquatic life or adverse effects to the receiving water are minimal. However, it is important that permittees be properly trained in the use of polymers. Operators of C&D sites need to have expertise in a number of technical areas, including engineering, stormwater management and implementation of erosion and sediment controls. Technical specialists, such as engineers, hydrologists and soil scientists are involved in many aspects of site design and construction activity. Permittees typically have engineers on staff, or employ consultants to prepare plans, supervise construction and conduct inspections of various aspects of the project. Given that construction activities require rigorous attention to safety and engineering specifications, there is a reasonable basis for EPA to expect that operators can conform to proper operation and maintenance of controls and proper use of polymers and flocculants. The erosion and sediment control and stormwater management industries are large and composed of diverse specialties. There are several national trade and professional organizations whose members are engaged in various aspects of erosion and sediment control and stormwater management and who have an active role in conducting research and technical outreach. EPA believes that there is a range of expertise available across the industry to properly implement controls that may be required to meet a numeric limitation. Also, sampling and compliance with the turbidity limitation is not required until 18 months after the effective date of this final rule for sites with 20 or more acres of disturbed land at one time and four years after the effective date of the final rule for sites with 10 or more acres of disturbed land at one time. This will allow permittees time to obtain any necessary training if they do not already have trained personnel on staff and for the permitting authorities to provide guidance to permittees.

VII. Summary of Significant Decisions and Revisions to Analyses

EPA solicited comments on a number of issues in the proposed rule. Two areas that EPA specifically requested comments on were the regulatory options proposed as well as the data used to estimate the costs, pollutant loading reductions, environmental benefits and economic impacts of various options. Based on comments received, EPA revised the regulatory options that were proposed and further developed a regulatory option that would establish a numeric limitation based on passive, rather than active, treatment at construction sites. EPA used data collected in support of the proposed regulation, data submitted during the public comment period and by the public after the close of the comment period, as well as additional data collected by EPA to estimate costs, environmental benefits and economic impacts for this option. EPA also updated its costs and economic analyses with these new data to revise the estimates for the proposed options. EPA

also revised what C&D sites may be new sources and covered by NSPS. This section summarizes the principle regulatory options considered for the final rule and the revisions that were made to EPA's analyses following proposal.

A. Regulatory Options

In considering options for the final rule, EPA revised the proposed regulatory options in several ways. First, comments received by state environmental agencies, Departments of Transportation (DOTs), the U.S. DOT, and other members of the public indicated that sediment basins are not common practice on all larger construction sites, particularly on linear projects such as road and highway construction. The reasons provided by commenters included the lack of available space within the project right of way as well as the preference to use distributed controls on some sites instead of centralized drainage at sites. Commenters also stressed the need to allow engineers and other professionals that are designing erosion and sediment control plans to choose practices that reflect site-specific factors, and that mandating basins for larger sites would limit that flexibility. Commenters also suggested that active treatment, which typically involves construction of storage basins, was a disincentive to using distributed stormwater controls to manage long-term stormwater discharges from newly developed and redeveloped sites. If permittees construct sediment basins, according to commenters, they are more likely to retain these basins as part of the long-term stormwater management controls. EPA agrees with a number of these comments, particularly the need to give professionals the flexibility to design site-specific controls. Therefore, EPA deleted the sediment basin sizing requirements that were contained in the proposed Options 1, 2 and 3 when considering options for the final rule. Commenters also indicated that the soil clay content provisions proposed by EPA for Option 2 would be difficult to implement, given the variation in soils present at construction sites and the fact that imported soils are often used for fill material. A concern was also raised on the practical applicability of the clay content provision to linear construction projects that may exist over large geographic areas. Therefore, determination of whether or not a particular project would meet the soil clay content thresholds would be difficult for owners and operators of construction sites. EPA agrees with commenters on this issue. Therefore, EPA deleted the soil clay content threshold from Option 2. Commenters also suggested that the R-factor criteria proposed under Option 2 would represent one more unnecessary complexity to the regulation, and that the site size criteria should be based on the disturbed area of the site, not the total project size since stormwater discharges from disturbed areas are the primary discharges containing pollutants. EPA agrees with these suggestions. Therefore, EPA also deleted the R-factor criteria from Option 2. The revised Option 2 would apply to any site that met the disturbed acreage size threshold, regardless of soil type and R-factor.

Comments from the potentially regulated industry and states on the proposal did not favor the use of ATS as the technology basis for a national turbidity limitation. There were a number of reasons given, but the most prominent included the costs, availability and feasibility of ATS. While EPA does not agree with all of these comments, the Agency further evaluated data available to support a numeric turbidity limitation based on technologies other than ATS, including techniques that incorporate either liquid or solid forms of polymer. Examples include liquid polymer dosing of sediment basins, passive dosing in channels through the use of polymer gel socks or floc-blocks or floc-logs, and application of polymer to fiber check dams. EPA also evaluated data available for the placer mining industry. EPA determined that a numeric turbidity limitation based on these and other passive treatment techniques are technically available. As a result, EPA further explored this option and looked at site size thresholds of 1, 5 and 10 acres of disturbed land at one time as potential applicability criteria for a technology-based numeric limitation based on passive treatment.

EPA also received numerous comments about the feasibility of many of the erosion and sediment control and pollution prevention provisions contained in Options 1, 2 and 3. EPA generally agrees that some of these requirements, as proposed, could not be implemented on some construction sites. As a result, EPA made several changes to these provisions which are described in more detail in section X.B.

B. Cost Analysis

EPA received several comments regarding the costs of ATS and the methodology used by EPA to determine costs of the regulatory options. While EPA believes some of these comments have technical merit, EPA found that some commenters greatly overestimated the likely actual costs to implement ATS. Key points made by commenters included (1) that the methodology used at proposal, which was based on a flat cost per gallon to treat, likely did not capture the actual costs of ATS in some applications and in some areas of the country; (2) that the methodology did not factor in the longer duration of some projects (particularly larger residential projects); and (3) the methodology for estimating the size of the industry, which was based on land use change data from 1992 to 2001, likely did not accurately predict the level of construction activity in the near future that would be expected under normal business conditions (i.e., not reflective of the current downturn in the industry), which is the primary analysis case upon which EPA based costs and economic impacts (see discussion in Section XII). EPA has revised and updated the methodology used to estimate the costs of ATS and the expected amount of construction activity to reflect these and other points. The revised analysis significantly increased costs for the revised Options 2 and 3. In the updated methodology, EPA first used data submitted by vendors to develop a series of one-time and monthly costs for ATS. Secondly, EPA estimated the expected amount of construction activity using long-term industry economic data. EPA then estimated the expected duration of projects of varying site size and project types using permit Notice of Intent (NOI) data from approximately 22,000 permit applications from 4 States for construction activities occurring primarily between 2003 and 2009. The combination of all three of these factors (a unit costing approach, longer durations for some projects and a higher estimate of total acres being developed) resulted in significantly higher costs for the revised Options 2 and 3 than were estimated at the time of proposal. Moreover, the cost of the revised Option 2 increased over the proposed Option 2 because EPA removed the R-factor and soil type criteria of proposed Option 2, thereby increasing the number of projects covered by revised Option 2. Additional details can be found in the Development Document and in the Economic Analysis.

C. Pollutant Load Analysis

EPA received several comments on the pollutant loading analysis contained in the proposal, primarily stating that EPA overestimated baseline pollutant loadings and the reductions due to Options 2 and 3 because the assumptions used in EPA's model did

not accurately account for current industry practices. EPA generally agrees with some of these comments, and has revised the assumptions used in the model. EPA also used a more detailed analysis of loads for the final rule that uses watershed-specific data for some of the model parameters. The result of these changes is that the load reduction estimates for Options 2 and 3 have decreased since proposal. Additional details on the new assumptions and the results of EPA's analysis can be found in Section XV and in the Development Document.

D. Economic Analysis

The primary revisions to the economic analysis were updates to the approach to developing model projects and then the assignment of project costs to model firms. EPA revised the model projects to include a set of 288 model projects, based on 12 different size categories, 12 duration categories, and two project types (building, transportation). EPA also accounted for the effect that different climate and soil conditions can have on control costs by considering variation in rainfall and runoff factors for each state. This resulted in 14,688 model projects with potentially different costs. These model projects were then combined with activity estimates to develop an estimated 84,000 individual model projects.

Another revision to the economic analysis was the way in which project costs were assigned to firms. For the proposal, project costs were used to develop a weighted average cost per acre for each state. These weighted average costs were then assigned to model firms based on the estimated number of acres they construct on per year. For the final rule, each of the 84,000 projects and their associated costs were assigned to firms. This assignment was based on each category of model firm's capacity to perform projects of various size and duration.

EPA also made changes to the adverse case analysis and the analysis of future costs. EPA received comments that the data used to represent adverse business conditions for the adverse case analysis did not adequately represent the most recent conditions for the industry, which are less favorable. EPA addressed this concern by updating the adverse analysis industry financial profile with 2008 Value Line financial data. For the future costs analysis, EPA was able to use future revenue projections published by Global Insights, to estimate year to year changes in acreage developed, the total number of projects and the number of projects subject to various rule requirements. This allowed for an assessment of changes in the number of firm and employment impacts from year-to-year.

EPA made two adjustments to the housing affordability analysis. For the proposal, EPA evaluated the effect of the proposed options on the price of the median and lower quartile homes. For the final rule, EPA evaluated the impacts of potential price increases for a new home selling for $100,000 and $50,000 to better reflect the impact of price increases at the very low end of the market for new housing. For the proposal, all new home buyers were assumed to buy the most expensive house they could qualify to purchase. However, for the final rule EPA was able to use data from the American Housing Survey, to estimate the average percentage of household income typically spent on a home purchase, for various income ranges. This allowed for a more realistic assessment of the number of home buyers who may have difficulty affording a new home after a price increase.

E. Benefits Estimation and Monetization

Although EPA is not required by statute to quantify environmental benefits for ELGs and NSPSs, EPA did quantify and monetize benefits of the regulatory options to comply with Executive Order 12866. EPA solicited comments on the proposed approach. EPA received comments on the approach and made revisions in order to improve upon the estimates prepared at proposal. Soil on construction sites contains a number of pollutants beyond sediment and turbidity. EPA estimated the degree to which the regulatory options would decrease nitrogen and phosphorus levels in receiving surface waters, and estimated associated water quality impacts using the nitrogen and phosphorus versions of the Spatially Referenced Regressions on Watershed Attributes (SPARROW) model. EPA used these estimates to inform the estimation of the degree to which the public is willing to pay for water quality improvements associated with the regulatory options, which in turn was utilized in EPA's monetized benefits analysis.

EPA expanded the set of potentially impacted waters to include a subset of the nation's estuaries. This enabled the agency to analyze the degree to which the public is willing to pay for improvements in estuarine water quality. EPA utilized this information in conjunction with available data on improvements in estuarine water quality associated with each of the regulatory options in order to monetize benefits associated with those options.

EPA also made refinements to the Water Quality Index (WQI) used for mapping pollution parameter changes to effects on human uses and support for aquatic and terrestrial species habitat. Implementation of the WQI involves transforming the measurements of parameter, such as TSS, nitrogen, and phosphorus, into sub-index values that express water quality conditions on a common scale of 0 to 100. For the pollutant TSS, a unique sub-index curve was developed for each of the 85 Level III ecoregions using baseline TSS concentrations calculated in SPARROW at the enhanced Reach File 1 (RF1) level (see Section XV). In addition, at proposal, EPA did not quantify projected reductions in nutrient loadings as a result of the rule, but these were included in the final rule analysis, including the assessment of changes in the WQI.

VIII. Characteristics of Discharges Associated With Construction Activity

Construction activity typically involves clearing, grading, excavating and other land-disturbing activities. Prior to construction activity, these land areas may have been agricultural, forested or other undeveloped lands. Construction activity can also occur as redevelopment of existing rural or urban areas, or infill development on open space within existing developed areas. The nature of construction activity is that it changes, often significantly, many elements of the natural environment. As described earlier, construction activities typically involve clearing the land of vegetation, digging, and earth moving and grading, followed by the active construction period when the affected land is usually left denuded and the soil compacted, often leading to an increase in the peak discharge rate and the total volume of stormwater discharged and higher rates of erosion. During the land disturbance period, affected land is generally exposed after removal of grass, rocks, pavement and other protective ground covers. Where the soil surface is unprotected, colloids, silt, clay and sand particles may be easily picked up by wind and/or washed away by rain or snow melt.

Stormwater discharges can have variable levels of pollutants. Available data show that turbidity levels in discharges from construction sites range from as low as 10–50 NTU to tens of thousands of NTU. When the denuded and exposed areas contain nutrients, pathogens, metals or organic compounds, these other pollutants are carried at increased rates (relative to

discharges from undisturbed areas) to surrounding waterbodies via stormwater and other discharges (e.g., inadequately controlled construction equipment wash water). Discharges of these pollutants from construction activities can cause changes in the physical characteristics of waterbodies, such as pH or water temperature as well as changes in biological characteristics such as aquatic species abundance, health and composition. Changes in stream flow regime can also occur due to deposition of sediment, as well as the altered watershed hydrology resulting from soil compaction and loss of infiltrative capacity.

Discharges from C&D sites associated with construction activity have been documented to increase the loadings of several pollutants in the receiving water bodies. The most prominent and most widespread pollutants of concern discharged from C&D sites are turbidity, suspended solids, total suspended solids (TSS), and settleable solids. Each of these pollutants are indicators of solids contained in the discharge (which, in the case of stormwater discharges associated with construction activities, are primarily due to soil particles), and each of these measures quantify different fractions of these solids.

Discharges associated with construction activity are also expected to contain varying concentrations of metals and toxic organic compounds, some of which may be contributed by equipment used onsite for grading and other construction activities, as well as various construction materials used on-site (such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures). Metals are also naturally present in soils and, by removing vegetative cover and increasing erosion and sediment loss, there will likely be an increase in the amount of metals discharged from the C&D site. Metals can also be present as a contaminant from previous activity on the site (such as may occur in redevelopment of industrial areas) or as a contaminant or additive in fertilizers and other soil amendments. Fuels and lubricants are maintained onsite to refuel and maintain vehicles and equipment used during construction activities. These products, should they come in contact with stormwater and other site discharges, could contribute toxic organic pollutants. Pathogenic pollutants can be present in stormwater that comes into contact with sanitary wastes where portable sanitation facilities are poorly located or maintained. Also, trash and other municipal solid waste can be carried away by stormwater.

Nutrients can be present in construction site discharges, either as naturally-occurring components of the soil or due to previous activities on the site, such as enrichment due to agricultural activities. In addition, activities during construction activity, such as hydroseeding, can increase nutrients levels in the soil.

IX. Description of Available Technologies

A. Introduction

As described in Section VIII, construction activity results in the discharge of pollutants to waters of the U.S. These discharges can be controlled by applying site design techniques that preserve or avoid areas prone to erosion and through the effective use of a combination of erosion and sediment control and pollution prevention measures. Construction activities should be managed to reduce erosion and retain sediment and other pollutants in the soil at the C&D site. Erosion and sedimentation are two separate processes and the practices to control them differ. Erosion is the process of wearing away of the land surface by water, wind, ice, gravity, or other geologic agents. Sedimentation is the deposition of soil particles, both mineral and organic, which have been transported by water, wind, air, gravity or ice (adapted from North Carolina Erosion and Sediment Control Planning and Design Manual, September 1, 1988).

Erosion control measures are intended to minimize dislodging and mobilizing of sediment particles. Sediment control measures are controls that serve to capture particles that have mobilized and are entrained in stormwater, with the objective of removing sediment and other pollutants from the stormwater discharge. An overview of available technologies and practices is presented below; see the Development Document for more complete descriptions. Many states and local governments and other entities have also published detailed manuals for erosion and sediment control measures, and other stormwater management practices.

B. Erosion Control Measures

The use of erosion control measures is widely recognized as the most important means of limiting soil detachment and mobilization of sediment. The controls described in this preamble are designed to reduce mobilization of soil particles and minimize the amount of sediment and other pollutants entrained in discharges from construction activity. Erosion can be minimized by a variety of practices. The selection of control measures that will be most effective for a particular site is dictated by site-specific conditions (e.g., topography, soil type, rainfall patterns). The main strategies used to reduce erosion include minimizing the time bare soil is exposed, preventing the detachment of soil and reducing the mobilization and transportation of soil particles off-site.

Decreasing the amount of land disturbed can significantly reduce sediment detachment and mobilization directly from ground disturbance or indirectly through changes in overland flows. Minimizing site disturbance by minimizing the extent of grading and clearing is the most effective means of reducing sediment yield. This approach not only maintains some site vegetative cover but also minimizes the temporary and permanent alteration of the natural hydrology of the site and the receiving waters, thereby reducing the susceptibility of the receiving waters to long-term changes in channel incision and expansion which affects the basin's sediment regime. Short term reductions in sediment yield can also be accomplished by phasing construction so that only a portion of the site is disturbed at a time. Another effective approach is to schedule clearing and grading events to reduce the probability that bare soils will be exposed to rainfall. Many areas of the country have defined times during the year when the majority of rainfall (and hence erosion) occurs. By scheduling major earth disturbing activities outside of the rainy season, erosion can be significantly reduced.

Managing stormwater flows on the site can be highly effective at reducing erosion. Typical practices include actively managing off-site and on-site stormwater using diversion berms, conveyance channels and slope drains to avoid stormwater contact with disturbed areas. In addition, stormwater should be managed using energy dissipation approaches to prevent high runoff velocities and concentrated flows that are erosive. Vegetative filter strips are often considered as sediment controls, but they can also be quite effective at dissipating energy and reducing the velocity (and thus erosive power) of stormwater. Stormwater that is directed to vegetated areas can infiltrate, thus reducing or even eliminating the amount of stormwater discharged from a site, particularly for smaller storm events.

After land has been disturbed and construction activity has ceased on any portion of the site, exposed soils should

be covered and stabilized immediately. Simply providing some sort of soil cover on these areas can significantly reduce erosion rates, often by an order of magnitude or more. Vegetative stabilization using annual grasses is a common practice used to control erosion. Physical barriers such as geotextiles, straw, rolled erosion control products and mulch and compost are other common methods of controlling erosion. Polymers (such as PAM) and soil tackifiers are also commonly used. These materials and methods are intended to reduce erosion where soil particles can be initially dislodged on a C&D site, either from rainfall, snow melt or up-slope runoff.

The effectiveness of erosion control measures is dependent on periodic inspection and identification and correction of deficiencies (*e.g.*, after each storm event). Erosion control measures alone will not eliminate the mobilization of soil particles and such controls must often be used in conjunction with sediment control measures.

C. Sediment Control Measures

Despite the proper use of erosion control measures, some sediment detachment and movement is inevitable. Sediment control measures are used to control and trap sediment that is entrained in stormwater runoff. Typical sediment controls include perimeter controls such as silt fences constructed with filter fabric and compost filter berms. Trapping devices such as sediment traps and basins, inlet protectors and check dams are examples of in-line sediment controls. Sediment traps and basins are commonly used approaches for settling out sediment eroded from small and large disturbed areas. Their performance can be enhanced using baffles and skimmers, and additional removal can be accomplished by directing trap or basin discharges to a sand filter or to a vegetated area. Basin and trap performance can also be enhanced by using chemically-enhanced settling (e.g., polymer or flocculant addition). Typical chemicals used on construction sites include polyacrylamide (or PAM), chitosan, alum, polyaluminum chloride and gypsum. Polymers or flocculants are available in either liquid or solid form, and can be introduced at several points in the treatment train in order to increase sediment removal. Liquid chemicals can be introduced via a metering pump in a channel upstream of a basin, or can be sprayed onto the surface of a basin. Rainfall-driven systems can also be used to introduce liquid forms of chemicals into channels or basins. This configuration allows for operation on nights or weekends when construction personnel may not be present on-site.

Conveyances are often used to channelize and manage stormwater on construction sites, and check dams are often placed in channels to control flow velocities and to remove sediment through settling and filtration. Sediment removal by check dams can be enhanced by applying polymer to the check dam, or by placing a polymer enclosed in a permeable material, such as a gel sock, or solid forms sometimes referred to as a floc-block, in the channel. Floc-blocks and gel socks are effective when placed in channels just prior to a basin, a check dam or other structure or conveyance, where the water velocity will be slowed allowing the turbidity, sediment and other pollutants, along with the polymer, to settle out.

Sediment removal can be further enhanced by directing discharges from basins and channels, or by directing discharges through silt fences or filter berms into vegetation or other buffers between the site and surface waters to promote filtration and infiltration. Also, stormwater in basins or other impoundments can be dispersed to vegetated areas using spray or drip irrigation systems, allowing for filtration and infiltration.

Active treatment processes such as electrocoagulation and filtration can also be used to increase sediment removal. Electrocoagulation uses an electrical charge to destabilize particles, allowing removal by settling or filtration. Filtration can be accomplished by directing stormwater to a sand filter bed, or by pumping water through vessels filled with sand or other media. Tube settlers and weir tanks can also be utilized to aid in sediment removal. When discharges from sediment controls or active treatment processes are directed to vegetated areas and stormwater is dispersed and allowed to infiltrate, the amount of stormwater discharged from the site can be reduced, and in some cases the discharge can be eliminated.

More detailed descriptions of sediment and erosion control measures, use of polymers and flocculants and active treatment processes can be found in the Development Document.

D. Other Construction and Development Site Management Practices

Construction activity generates a variety of wastes and wastewater, including concrete truck rinsate, construction and demolition waste, municipal solid waste (MSW), trash, and other pollutants. Construction materials and chemicals should be handled, stored and disposed of properly to avoid contamination of runoff that is discharged from the site. While mobilization by stormwater is one mechanism by which these wastes may be discharged from C&D sites, pollutants may also be discharged if wastes or wastewaters are dumped into streams or storm drains. Pollutants, trash and debris may also be carried away by wind. Control of these wastes can be accomplished using a variety of techniques.

Site planning, sequencing of land-disturbing activities and phasing of construction activities are also important management practices. Limiting the amount of land disturbed at one time, as well as during the entire construction project, are perhaps some of the most effective practices to reduce the amount of sediment, turbidity and other pollutants in discharges. The longer exposed soil areas are left unprotected, the greater the chance of rainfall-induced erosion. Proper planning such that soil stabilization activities can occur in quick succession after grading activities have been completed on a portion of a site can greatly reduce the amount of sediment and turbidity discharged. In addition, limiting the amount of land that is "opened up" at one time to the minimum amount that is needed, as well as limiting soil compaction and retaining natural vegetation on the site, can greatly reduce erosion rates and help maintain the natural hydrology. Also, grading of the site to direct discharges to vegetated areas and buffers that have the capacity to infiltrate runoff can reduce the volumes of stormwater requiring management in sediment controls.

E. Performance Data for Passive Treatment Approaches

Passive treatment systems (PTS), as described in this notice, include a variety of practices that rely on settling and filtration to remove sediment, turbidity and other pollutants. Where necessary, PTS includes the use of polymers or other flocculants. Data in the literature indicate that PTS are able to provide a high level of turbidity reduction at a significantly lower cost than active treatment systems. Details on PTS used as a basis for developing the numeric effluent limitation are contained in the Development Document as well as in the administrative record. Several studies and data sources are also summarized here.

For example, McLaughlin (see DCN 41005) evaluated several modifications to standard sediment trap designs at the North Carolina State University Sediment and Erosion Control Research and Education Facility (SECREF). He evaluated standard trap designs as contained in the North Carolina Erosion and Sediment Control Manual utilizing a stone outlet structure as well as alternative designs utilizing a skimmer outlet and various types of porous baffles. Baffle materials tested included silt fence, jute/coconut and tree protection fence tripled over. Tests were conducted using simulated storm events in which sediment was added to stormwater at flows of 10 to 30 liters per second. McLaughlin found that a standard gravel outlet did not significantly reduce turbidity values. Average turbidity values in the basin were 843 NTUs, while average turbidity in the effluent was 758 NTUs using the standard outlet. Use of a skimmer instead of a standard gravel outlet reduced turbidity to an average of 353 NTUs. Additional tests were conducted to evaluate the addition of polyacrylamide (PAM) through the use of floc-blocks. Floc-blocks are a solid form of PAM which are designed to be placed in flowing water. They are typically anchored by a rope or by placing them in a mesh bag or cage either in open channels or in pipes. As the water flows over the floc-blocks, the PAM dissolves somewhat proportional to flow. The floc-blocks typically have substantial amounts of non-PAM components, which are intended to improve PAM release, maintain the physical integrity of the blocks and enhance PAM performance (McLaughlin—Soil Facts; Chemical Treatments to Control Turbidity on Construction Sites). McLaughlin found that addition of PAM to sediment traps resulted in average effluent turbidities of 152 NTUs using a rock outlet and 162 NTUs using a skimmer outlet. For one set of tests, use of a standard stone outlet along with PAM was able to attain an average effluent turbidity of 51 NTUs, while tests with jute/coconut mesh baffles with PAM were only slightly higher, at 71 NTUs.

Warner and Collins-Camargo (see DCN 43071) evaluated several innovative erosion and sediment controls at a full-scale demonstration site in Georgia as part of the Erosion and Sedimentation Control Technical Study Committee (known as "Dirt II"). The Dirt II project consisted, among other things, of field monitoring as well as modeling of erosion and sediment control effectiveness at construction sites. The demonstration site was a 50-acre lot in a suburban area near Atlanta where a school was being constructed. In total, 22.5 acres of the site was disturbed. A comprehensive system of erosion and sediment controls were designed and implemented to mimic pre-developed peak flow and runoff volumes with respect to both quantity and duration. The system included perimeter controls that were designed to discharge through multiple outlets to a riparian buffer, elongated sediment controls (called seep berms) designed to contain runoff volume from 3- to 4-inch storms and slowly discharge to down-gradient areas, multi-chambered sediment basins designed with a siphon outlet that discharged to a sand filter, and various other controls. Extensive monitoring was conducted at the site. For one particularly intense storm event of 1.04 inches (0.7 inches of which occurred during one 27-minute period), the peak sediment concentration monitored prior to the basin was 160,000 mg/L while the peak concentration discharged from the passive sand filter after the basin was 168 mg/L. Effluent turbidity values ranged from approximately 30 to 80 NTUs. Using computer modeling, it was shown that discharge from the sand filter, which flowed to a riparian buffer, was completely infiltrated for this event. Thus, no sediment was discharged to waters of the state from the sand filter for this event. For another storm event, a 25-hour rainfall event of 3.7 inches occurred over a 2-day period. Effluent turbidity from one passive sand filter during this storm ranged from approximately 50 to 375 NTU, with 20 of the 24 data points below 200 NTU. For a second passive sand filter, effluent turbidity ranged from approximately 50 to 330 NTU, with nine of 11 data points below 200 NTU. In estimating compliance costs for the rule, EPA assumed that most operators would use sediment basins or check dams with polymer addition to enhance settling, rather than a passive sand filter. The Warner study indicates that using a comprehensive suite of erosion and sediment controls, including a basin with a surface outlet coupled with an in-ground passive sand filter may be able to achieve comparable turbidity control to the technologies that EPA costed without relying upon the use of polymers or flocculants. EPA has not costed this approach for the rule, nor included this data in calculation of the numeric limitation.

There are other references in the literature describing the various types of PTS and the efficacy of these systems. One application of a PTS is to add liquid polymer, such as PAM, to the influent of a conventional sediment basin. This can be accomplished by using a small metering pump to introduce a pre-established dose of polymer in the influent pipe or channel. If the polymer is added in a channel far enough above the basin, then turbulent mixing in the channel can aid in the flocculation process. Otherwise, some sort of provision may need to be made to provide mixing in the basin to produce flocs. Polymers typically used in this particular application include PAM, chitosan, polyaluminum chloride (PAC), aluminum sulfate (alum) and gypsum.

The Auckland (New Zealand) Regional Council conducted several trials to evaluate the effectiveness of chemical flocculants and coagulants in improving settling of suspended sediment contained in sediment laden runoff from earthworks sites (DCN 42112). Trials were conducted using both liquid and solid forms of flocculants. Trials were initially conducted on two projects: a highway project and residential development. A follow-on study evaluated passive basin dosing at an additional site (see DCN 42102).

The highway project (ALPURT) evaluated both a liquid polymer system and solid polymers. Liquid polymers evaluated were alum and PAC and solid polymers evaluated were all polyacrylamide products (Percol AN1, Percol AN2 and Percol CN1). Bench tests indicated that AN2 performed best among the solid polymers and that both PAC and alum were effective in flocculating the soils present on the site.

Following bench testing of the polymers, liquid and solid dosing systems were developed. For the liquid dosing system, initial consideration was given to a runoff proportional dosing system which would include a weir or flume for flow measurement, an ultrasonic sensor and signal generating unit, and a battery-driven dosing pump. These components, together with costs for necessary site preparatory work, chemical storage tanks and a secure housing, were estimated to cost approximately $12,000 (1999 NZ $) per installation. An alternative system was developed that provided a chemical dose proportional to rainfall. This rainfall-driven system, which did not require either a runoff flow measurement system or a dosing pump, had a total cost of $2,400 (1999 NZ $) per installation.

The rainfall-driven system operated by collecting rainfall in a rainfall catchment tray that was designed

proportional to the watershed area. Rainfall into this tray was used to displace the liquid treatment chemical from a storage tank into the stormwater diversion channel prior to entering the sediment basin. The size of the catchment tray was determined based on the size of the catchment draining to the basin, taking into consideration the desired chemical dosage rate obtained from the bench tests. Accumulated rainfall from the catchment tray fills a displacement tank that floats in the chemical storage tank. As the displacement tank fills with rainfall and sinks, liquid chemical is displaced from the chemical storage tank and flows via gravity to the dosing point.

Field trials of the liquid treatment system using alum were conducted at the ALPURT site. The authors report that the system performed "satisfactorily in terms of reduction of suspended solids under a range of rainfall conditions varying from light rain to a very high intensity, short duration storm, where 24mm of rainfall fell over a period of 25 minutes." Suspended solids removal for the intense storm conditions was 92% with alum treatment. For a similar storm on the same catchment with the same retention pond without alum treatment, suspended solids removal was about 10%.

Field trials at the ALPURT site were also conducted using PAC. In total, 21 systems were used with contributing catchments ranging between 0.5 and 15 hectares (approximately 1 to 37 acres). The overall treatment efficiency of the PAC-treated basins in terms of suspended sediment reduction were reported to be between 90% and 99% for ponds with good physical designs. The authors noted that some systems did not perform as well due to mechanical problems with the system or physical problems such as high inflow energy (which likely caused erosion or sediment resuspension) or poor separation of basin inlets and outlets. The suspended solids removal for all ponds incorporating PAC ranged from 77% to 99.9%, while the removal in a pond not incorporating PAC ranged from 4% to 12%. Influent suspended solids concentrations for the systems incorporating PAC ranged from 128 to 28,845 mg/L while effluent concentrations ranged from 3 to 966 mg/L. In comparison, influent suspended solids concentrations for the untreated ponds were approximately 1,500 mg/L while effluent concentrations were approximately 1,400 mg/L. The authors also noted that dissolved aluminum concentrations in the outflow from the basins treated with PAC, in most cases, were actually less than the inflow concentrations, and were also less than the outflow concentrations from the untreated ponds. Outflow aluminum concentrations in the PAC treated ponds ranged from 0.01 to 0.072 mg/L. The ALPURT trials indicate that a relatively simple PTS using liquid polymers can result in significant reductions in suspended sediment concentrations, even with influent concentrations in excess of 25,000 mg/L. Although some effluent concentrations were as high as several hundred mg/L, the majority were below 100 mg/L. This indicates that a passive liquid polymer system can be used to meet a numeric effluent limitation for turbidity at a capital cost on the order of several thousand dollars per sediment basin. Coupling a system such as this with a gravity sand filter or distributed discharge to a vegetated buffer (as described by Warner and Collins-Camargo, DCN 43071) or dispersion would reduce discharge turbidity levels even further, and for certain storm events would eliminate the discharge altogether.

Field trials of polymer treatment using solid forms of PAM by the Auckland Regional Council were conducted at the ALPURT site as well as a residential project (Greenhithe). Trials at the ALPURT site were conducted by placing the floc-blocks in plastic mesh bags in plywood flumes through which the runoff from the site was directed. Initial trials encountered problems due to the high bedload of granular material, which accumulated against and stuck to the floc-blocks inhibiting solubility of the polymer. The system was reconfigured to incorporate a forebay before the flumes in order to facilitate removal of the bedload fraction. The authors noted that while this system was generally effective at low flow rates, it was difficult to control dosage rates and sediment accumulation in the flumes continued to be a problem. The authors concluded that "Floc Block treatment has a high potential for removal of suspended solids from stormwater with consistent quality, particularly for small catchments; when flow balancing can be achieved prior to treatment."

Field trials were also conducted at the Greenhithe site, which was a 4-hectare (approximately 10-acre) residential project. As with the ALPURT trial, a flume was constructed and placed in the flow path immediately before the sediment basin. Results of the trials were mixed. The authors noted several problems with the floc-blocks, such as drying and breakdown of the blocks due to prolonged exposure to the air and softening and breakdown during periods of prolonged submergence. Sediment accumulation around the blocks and breakdown continued to be a problem. Incorporating an effective sediment forebay and limiting bedload are suggestions for increasing performance. In addition, the authors recommended soaking the floc-blocks in water to allow hydration before use and periodic spraying with water as ways to limit drying of the floc-blocks. EPA notes that similar problems with floc-blocks have been noted by some construction site field inspectors (see DCN 41109) and by McLaughlin (see DCN 43082). Because of the additional operation and maintenance requirements associated with the use of floc-blocks, a field inspection and maintenance program should be part of proper application of this technology.

Results of the PAC studies at the ALPURT sites have led the Auckland regional council to require chemical treatment for any site that produces more than 1.5 metric tons of (net) sediment as determined by the Universal Soil Loss Equation. Sites that exceed this threshold require chemical treatment in accordance with a site chemical treatment plan. Exceptions include projects of less than one month duration and sites with granular volcanic soils and sand areas. Chemical treatment may also not be required if bench testing indicates that chemical treatment will provide no improvement in sediment removal efficiency (see DCN 41111).

In addition to (or in place of) adding polymers to sediment basins, polymers can be introduced on other areas of the site as a soil stabilization measure or as components of other BMPs. For example, McLaughlin (DCN 41005) evaluated adding polymer to check dams on highway projects. McLaughlin noted significant reductions in turbidity from the use of fiber check dams coupled with PAM application. Significant reductions were even noted when PAM was added to rock check dams. Other research done by McLaughlin with other researchers includes studying the effectiveness of using PAM dosing systems for turbidity reduction in stilling basins (EPA–HQ–OW–2008–0465–0984.4), and using polymer blocks for turbidity control (EPA–HQ–OW–2008–0465–0984.7 and 0984.10). McLaughlin, Hayes et al. also studied modified sediment control practices including polymer dosing at a transportation construction site (EPA–HQ–OW–2008–0465–0984.3)

Various other researchers evaluated PAM as a soil stabilization agent. There are a number of documents in the administrative record for this

rulemaking describing the use of PAM in this manner.

The data from these sources, as well as other data in the record, indicate that various types of PTS that utilize both solid and liquid forms of polymers have been reported to be effective in reducing turbidity levels in discharges from construction and development sites.

EPA also considered the results of a three-year study conducted in Georgia (Warner & Collins-Comargo, DCN 43071) which developed and demonstrated cost-effective erosion prevention and sediment control systems. These controls did not rely on the use of polymer, instead they demonstrate the effectiveness of ponds, passive sand filters and seep berms.

X. Development of Effluent Limitations Guidelines and Standards and Options Selection Rationale

In developing this final rule, EPA considered all the available information, including information, data and analyses conducted in support of the proposed rule, public comments received and additional information and data collected by EPA following proposal which is contained in the record. EPA evaluated a range of options for reducing pollutant discharges associated with construction activity. The options evaluated by EPA are intended to control the discharge of turbidity, sediment and other pollutants in stormwater and other wastewater from C&D sites.

A. Description of the Regulatory Options Considered

1. Options Considered in the Proposal

In developing today's final rule, EPA evaluated several regulatory options. The proposal discussed a wide range of options and presented a detailed analysis for several options. As discussed earlier, Option 1 would have required implementation of erosion and sediment controls and pollution prevention measures for all sites and the installation of a sediment basin with a surface outlet for certain sites and other non-numeric effluent limitations or BMPs; Option 2, would have added to the requirements of Option 1 by establishing a requirement to monitor for a numeric limitation for turbidity (13 NTU) based on the application of ATS at sites of 30 or more acres with soil clay content of 10 percent or more and an R-factor of 50 or larger; Option 3 would have expanded the application of the turbidity limitation based on ATS to all sites which disturb 10 or more acres. The proposal also presented and solicited comment on another option that would require compliance with a higher numeric turbidity effluent limitation (e.g., 50 to 150 NTU, or some other value) based on passive treatment technologies (see 73 FR 72562, 72580–72582, 72610–72611). At proposal, EPA sought additional data on the performance of PTS, and the cost and pollutant loading reductions that would be attainable from such an option.

2. Regulatory Options Considered for the Final Rule and Rationale for Consideration of Revisions to Options in the Proposed Rule

In developing the final rule, EPA considered the wide range of options considered in the proposed rule, and some revisions to those options, based on comments received and additional information obtained by EPA. EPA considered a revision to Option 1 to remove the requirement for a sediment basin in response to concerns raised by commenters about the appropriateness and availability of a basin at all construction sites with 10 or more disturbed acres draining to one location. An example includes areas where excavation is precluded due to the presence of shallow bedrock. In addition to the sediment basin requirements, EPA also considered modifying some of the erosion and sediment control and pollution prevention requirements to make them broadly applicable and compatible with all types of potentially regulated construction activity, and considered deleting certain proposed requirements. These changes to the non-numeric effluent limitations are detailed in Section X.B of this notice.

EPA considered a revision to Option 2 to remove the soil clay content criteria as part of the basis for determining if a site would be subject to the numeric limitation. Numerous commenters expressed concern about difficulties associated with implementation of this soil clay content criterion. Commenters raised questions, for example, about how sites would measure soil content and to what depth would the soil have to be sampled to determine the clay content (e.g., to a depth to which excavation will occur, or only the top several inches). Also, questions were raised as to the number of soil samples that would be required of sites of different size. Also, commenters raised the question of how to account for fill brought onto the site and the variation in soil types present at different depths and at different areas within the site. EPA also considered that adding complexity to the applicability section generally makes it more difficult to comply with, implement and enforce a rule. EPA agrees that the implementation of a soil clay content criterion for determining whether a site would be subject to a numeric limitation would be difficult to implement and therefore considered removing this criterion from Option 2.

EPA similarly considered modifying Option 2 to remove the RUSLE R-factor criterion as part of the basis for determining if a site would be subject to the numeric limitation. EPA received numerous comments about the potential practical difficulties associated with this criterion. Particularly, R-factor data is not readily available for all areas of the country, including the entire state of Alaska. Also, in certain areas of the country, the annual R-factor may be low, but soil erosion rates may still be very high during certain time periods (such as during spring thawing). Therefore, EPA determined that an annual R-factor criterion, as proposed, would not be easily implementable, nor necessarily target those sites with greater potential for soil erosion.

EPA also considered revising Options 2 and 3 so that the monitoring requirements and turbidity limitation would not apply to interstate natural gas pipeline construction activity (see discussion in Section VI).

EPA also considered changing Option 2 so that the applicability of the turbidity limitation would be a function of disturbed area of the site, as opposed to the total size of the site. In addition, EPA considered revising the non-numeric effluent limitations of Option 2 (as well as Option 3) to be consistent with the Option 1 requirements discussed above.

EPA also considered the option discussed in the proposal (Option 4) that would establish a numeric limitation for turbidity based on the application of PTS for the final rule. This option would require all construction sites to implement the non-numeric effluent limitations described for Option 1, as well as requiring sites equal to or greater than a specified number of acres disturbed at one time to meet a numeric limitation to control turbidity and other pollutants in stormwater discharges from C&D sites. EPA considered thresholds of 1, 5 and 10 acres disturbed at one time for this option. The technology basis for Option 4 consists of a suite of passive treatment technologies and erosion and sediment controls that are currently used at construction sites across the United States and abroad; as well as in other industries, such as drinking water treatment and mining. Examples of passive treatment technologies include sediment basins, sediment traps and

other impoundments (with and without polymer or flocculant dosing), polymer addition to fiber check dams, sand filtration, and dispersion of stormwater to vegetated areas. PTS can substantially reduce the amount of turbidity, sediment and other pollutants discharged from construction sites. See Section IX for additional discussion of passive treatment approaches.

B. Non-Numeric Effluent Limitations Included in All Regulatory Options

Today's final rule, as well as the other options EPA considered, includes a suite of non-numeric effluent limitations that apply to all permitted C&D sites. This suite of non-numeric effluent limitations makes up Option 1 and is also a component of Options 2, 3 and 4. These non-numeric effluent limitations are structured to require permittees to first prevent the discharges of sediment and other pollutants through the use of effective planning and erosion control measures; and second, to control discharges that do occur through the use of effective sediment control measures. Permittees are also required to implement a range of pollution prevention measures to limit or prevent discharges of pollutants including those from dry weather discharges.

The non-numeric effluent limitations that are included in all options are designed to prevent the mobilization and discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants. Soil on construction sites can contain a variety of pollutants such as nutrients, organics, pesticides, herbicides and metals. These pollutants may be present naturally in the soil, such as arsenic or selenium, or they may have been contributed by previous activities on the site such as agriculture or industrial activities. These pollutants, once mobilized by rainfall and stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants. Therefore, the non-numeric effluent limitations are important components of the final rule not only for the purposes of limiting sediment generation and discharge, but also to minimize the discharge of dissolved pollutants.

The non-numeric effluent limitations in the final rule apply to all permitted C&D sites including the sites that are subject to the numeric effluent limitation and monitoring requirements at 40 CFR 450.22. (See Section X.G.) EPA has the authority under the CWA to establish non-numeric effluent limitations as supplemental to a numeric effluent limitation or in place of a numeric effluent limitation. See *Citizens Coal Council* v. *EPA*, 447 F.3d 879, 896 (6th Cir. 2006). The non-numeric effluent limitations in this rule are necessary for those sites that are also subject to the numeric effluent limitation for turbidity because the non-numeric effluent limitations may address different pollutants or the same pollutants differently, the numeric effluent limitation is not applicable on days when total precipitation on that day is greater than the local 2-year, 24-hour storm event (See Section XIX.A), and the fact that sites may fluctuate above and below ten acres of disturbed land. Thus there will be times when sites are discharging pollutants in excess of the numeric effluent limitation and the non-numeric effluent limitations will be the only applicable effluent limitation and are thus essential to the control of discharges from the site. Also, some of the non-numeric effluent limitations are addressing discharges unrelated to the discharge of turbidity, for example, 40 CFR 450.21(e)(1) which prohibits the discharge of "wastewater from washout of concrete, unless managed by an appropriate control" addresses pollutants such as pH and can occur during precipitation related events or dry weather discharges. The structure of the final rule, including the requirement that the non-numeric effluent limitations apply to all sites, was supported by state permitting authorities and is similar to the structure of the newly issued California CGP (see DCN 42104).

The final rule contains non-numeric effluent limitations that require the permittee to minimize the discharge of pollutants. Under the regulatory structure of the final rule the permitee can minimize the discharge of pollutants from construction sites by utilizing non-numeric effluent limitations or BMPs such as the erosion and sediment controls listed below at (i) through (vii) and at 40 CFR 450.21(a)(1) through (7). The erosion and sediment controls at (i) through (vii) below are what EPA has determined are the required non-numeric effluent limitations that are necessary for owners or operators of construction sites to utilize in order to minimize the discharge of pollutants from the site. This is true for the other non-numeric effluent limitations at 40 CFR 450.21 as they are what EPA has determined are the required controls necessary to minimize, control or prohibit discharges of pollutants from construction sites. The permitting authority may determine that additional non-numeric effluent limitations or specific BMPs are necessary in order to minimize the discharge of pollutants and EPA has structured 40 CFR 450.21 to allow the permitting authority that discretion. Due to geographic differences or other variable factors a permitting authority may choose to require additional or more stringent non-numeric effluent limitations in its individual or general NPDES permits for discharges associated with construction activity. For example, the permitting authority may determine that it is necessary for permitees to initiate soil stabilization measures when construction activity has permanently or temporarily ceased and will not resume for a period exceeding 7 calendar days, as opposed to 14 calendar days at X.B.1.b below or that additional erosion and sediment controls are necessary. EPA purposefully drafted the non-numeric effluent limitations to allow for flexibility in how the permitting authority implements the requirement in NPDES permits. For example, in the erosion and sediment control section below at section X.B.1.a.iv EPA simply required that permitees "minimize the disturbance of steep slopes" leaving it up to the permitting authority to determine the specific requirements applicable to owners or operators of C&D sites to minimize disturbance of steep slopes in order to minimize the discharge of pollutants from the site. This flexibility built into the final rule will also benefit permittees by allowing the owners or operators of construction sites discretion to choose BMPs that will minimize the discharge of pollutants based on the unique nature of the particular site. For example, at 40 CFR 450.21(a)(5), the final rule states that construction sites must design, install and maintain controls to "minimize sediment discharges from the site." Absent specific requirements from the permitting authority the final rule gives the permittee discretion to choose what practices and controls to use to minimize the discharge of sediment from the site based on the site specific nature of the construction activity.

The non-numeric effluent limitations are required for all sites, but there are

site-specific considerations that may make one or more of the provisions infeasible on a particular site. EPA has specifically qualified some of the requirements to state that the requirement must be implemented unless infeasible. By infeasible, EPA means that there is a site-specific constraint that makes it technically infeasible to implement the requirement, or that implementing the requirement would be cost-prohibitive. The burden is on the permittee to demonstrate to the permitting authority that the requirement is infeasible.

With respect to the soil stabilization language at § 450.21(b), EPA has qualified the soil stabilization requirements such that vegetative stabilization may be delayed in arid or semi-arid areas, or if an area is experiencing a drought such that vegetative stabilization practices cannot be initiated. In such cases, the permittee should consider non-vegetative stabilization practices. In addition, EPA would generally not expect permitting authorities to require vegetative stabilization in areas that are excessively rocky or infertile, that have non-erodible soils (such as sands), certain coastal areas, or during periods when snow or ice are covering the ground and generally in areas where vegetative stabilization would not be appropriate. Permitting authorities should incorporate this requirement into permits with consideration of appropriate stabilization measures for various areas within their jurisdiction.

EPA made several revisions to the non-numeric effluent limitation since proposal. Some of these revisions were made in response to comments, while others were made as a result of EPA re-evaluating the feasibility and appropriateness of some of the proposed requirements. Section X.B.1 describes the non-numeric effluent limitations contained in the final rule while Section X.B.2 describes how the non-numeric effluent limitations in final rule differ from those in the proposal.

1. Non-Numeric Effluent Limitations Contained in the Final Rule

The non-numeric effluent limitations contained in the final rule are as follows:

a. Erosion and Sediment Controls

Permittees are required to design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

i. Control stormwater volume and velocity within the site to minimize soil erosion;

ii. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;

iii. Minimize the amount of soil exposed during construction activity;

iv. Minimize the disturbance of steep slopes;

v. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

vi. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and

vii. Minimize soil compaction and, unless infeasible, preserve topsoil.

b. Soil Stabilization Requirements

Permittees are required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, vegetative stabilization measures must be initiated as soon as practicable.

c. Dewatering Requirements

Permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

d. Pollution Prevention Measures

Permittees are required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

i. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

ii. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and

iii. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

e. Prohibited Discharges

The following discharges from C&D sites are prohibited:

i. Wastewater from washout of concrete, unless managed by an appropriate control;

ii. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

iii. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

iv. Soaps or solvents used in vehicle and equipment washing.

f. Surface Outlets

When discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

2. Changes to the Non-Numeric Effluent Limitations Since Proposal

EPA made a number of changes to the non-numeric effluent limitations for the final rule. EPA does not view these changes as making the final rule requirements less stringent than those contained in the proposal, but rather views these changes as necessary adjustments that make the requirements applicable to all types of construction activities. EPA has determined that many of the requirements, as proposed, could not be implemented on every construction site due to technical reasons. In general, some requirements were eliminated, while others were revised to include "unless infeasible" language, recognizing that not every site will be able to implement every one of the proposed requirements. Also, the requirements were re-arranged to separate erosion and sediment control requirements from soil stabilization and pollution prevention requirements. However, EPA believes that most practices can be implemented on most sites, and where a practice is feasible and necessary for effective control of pollutant discharges from stormwater

runoff, this rule requires that it be implemented. The changes made, by section of the proposed rule text, along with the rationale for the changes are as follows:

Section 450.21(a): The definition of when erosion controls are considered effective has been deleted since effectiveness varies based on site-specific parameters. In addition, the proposed language was limiting in that there may be other objective measures of effectiveness that were not described by EPA. The requirement to stabilize exposed soils has been incorporated into a "Soil Stabilization" section in the final rule at § 450.21(b).

Section 450.21(a)(4): The requirement to minimize the amount of soil exposed at any one time has been removed as the soil stabilization language at § 450.21(b) requires immediate stabilization.

Section 450.21(a)(5): The requirement to preserve natural vegetation was removed as there are cases where preserving the natural vegetation may not be compatible with the ultimate land use. The requirement to preserve topsoil was changed to include "unless infeasible," recognizing that it may not always be feasible to preserve topsoil depending on the ultimate land use.

Section 450.21(a)(6): The language regarding minimizing soil compaction was simplified and now includes "unless infeasible," and the requirements for deep ripping and decompaction and incorporation of organic matter to restore infiltrative capacity were deleted because the use of these techniques is dependent upon the ultimate land use.

Section 450.21(a)(7): The requirement for providing and maintaining natural buffers around surface waters was combined with the requirement to direct discharges to vegetated areas found in § 450.21(b)(9) and now includes "unless infeasible."

Section 450.21(a)(8): The requirement to minimize the construction of stream crossings was deleted as the construction of stream crossings on a particular project is determined by consideration of a number of factors, and simply minimizing the number based on erosion and sediment control considerations may conflict with other considerations. EPA has determined that this requirement is best left to the discretion of the permitting authority.

Section 450.21(a)(9): The requirement to sequence/phase construction activities was deleted. EPA believes that permittees should consider sequencing or phasing for projects, particularly for larger or longer-duration projects. Phasing construction so that less than 10 acres of land are disturbed at any one time is one way for owners or operators of construction sites to comply with the rule without having to sample discharges and meet the numeric limitation in Option 4. EPA believes that this is appropriate because of the environmental benefits of such sequencing. However, EPA has determined that this is a site-specific consideration best addressed by the permitting authority.

Section 450.21(a)(11): The requirement to implement erosion controls on slopes was deleted as the soil stabilization requirements encompasses all types of stabilization, not just on slopes.

Section 450.21(a)(12): The requirement to establish temporary or permanent vegetation to stabilize exposed soils was deleted as vegetative controls may not always be the most appropriate stabilization measures. The selection of appropriate stabilization techniques is best left to the discretion of the permitting authority.

Section 450.21(a)(13): The requirement to divert stormwater that runs onto the site away from disturbed areas of the site was deleted as this may not always be feasible, or, in certain instances, may increase off-site erosion.

Section 450.21(b): The sediment control requirements were combined with the erosion control requirements into a new section titled "Erosion and Sediment Controls" at § 450.21(a) in the final rule regulatory text. The requirement to install sediment controls prior to commencement of construction and to maintain during all phases of construction activity was deleted as the timing of implementation of controls is site-specific. Maintenance of controls is inherent in permits and it is not necessary to include this requirement in the national rule.

Section 450.21(b)(1): The requirement to establish and maintain perimeter controls was deleted, as the need for perimeter controls is dictated by site topography. The requirement to discharge stormwater from perimeter controls through vegetated buffers and functioning stream buffers was deleted. This requirement now applies to all discharges, unless infeasible, as described at § 450.21(a)(6).

Section 450.21(b)(2): The requirement to control discharges from silt fences using a vegetated buffer or filter strip was deleted as this may not always be feasible, depending on the site location or climate.

Section 450.21(b)(3): The requirement to minimize slope length and to install linear sediment controls and slope breaks on erodible slopes was deleted as the need for these controls is dictated by site-specific considerations and is best left to the discretion of the permitting authority.

Section 450.21(b)(4): The requirements to establish construction entrances and exits and to utilize wheel wash stations were deleted as it may not always be feasible to utilize wheel wash stations (for example, in remote areas). The need for construction entrances and exits are dependent on site configuration.

Section 450.21(b)(5): The requirement to remove sediment from paved surfaces daily and the prohibition on washing sediment and other pollutants into storm drains were deleted. The need for these requirements depend on site configuration (i.e., if storm drains discharge to a sediment control or discharge off-site).

Section 450.21(b)(6): The requirement to implement controls to minimize the introduction of sediment and other pollutants to storm drain inlets was deleted (for the same reason as § 450.21(b)(5) above).

Section 450.21(b)(7): The language regarding dewatering was changed to be specific to dewatering trenches and excavations. This language is now found at § 450.21(c).

Section 450.21(b)(8): All language regarding sediment basins was deleted (see Section VII.A).

Section 450.21(b)(9): The requirement to direct discharges from sediment controls to seep berms and level spreaders and to utilize spray or drip irrigation systems was changed. This requirement now applies to all discharges, but is more general in that it does not specify techniques, but rather requires all discharges to be directed to vegetated areas, unless infeasible (now found at § 450.21(a)(6)). This provides more flexibility for permittees to select appropriate techniques.

Section 450.21(c): The language describing examples of effective pollution prevention measures was deleted and instead the new requirement at § 450.21(d) is to "design, install, implement and maintain effective pollution prevention measures" as this language is not limiting to those measures described in the proposal. In addition, pollution prevention requirements in the final rule are presented separately from a series of "prohibited discharges". At proposal, these two concepts were presented together.

Section 450.21(c)(1): Discharges of construction waste, trash and sanitary wastes are not prohibited in the final rule, but rather the requirement is to minimize the exposure of a variety of

materials to precipitation and stormwater (now found at § 450.21(d)(2)). EPA has determined that a requirement to minimize exposure to precipitation and stormwater, rather than a strict prohibition on the discharge of these materials, is a more appropriate requirement as it may not always be feasible to prevent these materials from being discharged from the site.

Section 450.21(c)(2): Concrete washout is now addressed separately at § 450.21(d)(1), and discharges are allowed if managed by appropriate controls. The concrete washout provision is not a prohibition, as are discharges from other sources, because there are technologies available to treat concrete washout. Therefore, discharges of wastewaters from concrete washout are allowed if managed by appropriate controls. Wastewater from washout of form release oils and curing compounds have been added to the list of prohibited discharges at § 450.21(d)(2).

Section 450.21(c)(4): The requirement was changed to clarify that the prohibition is on the discharge of soaps and solvents.

Section 450.21(c)(5): The requirement was changed so as not to prohibit the discharge of wash waters but rather to control discharges from equipment and vehicle washing and wheel wash, recognizing that wash waters can be managed using appropriate controls.

Section 450.21(c)(6): "Building products" were added to the list of materials, and spills and leaks are addressed in a separate requirement (§ 450.21(d)(3)).

Section 450.21(c)(7): The requirement to prevent runoff from contacting areas with uncured concrete was deleted, as this may not be feasible on some sites (such as bridges, roads, etc.).

C. Numeric Effluent Limitations and Standards Considered

EPA considered numeric effluent limitations based on primarily two suites of technologies for the final rule. The first, advanced treatment systems or ATS, were described in the proposed rule under Options 2 and 3. For the final rule, EPA considered effluent limitations for turbidity based on ATS for site size thresholds of 10 acres and 30 acres of disturbed land. As described earlier, these options are similar to those contained in the proposal, except the soil clay content and R-factor criteria have been removed from Option 2. In addition, Option 2 would apply to sites of 30 or more disturbed acres. At proposal, Option 2 would have applied if the site was 30 or more acres, regardless of the amount of land disturbed on the project

The second technology suite, passive treatment systems or PTS, constitutes the technology basis for today's final rule. In the proposal, EPA considered the establishment of numeric turbidity limitations based on PTS and solicited comment and additional information and data on this option. For the final rule, EPA considered numeric limitations for turbidity based on PTS for a site size threshold of 10 or more acres disturbed at one time (Option 4). EPA also evaluated site size thresholds of 1 and 5 acres disturbed at one time.

Additional information on both PTS and ATS is presented in Section IX of today's notice, the development document and in the administrative record. The nomenclature presented in Table X–1 is used to describe these options throughout today's notice.

TABLE X–1—MAIN OPTIONS CONSIDERED FOR NUMERIC EFFLUENT LIMITATIONS AND STANDARDS

Option	Technology basis	Site size threshold (acres disturbed)
2	Active Treatment	30 or more.
3	Active Treatment	10 or more.
4	Passive Treatment	10 or more.

For all of these options, the numeric turbidity limitation would apply to all discharges from the site except on days when total precipitation during the day exceeded the local 2-year, 24-hour storm. If the total precipitation in any one day is greater than the local 2-year, 24-hour storm event, then permittees would still need to sample (because they wouldn't know in advance whether the precipitation on that day was going to exceed the storm size threshold) but the numeric effluent limitation would not apply to discharges for that day. However, the numeric effluent limitation is applicable to all discharges from the site on subsequent days if there is no 2-year, 24-hour storm event during those days. Even when total precipitation during the day exceeds the local 2-year, 24-hour storm permittees must comply with the non-numeric effluent limitations § 450.22(c) through § 450.22(h). (See Section XIX.A for EPA's rationale for selecting the 2-year, 24-hour storm event).

Under all the options considered that contain a numeric limitation, the limitation applies so long as the total amount of disturbed area on the project, at any one time, is at or above the specified acreage threshold (i.e., 10, 20 or 30 acres). For example, under Option 4, if a project initially disturbs 10 or more acres of land at one time during construction activity, but after completion of clearing and grading and infrastructure installation the site is stabilized prior to or during commencement of vertical construction, then the sampling requirements and turbidity limitation would cease to apply at the point where the total disturbed land area at the site is less than 10 acres at one time. So long as the total disturbed land area at one time remains below 10 acres for the remainder of the construction activity, the sampling requirements and turbidity limitation would not apply. If, however, at some point during the remainder of the project 10 or more acres were to be disturbed at one time, then the sampling requirements and turbidity limitation would again apply to all discharges from the C&D site. This 10 acre threshold also applies to projects that are part of a larger common plan of development. If an individual portion of a project disturbs less than 10 acres at one time, but the amount of land disturbed at one time under the larger common plan of development is 10 or more acres, then sampling of discharges from the entire project is required during the period when the total disturbed land for the whole project is 10 or more acres.

EPA has also found it is reasonable to allow time for permitting authorities to develop monitoring requirements and to allow the regulated community time to prepare for compliance with a numeric limitation. Compliance with the numeric limitation and the associated monitoring requirements are not required until 18 months after the effective date of this rule for sites with 20 or more acres of land disturbed at one time and four years after the

effective date for sites with 10 or more acres of land disturbed at one time. EPA's rationale for this decision is described in Section XIX.B.

In addition to the issue discussed above regarding EPA's determination that turbidity is the appropriate end point for today's rule because of its applicability to more than simply conventional pollutants, EPA evaluated the advantages and disadvantages of establishing a limitation on turbidity rather than total suspended solids (TSS). Turbidity is more appropriate because turbidity can be easily measured in the field while TSS requires collection of a sample and analysis in a laboratory. Demonstrating compliance with a turbidity limitation is relatively easy and inexpensive for construction site owners or operators to implement. Hand-held turbidity meters (turbidimeters) can be used to measure turbidity in discharges, or data loggers coupled with in-line turbidity meters can be used to automatically measure and log turbidity measurements reducing labor requirements associated with sampling. Since most controls and treatment systems are flow-through systems, the use of TSS would not allow permittees to gauge performance in the field and take any correction action if they are in danger of violating the limitation. With the limitation based on the pollutant turbidity, permittees can measure turbidity levels in discharges continuously, with immediate, real-time information on the efficacy of their controls, and take immediate action if they are in danger of exceeding the turbidity limitation. For these reasons, EPA has determined that turbidity is a more appropriate measure of the effectiveness of the PTS and the technology can be implemented more easily by utilizing turbidity rather than TSS.

D. Selected Options for BPT, BCT, BAT and BADT for NSPS

EPA has selected Option 1 as the basis for BPT and BCT and EPA has selected Option 4 as the basis for BAT and BADT for NSPS. Option 1 requires all C&D sites to implement a range of non-numeric effluent limitations. Option 4 requires all C&D sites to implement the same range of non-numeric effluent limitations as in Option 1 and requires sites with 10 or more acres of disturbed land at one time to meet a numeric limitation based on PTS to control pollutants in stormwater discharges.

E. Selection Rationale for BPT

EPA is establishing BPT effluent limitations on the basis of the technologies described under Option 1. EPA has determined that the non-numeric effluent limitations in Option 1 represent a level of control that is technologically available and economically practicable and represents the average of the best performance of construction sites in the C&D point source category considering the factors in CWA section 304(b)(1)(B). The requirements established by Option 1 are well-established for construction activities in all parts of the country. The Option 1 requirements are generally consistent with the requirements currently in place under the existing Construction General Permits issued by EPA and most states. Many of these types of effluent limitations have been in place in NPDES permits for discharges associated with construction activity since at least the early 1990s. Prior to the issuance of the 1990 NPDES Phase I regulations, many existing state laws and regulations required the implementation of erosion and sediment controls. Many of these controls were first used beginning in the 1960s and 1970s, and they are well-established industry practices. In Option 1, EPA has taken this established approach to controlling stormwater discharges from construction sites and established minimum requirements for owners or operators of the site. In some cases the narrative limitations of Option 1 are more stringent than past EPA general permit requirements, e.g., the soil stabilization requirements are more stringent than the 2008 EPA CGP. These requirements represent the average of the best performance of the industry because they are being used effectively by construction operators and/or EPA's analysis indicates that the costs are small in relation to the effluent reduction benefits to be achieved from such requirements, traditionally measured in terms of cost per pound of pollutant removed. As stated in Section III.D., EPA assesses cost-reasonableness of BPT effluent limitations by considering the cost of treatment in relation to the effluent reduction benefits achieved, typically in dollars/pounds of pollutants reduced. EPA has determined that the costs in relation to the pollutant reduction benefits of the selected option for BPT are reasonable. The costs per pound of sediment removed expressed as TSS for Option 1 is $0.10 per pound ($ 2008). The range of costs per pound removed for other industrial categories is $0.26 to $41.44 per pound in year 2008 dollars.

EPA considered the non-water quality environmental impacts of Option 1 including energy usage, air emissions and solid waste handling associated with the non-numeric effluent limitations. Energy usage associated with the non-numeric effluent limitations includes fuel consumption for construction equipment to excavate and install erosion and sediment controls and excavation and placement or disposal of accumulated sediment (see Section XIV.C). Air emissions associated with the non-numeric effluent limitations would be emissions generated from the burning of fuel by construction equipment (see Section XIC.A). Solid waste generated from stormwater treatment includes the polymer-laden sediment settled out during treatment, if polymers or flocculant are utilized, though they are not part of the technology-basis for BPT (see Section XIV.B). EPA found the non-water quality environmental impacts associated with Option 1 to be minimal and acceptable. The non-water quality environmental impacts associated with the BPT effluent limitations are negligible as there is little incremental energy expended in the implementation of the erosion and sediment controls, since these types of controls are already being implemented by the majority of construction sites nationwide. Selecting Option 1 as BPT for this point source category is consistent with the CWA and regulatory determinations made for other point source categories, in that the Option 1 requirements represent limitations based on the average of the best performance of facilities within the C&D point source category. See *Weyerhauser Co.* v. *Costle,* 590 F. 2d 1011, 1053–54 (D.C. Cir. 1978).

EPA rejected Options 2, 3 and 4 as the basis for BPT because EPA views BPT as the first level of technology-based control representing the average of the best performance on a national basis. Although meeting a numeric limitation represents BAT and BADT for NSPS, as discussed below, meeting a numeric effluent limitation is a substantial change for most owners or operators engaged in construction activity nationwide. EPA's record does not indicate that meeting a numeric turbidity limitation, even for the subset of facilities identified in Option 4, represents today's average of the best performance and therefore it does not represent the BPT level of control for this point source category.

F. Selection Rationale for BCT

EPA is establishing BCT equivalent to BPT, based on Option 1. BCT represents the best control technology for conventional pollutants which is primarily TSS for the construction and development point source category. As discussed in X.E above, the

requirements of Option 1have been demonstrated to be technologically available and EPA's analyses show that the requirements are economically practicable. Establishing BCT effluent limitations for a point source category begins by identifying technology options that provide additional conventional pollutant control beyond that provided by application of BPT effluent limitations. Conventional pollutants under the CWA are biochemical oxygen demand (BOD_5), TSS, fecal coliform, pH, and oil and grease. CWA section 304(a); 40 CFR 401.16. Stormwater discharges, if not adequately controlled, can contain very high levels of TSS. In addition, many of the construction materials used at the site can contribute BOD or oil and grease. Fecal coliform can also be present at elevated levels, due to natural sources (contributed by animal wastes) or if stormwater is not segregated from sanitary waste facilities. See Section VIII for additional discussion of pollutant sources.

EPA evaluates the candidate BCT options by applying the two-part BCT cost test. The first part of the BCT cost test is the POTW test. To "pass" the POTW test, the cost per pound of conventional pollutant discharges removed in upgrading from BPT to the candidate BCT must be less than the cost per pound of conventional pollutant removed in upgrading POTWs from secondary treatment to advanced secondary treatment. Using the RS Means Historical Cost Indices, the inflation-adjusted POTW benchmark (originally calculated to be $0.25 in 1976 dollars) is $0.92 (2008 $). To examine whether an option passes this first test, EPA calculates incremental values of the candidate option relative to the selected BPT (Option 1). EPA calculated the incremental cost per pound of conventional pollutants removed ($/lb TSS) for Option 2 to be $2.50. Since this result is more than the POTW benchmark, Option 2 fails the first part of the two-part BCT cost test. EPA also calculated the incremental cost per pound of conventional pollutants removed for Option 3, which is $3.22. Therefore, Option 3 also fails the first part of the BCT cost test. EPA also calculated the incremental cost per pound of conventional pollutants removed for Option 4, which is $0.35. Therefore, Option 4 passes the first part of the BCT cost test.

To pass the second part of the BCT cost test, the industry cost effectiveness test, EPA computes a ratio of two incremental costs. The numerator is the cost per pound of conventional pollutants removed by the BCT candidate technology relative to BPT. The denominator is the cost per pound of conventional pollutants removed by BPT relative to no treatment (i.e., raw wasteload). As in the POTW test, the ratio of the numerator divided by the denominator is compared to an industry cost benchmark. The industry cost benchmark is the ratio of two incremental costs: The cost per pound to upgrade a POTW from secondary treatment to advanced secondary treatment, divided by the cost per pound to initially achieve secondary treatment from raw wasteload. If the calculated ratio is lower than the industry cost benchmark of 1.29 (i.e., the normalized cost increase must be less than 29 percent), then the candidate technology passes the industry cost test. Since both Option 2 and 3 fail the first part of the BCT cost test, it is not necessary to compute the ratio for the second part. The calculated ratio for Option 4 is 5.47; therefore, Option 4 fails the second part of the BCT cost test. Therefore, EPA is setting BCT equal to Option 1.

G. Selection Rationale for BAT and BADT for NSPS

1. Selection Rationale

EPA is selecting Option 4 as the basis for BAT and BADT for NSPS. The requirements of the selected Option have been demonstrated to be technologically available, economically achievable, pose no barrier to entry and have acceptable non-water quality environmental impacts (see section XIV) and thus represent BAT and BADT for NSPS. As described above in Section III.D of this notice, the CWA requires EPA to consider several of the same factors when establishing BAT and NSPS. Both levels of control are based on the best technology, considering the cost of achieving such effluent reduction and any non-water quality environmental impacts (including energy requirements). See CWA sections 304(b)(2)(B) and 306(b)(1)(B). The principle difference between the two technology standards is the potential for new sources under NSPS to install the best available demonstrated control technology without the cost to retrofit new technology into an existing site. In both cases, the Agency must determine that the requirement will not cause unacceptable economic impacts to the industry as a whole or by presenting a barrier to entry to new facilities.

The construction industry is different from other industries when considering closures and barriers to entry. For this industry, the permitted activity is a temporary project rather than ongoing operations at a permanent facility. This is an important distinction, in that it provides construction firms with greater flexibility in how they respond to the rule. Not only can they elect to use one or more technologies to ensure compliance with the rule for a project they can also plan the dimensions and timing of the project in such a way as to minimize the effects of the rule on project profitability. As all new construction projects are new and impermanent, there is no meaningful distinction between new and existing sources, from the standpoint of economic affordability. As such, EPA is discussing the basis for both BAT and NSPS together.

EPA has determined that a numeric limitation as well as non-numeric effluent limitations for sites with 10 or more acres disturbed at one time is technically available as that term is used in the CWA. The technologies used to meet the limitation in Option 4 are non-numeric effluent limitations or BMPs, the use of polymer-aided settling, and site planning techniques such as limiting the amount of land disturbed at any one time or phasing construction activities. These technologies are currently being utilized throughout the country and EPA has determined that the use of these technologies will result in stormwater discharges from C&D sites consistently meeting the requirements of Option 4. EPA has determined that a numeric effluent limitation is achievable based on the performance of these technologies measured by the information and data described in Section IX.E and by information concerning similar treatment systems used in the placer mining industrial point source category.

Passive treatment systems are currently used at a range of construction sites as evidenced by the information contained in the record. EPA has determined that a numeric limitation is achievable based on the performance of PTS measured by the data described in Section IX.E and in the Development Document and the record. Multiple studies performed by McLaughlin in North Carolina have demonstrated the effectiveness of passive approaches in reducing turbidity in stormwater discharges from construction sites. Many of McLaughlin's studies were performed on linear transportation projects for the North Carolina Department of Transportation in piedmont areas of the State. Another researcher, Warner, evaluated several erosion and sediment controls at a full-scale demonstration construction site in Georgia. Additionally, there were several studies conducted in New

Zealand on the effectiveness of flocculants and coagulants at improving settling at transportation and residential projects. See Section IX.E for a more detailed discussion of these studies. Adding flocculants or polymers to aid in sediment removal are also routinely used a drinking water plants to treat their source water. Polymer aided settling has also been used in placer mining to treat effluent.

In the proposal, EPA provided data on PTS and solicited comments on the pollutant removal effectiveness, effluent quality attainable and the technical basis for establishing a particular numeric turbidity limitation for C&D sites based on passive treatment. See 73 FR 72562, 72580–82, 72610–11. Commenters provided additional data and papers on PTS and EPA identified additional data on PTS (see the chapter 6 of the TDD for a description of the data EPA has used as a basis for the numeric limitation). EPA also obtained additional data from vendors on ATS, the first component of which, namely polymer-assisted settling, has been used, in combination with data available at the time of proposal, as a basis for the numeric limitation (see Chapter 6 of the TDD). A technology is "available" even if it is not widely or routinely used as long as the technology is used at some facilities, a pilot plant or is adequately available. See *e.g., American Frozen Foods* v. *Train*, 539 F.2d 109 (D.C. Cir. 1976) (BAT was based on two exemplary plants); *Ass'n of Pacific Fisheries* v. *EPA*, 615 F.2d 794, 816 (9th Cir. 1980) (legislative history indicates BAT can be established based on statistics from one plant); *FMC Corp* v. *Train*, 539 F.2d 973 (4th Cir. 1976) (BAT limitations based on single pilot plant and a few exemplary plants); *Kennecott* v. *EPA*, 780 F.2d at 458 (Congress required EPA to search out BAT and to strive for zero discharge. BAT was based on two plants). The data and information in the record on the use of these technologies to control stormwater discharges support EPA's determination that a well designed and maintained PTS on varying types of construction sites in several areas of the country will consistently achieve a numeric limitation and is thus technologically available. The data and studies in the record show that these technologies have been used in areas of the country with different rainfall patterns and soil types. Locations of the studies include the Pacific Northwest, North Carolina, and Georgia, as well as outside the U.S. (including New Zealand). In addition, these technologies have been implemented on different project types, including transportation, institutional and residential construction.

The Agency also examined the use of these technologies to control sediment, turbidity and other pollutants in other industries. At least six federal circuit courts have upheld EPA's use of transfer of technology in the context of the CWA when promulgating ELGs and NSPSs, concluding that effluent limitations may be based on a technology which has been demonstrated outside the industry, if that technology is transferable to it. See *e.g., CPC International* v. *Train*, 515 F.2d 1032, 1048 (8th Cir. 1975); *Kennecott* v. *EPA*, 780 F.2d 445, 453 (4th Cir. 1986); *CHS* v. *EPA*, 553 F.2d 280, 285–287 (2d. Cir. 1977); *Ass'n. of Pacific Fisheries* v. *EPA*, 615 F.2d 794, 817 (9th Cir. 1980).

EPA examined the use of polymer-aided settling that is used in the placer mining industry to treat effluent from the mining facilities. Placer mining extracts gold from alluvial deposits. Excavation often uses water as the means to disturb the sediments allowing the gold to be extracted. The wastewater generated with placer mining contains the sediment that has been separated from the gold. Though the water used during the gold extraction process is not "stormwater," the water during the mining process acts in a similar manner as stormwater as it detaches, erodes and dislodges the soil and discharges sediment, turbidity and other pollutants from the facility. The placer mining effluent guidelines (40 CFR part 440 subpart M) established limitations for settleable solids based on simple settling for a minimum of 4 hours. While developing the placer mining effluent limitations guidelines, EPA conducted treatability studies on the effectiveness of simple settling and chemically-aided settling (polyethylene oxide (PEO) and PEO with polyelectrolyte). Settleable solids, TSS and turbidity were measured in these studies. EPA has examined the data from these studies to evaluate the effectiveness of settling and polymer aided settling applicable to the C&D point source category. EPA considers this treatment performance data to be appropriate because both placer mining and C&D involve significant disturbance of soils and placer mining process wastewater has similar characteristics to stormwater from construction sites. Untreated wastewater in the tests contained concentrations of TSS ranging from 3,585 mg/L to 161,700 mg/L with turbidity ranging from 2,450 to >80,000 NTU. After simple settling for 6 hours the concentrations of TSS dropped to between 28 mg/L and 26,235 mg/L while turbidity decreased to between 35 to 35,000 NTU. In the tests where polyelectrolyte was added, initial TSS concentrations ranged from 869 to 55,340 mg/L while turbidity ranged from 1,680 to 42,500 NTU. After 6 hours of settling, the TSS in the polyelectrolyte samples ranged from 2 to 23 mg/L while turbidity ranged from 5 to 78 NTU. Notable also was that turbidity had decreased to between 13 and 97 NTU after only one hour of settling in these samples. Similar results were reported for PEO with initial turbidity ranging from 1,235 to 39,500 and results after 6 hours ranging from 51 to 140 NTU (See DCN 42103, 1986 Alaskan Placer Mining Study Field Testing Program Report).

EPA acknowledges that the placer mining treatment data was specific to that industry. There may be other distinctions between the treatment evaluated there and the technology in today's rule (e.g., the placer mining data is based on enhanced settling using a polyelectrolyte and a polyelectrolyte with a polymer only, as opposed to a full range of passive treatment techniques relied upon in today's rule). Nonetheless, the technology (chemically-enhanced settling) and the materials (water containing dirt, rock, sand and similar materials) are fundamentally similar and support EPA's conclusion that this type of well-demonstrated treatment technique can reliably achieve low turbidity levels in sediment bearing waste streams. This data demonstrates that simple settling or enhanced settling is capable of achieving the limitation.

The data in the record on the use of PTS at construction sites supports EPA's determination that a well designed and maintained passive treatment system will consistently achieve the limitation and is thus technologically available. The data in the record on the use of enhanced settling at placer mining facilities supports EPA's determination that PTS will consistently achieve the limitation in discharges associated with construction activity and supports PTS being technologically available.

Besides the use of PTS, owners and operators will often times be able to rely on non-numeric effluent limitations or BMPs, without the use of polymers of flocculants, to meet the limitation. For example, Horner et al. (see NRC at pg. 445 and DCN 01350) showed that a turbidity limitation of 25 to 75 NTUs can be consistently met on highway construction sites in Washington. See also discussion of Warner and Collins-Camargo earlier (DCN 43071). Owners or operators can also choose to modify their site planning, construction

operations or the processes in which the construction activity occurs, such as changing the way the site is graded so that stormwater is directed to areas where it can infiltrate. Also, if a vegetated area is available, owners or operators can choose to utilize this area for dispersion of the stormwater. The Agency may base BAT and NSPS limitations and standards upon effluent reductions attainable through changes in a facility's processes and operations, as are available to owners and operators of construction sites. See *Texas Oil & Gas Ass'n* v. *EPA,* 161 F.3d 923, 928 (5th Cir.1998). In addition, owners or operators have the option to phase their construction activity or limit the amount of land disturbed at one time in a manner such that the numeric limitation would not apply to their construction activity. Construction site owners or operators can avoid the application of the numeric limitation in Option 4 to their discharges altogether if they limit construction activity so that less than 10 acres are disturbed at any one time.

EPA's analysis shows that the technologies that form the basis of Option 4 can consistently meet the limitation.

In addition, the non-numeric effluent limitations of Option 4 are technically available. These non-numeric effluent limitations represent the average of the best performance of construction sites across the country. See discussion of BPT in section III.D.1. As BAT represents best available technology, they are also technologically available.

In considering economic impacts, EPA's analyses show that the requirements of Option 4 are economically achievable (BAT) and will not pose a barrier to entry (NSPS). Under the CWA, in the effluent guidelines program, EPA traditionally assesses the economic impact on the industry as a whole, by looking at what percentage of facilities would close or face a barrier to entry as a result of the costs of the regulatory requirements and any resulting loss of employment.

EPA estimates that out of the 82,000 firms expected to be affected by this regulation, 147 firms or 0.2 percent, may close as a result of the requirements. This closure estimate is based on the assumption that some of the costs associated with this regulation will be passed on to the customers of these firms. Based on the typical number of employees working for these firms, EPA estimates 7,257 job losses associated with these closures, out of total in-scope employment of 1.85 million. As discussed in section XII.D, construction firms routinely expand and contract their workforce in response to work load and as a result many workers laid off when a firm closes are rehired by new and other existing more financially healthy firms. Therefore, job losses due to firm closures are in many cases a temporary displacement of the workforce as compared to other industrial point source categories. The construction industry is a highly dynamic industry that is characterized by many small firms with a relatively high turnover that expand and contract their level of activity readily in response to changes in market conditions.

The relatively high rate of entry and exit in the construction industry, compared to other industries, suggests barriers to entry are normally low. Option 4 is not likely to put new firms at a disadvantage as both existing and new firms will need to meet the same requirements for each new project begun. Existing firms are likely to have more assets than new firms and therefore may be able to use more of their own financial resources to finance a new project. The greater the compliance costs in comparison to baseline assets the more likely the rule would pose a barrier to new entrants. EPA assessed the increase in financing requirements in relation to typical baseline assets for the different firm revenue categories, and under Option 4 no firm category would face financing requirements greater than 4.1% of baseline assets. EPA does not consider Option 4 to pose a barrier to entry for new firms into the marketplace. For a more detailed discussion see Section XII below.

Option 4 is projected to have a total industry compliance cost, once fully implemented in NPDES permits and the industry has returned to normal levels of construction activity, of $953 million per year (2008 $). Most C&D sites are permitted under general permits, so this rule will not be fully implemented until all state and EPA general permits have expired and new general permits are issued that incorporate the Option 4 requirements, which will take approximately 5 years after the effective date of this rule. Costs in the first year (2010) are estimated to be approximately $8 million, and annualized costs for the first 10 years after promulgation are estimated to be $577 million (see Table X–2). Given the size of the industry and the current annual value of construction activity of $960 billion (July, 2009), EPA has determined that this cost, which represents less than one tenth of one percent of the current total value of annual construction activity, can be reasonably borne by the industry.

TABLE X–2—OPTION 4 ANNUAL COMPLIANCE COST BY YEAR

	Compliance year									
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Annual Compliance Cost (Millions)	$8	$63	$204	$538	$810	$834	$859	$885	$911	$938

These economic impacts are well within the range of impacts EPA has imposed on other industries subject to ELG and NSPS rulemakings. Congress expressly considered BAT and NSPS to be technology-forcing and that in striving towards the ambitious goals of the CWA either BAT or NSPS may, and likely will, result in some economic impacts to a portion of an industry. See *e.g., American Iron & Steel* v. *EPA,* 526 F.2d 1027, 1052 (3d. Cir. 1975); *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1026 (D.C. Cir. 1978). Based on the traditional factors EPA considers under the CWA when promulgating effluent limitations guidelines and standards the Agency determined that Option 4 is economically achievable and will not pose a barrier to entry. For a more complete discussion of EPA's economic impact analysis see Section XII of this notice.

Under the Regulatory Flexibility Act (RFA), EPA also considered the impact to firm revenues for Option 4, at full implementation under normal levels of construction activity. EPA evaluated impacts of the rule on small firms. EPA considers the number of firms where the costs to those firms exceed 1 percent and 3 percent of revenue. Under Option 4, there are no firms, either small or large, that are expected to incur compliance costs exceeding 3 percent of their revenues, while only 230 small firms (0.03% of in-scope firms and 0.84% of those incurring costs) are expected to incur costs exceeding 1

percent of their revenues. Another measure of economic stress considered by EPA is the estimated change in important firm financial metrics, such as the ratio of pretax income to total assets. For this option, a total of 169 out of 82,000 firms expected to be affected by this regulation are estimated to incur financial stress as a result of regulatory requirements, which represents 0.2 percent of in-scope firms. These impacts are not necessarily additive with estimated 147 firm closures, mentioned previously, as they evaluate different aspects of a firm's financial viability, and the same firm may experience more than one measure.

EPA found the non-water quality environmental impacts associated with Option 4 to be minimal and acceptable. The non-water quality environmental impacts associated with the BPT effluent limitations are negligible as there is little incremental energy expended in the implementation of the erosion and sediment controls, since these types of controls are already being implemented by the majority of construction sites nationwide. Depending on the particular polymer or flocculant used, these solids are typically utilized as fill material on the construction site. If they cannot be used as fill, then they would be treated as municipal solid waste. However, EPA would expect permittees to choose polymers or flocculants that would allow for use of removed solids on-site.

EPA considered site size thresholds smaller than 10 acres for the applicability of passive treatment systems and a numeric effluent limitation and associated monitoring requirements. While EPA does not have information to indicate a numeric effluent limitation for stormwater discharges is not feasible for smaller construction sites, EPA has determined that a site size threshold below 10 acres disturbed at one time does not at this time represent BAT and NSPS in recognition of other relevant factors, such as the fact that this is the first time EPA has required an enforceable numeric effluent limitation for stormwater discharges from construction sites nationwide, the increased burden on the permitting authorities, and that construction sites less than 10 acres are more likely to be operated by small businesses.

EPA recognizes that meeting a numeric limitation is a significant change for this industry. A 10-acre threshold of land disturbed at one time will result in the numeric effluent limitation for turbidity and the associated monitoring requirements applying to a very substantial number of constructed acres of land per year. EPA has estimated that at a threshold of 10 acres disturbed at one time, 623 thousand acres and more than 21,000 projects annually will be subject to the numeric effluent limitation. Thus, EPA has determined the final rule would result in the numeric effluent limitation and monitoring requirements applying to an estimated 73% of the constructed acres per year. If EPA were to lower the threshold of land disturbed at one time to below 10 acres, the final rule would significantly increase the number of projects subject to the numeric effluent limitation. As stated above, at a 10-acre threshold, about 21,000 projects are subject to the numeric effluent limitation; however, if the Agency were to lower the threshold to, for example, 5 acres, the number of construction projects climbs to 37,000 projects; and at 1 acre, the number of construction projects would jump to 84,000 projects, a four-fold increase in covered projects compared to a 10-acre threshold. EPA received comments from state permitting authorities concerned about the potential increased burden a numeric effluent limitation may have if it were applied to all construction sites. State permitting authorities must oversee incorporation of the final rule into their NPDES permits, in addition to providing logistical and technical support to permittees subject to the new requirements. While the final rule is not mandating specific reporting requirements, EPA expects permitting authorities to develop requirements in their NPDES permits for frequent reporting to assist in compliance monitoring and program development. The permitting authority will have to manage the reported effluent data and discharge monitoring reports. EPA considered the significant further progress that applying a numeric effluent limitation based on passive treatment systems to 73% of the constructed acres would have in meeting the goals of the CWA in combination with the likely increased workload to permitting authorities, especially during a unique period of time when resources may be an issue for permitting authorities.

Additionally, EPA considered that construction sites less than 10 acres are more likely to be operated by small businesses. Larger construction firms, who tend to operate on larger sites, will likely have in-house expertise, while smaller construction firms may need to rely on hiring consultants to implement the passive treatment systems in order to meet the numeric effluent limitation. Based on comments EPA received, the Agency has some concerns regarding the expertise at the small construction firm level and, given the size of the construction industry, the availability of the support industries for small construction sites. The concern is that the support industries for small construction sites, such as consulting firms and erosion and sediment control service providers, will not be available, especially as the entire industry adjusts to the new requirements, to provide the level of support needed for these smaller sites to effectively implement passive treatment systems to meet the numeric effluent limitation. If the threshold was below 10 acres disturbed at one time, an additional 63,000 sites, under a 1-acre threshold, or an additional 15,000 sites, under a 5-acre threshold, may need outside support for passive treatment systems. EPA considered the issue of small businesses' operation of small sites, the availability of expertise for small sites that is necessary to meet a numeric effluent limitation and the resulting questions raised as to whether passive treatment systems are available for construction sites with less than 10 acres disturbed at one time.

In sum, after consideration of all the relevant factors in CWA sections 304(b) and 306(b), EPA has determined that the selected option is technologically available, economically achievable for the industry as a whole, poses no barrier to entry, has acceptable non-water quality environmental impacts and is BAT and NSPS for this point source category. The selected option accommodates the concerns of the regulated community and permitting authorities about the practicalities of meeting a numeric effluent limitation. This rule reflects a new generation of controls and approach to managing stormwater discharges from C&D sites, with objective and enforceable limitations based upon demonstrated technologies that this industry as a whole can achieve and afford.

2. Numeric Limitations.

Numeric effluent limitations are feasible for discharges associated with construction activity. Numeric effluent limitations are appropriate on a nationwide basis for some construction sites and in this case are the best way to quantifiably ensure industry compliance and to make reasonable further progress toward the CWA goal of eliminating pollutants into the nation's waters. Numeric effluent limitations are an objective and effective way for the permitting authority to implement, and the regulated industry to comply with, the technology based requirements for

this point source category. Numeric limitations put the owner and operator, the permitting authority and the public on notice as to what is required, thereby facilitating effective permit development and management of stormwater discharges associated with construction activity, in order to further the objectives of the CWA.

EPA has in the past indicated that numeric limitations for discharges from C&D sites might not be feasible. Over the last several years, additional data and information has become available indicating that a numeric limitation is technically available and is appropriate for some sites. Several states have recognized that current BMPs used at construction sites are not always able to meet water quality objectives. Therefore, several researchers (such as McLaughlin, Warner and Horner) have investigated improved approaches to managing construction site stormwater. Their research has demonstrated that the performance of current BMPs can be improved and that effluent quality can be substantially improved. In addition, several states have incorporated action levels into their permits, so owners and operators of construction sites have experience with sampling stormwater discharges and analyzing for turbidity. In addition, California has recently established effluent limitations for some sites within the State, and dischargers within the Lake Tahoe basin have been subject to numeric limitations for some time. The industry in general has become more aware of the importance of turbidity control and has developed a number of innovative approaches to improve turbidity removal. Also, a substantial vendor base has developed in recent years that offer a range of expertise and approaches for controlling turbidity. In addition, permittees have many choices regarding when land disturbing activities take place and how they decide to conduct land disturbing activities on a particular site that have a pronounced effect on the amount of sediment generated, and subsequently the amount of sediment and other pollutants requiring management. Consideration of these factors during the planning phases of projects will significantly influence the level of control needed, and the feasibility of meeting a limitation.

Not withstanding a heavy reliance on non-numeric limitations in the past, the use of numeric effluent limitations by EPA in national rulemakings to control stormwater discharges has precedent in a number of contexts. Industries that have exposed areas devoted to production or material storage often have numeric limitations that apply to stormwater discharges from these areas. EPA has promulgated at least eight different effluent limitations guidelines for industrial point source categories that address stormwater or a combination of stormwater and process wastewater with numeric effluent limitations.[1]

In addition to numeric limitations being utilized for stormwater discharges in other industrial categories, several states have effluent limitations or action levels or benchmarks (hereinafter, benchmarks) for stormwater discharges associated with construction activity. A benchmark is a numeric monitoring requirement where discharges must be sampled to determine whether they meet a certain level of pollutant(s) in the discharge. For example, the State of Oregon requires construction sites to monitor, and the permit contains a 160 NTU benchmark for sites discharging to a CWA section 303(d) listed waterbody or a waterbody with a TMDL for sediment and turbidity. The State of Georgia has turbidity benchmarks that are a function of the construction site size in relationship to the watershed size.

The only practical difference between a numeric effluent limitation and a benchmark is that a violation of a benchmark, in and of itself, is not a violation of a NPDES permit. If a benchmark is exceeded, generally, the enforceable requirement is for the discharger to contact the permitting authority, examine its BMPs, and implement additional controls, if necessary. A benchmark requires similar types of site planning, employee education, firm resources, monitoring and sampling, design, installation and maintenance of erosion and sediment controls and compliance with other non-numeric effluent limitations, and application of other passive treatment technologies as are necessary to meet a numeric limitation.

Some commenters argued for a benchmark as opposed to a numeric turbidity limitation due to the variable nature of stormwater and after the comment period industry stakeholders stated that they were supportive of a benchmark approach, albeit at a higher NTU level. EPA believes that benchmarks can be an important tool for permitting authorities and for permittees. However, numeric limitations are feasible and appropriate for larger C&D sites on a nationwide basis and the feasibility of using a benchmark approach is comparable to the feasibility of meeting a numeric effluent limitation. EPA does not believe that a benchmark approach would represent BAT and NSPS at the national level. Technologies and practices that can achieve numeric effluent limitations for stormwater discharges are technologically available and the Agency finds no reason to rely on benchmarks as opposed to numeric effluent limitations in this case. EPA recognizes and has considered the issue of variability of stormwater discharges at C&D sites and has included several provisions in the rule to address this issue. First, today's numeric limitation does not apply on days when total precipitation in that day is greater than the local 2-year, 24-hour storm event. As stated below in Section XIX.A, the reasoning behind this exemption is that for larger storm events, controls may be overwhelmed by the large amount of stormwater and a numeric limitation may be more difficult to meet. Additionally, as discussed below, the numeric turbidity limitation is a daily maximum, meaning an owner or operator will not be in violation of the limitation if individual samples of their discharges exceed the limitation, as long as the average of the samples taken over the course of a day are below the limitation.

In addition to the use of benchmarks, at least one state has state-wide numeric effluent limitations for discharges associated with construction activity. The State of California has an enforceable numeric effluent limitation of 500 NTU in its construction general permit for high risk sites. Also, states have set numeric turbidity limitations for specific areas (such as the Lake Tahoe Basin), or for specific projects.

3. Rationale for Rejecting Options 1, 2 and 3 as the Technology-Basis for BAT and BADT for NSPS

EPA rejected Option 1 as the basis for BAT and BADT for NSPS because there are technologies that remove greater levels of pollutants from stormwater discharges from C&D sites than Option 1 that are technologically available, economically achievable, pose no barrier to entry and have acceptable non-water quality environmental impacts, thus Option 1 is not BAT and BADT for NSPS.

EPA rejected Options 2 and 3 for numerous reasons. For Option 2 and 3 EPA believes that the use of ATS is likely to influence the ability of site planners to select stormwater management controls that can infiltrate

[1] See 40 CFR part 411 (Cement Manufacturing); 40 CFR part 418 (Fertilizer Manufacturing); 40 CFR part 419 (Petroleum Refining); 40 CFR part 422 (Phosphate Manufacturing); 40 CFR part 423 (Steam Electric); 40 CFR part 434 (Coal Mining); 40 CFR part 440 (Ore Mining and Dressing); and 40 CFR part 443 (Asphalt Emulsion).

and manage stormwater on-site through green infrastructure practices because ATS typically requires the use of a centralized drainage system and large stormwater basins. Option 3 would present an even larger disincentive to the use of infiltration and retention practices because of the larger number of sites that may need to use larger basins.

EPA is concerned that basing a numeric limitation on ATS is likely to present a disincentive for site planners to select controls that may be more effective from a hydrologic standpoint to maintain the predevelopment hydrology of the site. In particular, ATS would require larger basins than what may be required under existing state permits. For example, EPA estimates that a construction project on a 17-acre site in Alabama would need a basin providing approximately 200,000 cubic feet of storage to support application of ATS. This is almost three times larger than the sediment basin that EPA estimates may be required on this same project under the Alabama CGP. Since it would be much more expensive to decommission this larger basin, this presents an incentive for the developer to retain this basin as part of the permanent stormwater management controls because the cost of retrofitting this basin would likely be cheaper than installing distributed runoff controls, such as rain gardens, which EPA views as significantly more effective at managing stormwater on the development after construction activity has ceased. As discussed at length in the NRC report noted above, the use of retention, infiltration and other low-impact development techniques is preferable from a hydrologic standpoint to maintain predevelopment hydrology than detention through the use of a sediment basin. Passive treatment systems do not have these same limitations as ATS, since there is more flexibility in the selection of controls. By utilizing passive treatment systems, a sediment basin may not be required, and the site planner may be more inclined to use distributed runoff controls, such as rain gardens, instead of converting the sediment basin into a permanent stormwater management pond. Even where a basin is needed, it may be a smaller basin than would be needed for a full ATS. As discussed in Section VII.A, there is also a concern that was raised by commenters on the reliance on ATS due to the unique characteristics of linear projects. Similar to what was discussed above, passive treatment systems will provide owners and operators of construction sites the flexibility in the selection of controls to include site specific conditions, including right-of-way constraints.

Many states and municipalities are moving in the direction of requiring stormwater discharges from newly developed and redeveloped sites to mimic the hydrology that would have occurred on the site prior to the site being developed. These techniques not only eliminate or reduce stormwater discharges from newly developed or redeveloped sites, they can be designed to prevent stream bank and bed erosion, help recharge groundwater, conserve energy, and mitigate urban heat island impacts. As these practices can provide various environmental benefits, these important environmental outcomes have been factored into EPA's options selection process. As discussed in Section VI, EPA recognizes, as the NRC report concluded, that the current regulatory approach by EPA under the CWA is not adequately controlling all sources of stormwater discharges that are contributing to waterbody impairment. As a result, EPA has committed to and begun a rulemaking addressing stormwater discharges from newly developed and redeveloped sites under CWA section 402(p). EPA has published a draft Information Collection Request, 74 FR 56191 (October 30, 2009) for public comment seeking information and data to support the rulemaking.

Passive treatment systems are able to provide a high level of pollutant reduction at a significantly lower cost than active treatment systems. In particular, Option 2 would have cost about $4.9 billion and removed 70% of the sediment discharged from construction sites. This is in contrast with a $0.95 billion cost with 77% sediment removals for Option 4. While Option 3 achieves somewhat greater removals (87%) it comes at a very high cost ($9 billion).

In rejecting ATS as BAT and NSPS in the final rule, EPA also considered the fact that as discussed above EPA is conducting a rulemaking to address stormwater discharges from development that is likely to impose additional costs on the construction industry. EPA has just begun the rulemaking process for that rule, thus the Agency has not quantified the costs, but the Agency is concerned about the potential additive costs of choosing ATS as BAT and NSPS in this final rule in combination with the potential costs of this new stormwater rule. This was a similar consideration by EPA in the Offshore Oil & Gas ELG where EPA rejected the most stringent option in part because of the potential for the same industry to be required to bear additional costs in a subsequent rule. See 58 FR 12454, 12483 (March 4, 1993).

Although EPA is rejecting ATS as a basis for BAT and NSPS nationally, ATS is an effective and important technology that has broad applicability for construction sites. ATS was applied to construction site discharges initially as a means of addressing water-quality concerns, such as discharging stormwater to high-quality receiving waters with low background turbidity. Indeed, in many areas where ATS use has been most prevalent (such as in the States of California, Washington and Oregon), construction activities are taking place in areas where the receiving waters have background turbidity of only a few NTUs and where sensitive or endangered species are present. In these cases, the use of ATS has allowed construction activity to occur so that discharges are at or below the background turbidity levels in the receiving waters. If not for ATS, it is unlikely that many of these projects would have met water quality requirements if forced to rely on conventional erosion and sediment controls.

As stated above, EPA acknowledges that many state and local governments have existing programs for controlling stormwater and wastewater discharges from construction sites. Today's rule is intended to work in concert with these existing state and local programs and in no way does EPA intend for this regulation to interfere with existing state and local requirements that are more stringent than this rule or with the ability of state and local governments to promulgate new and more stringent requirements. Today's rule is a floor, not a ceiling. To make this point clear EPA included "at a minimum" language in the regulation to highlight the fact that EPA does not want to prevent more stringent state technology-based or other effluent limitations from serving as CWA requirements in NPDES permits. This rule is establishing the minimum technology required by construction operators. States and EPA can also require more stringent limitations that are necessary to meet water quality standards. CWA section 301(b)(1)(C). Where TMDLs for sediment or turbidity are established, the use of ATS may be an important tool to ensure water quality standards are met. States also have the authority to require more stringent requirements under state law under CWA section 510. Permitting authorities may establish more stringent effluent limitations subsequent to promulgation of today's regulation

based on the application of ATS, or other technologies, where appropriate.

4. Definition of "New Source" for the C&D Point Source Category

As stated above, EPA is selecting Option 4 as the best available demonstrated control technology (BADT) for NSPS under section 306. At proposal, EPA stated that it interpreted "new source" at CWA section 306 to not include stormwater discharges associated with construction activity from C&D sites. EPA stated that it is a reasonable interpretation of section 306 to exclude C&D sites from the definition of "new source" because a construction site cannot itself be constructed. The Agency found that if construction sites were intended to be "new sources" it is illogical that there would be a separate definition for "construction" or that there would be a requirement in section 306 that "sources" be constructed prior to becoming "new sources." See 73 FR 72583. The result of this interpretation is that no C&D sites would ever be new sources. However, the 2006 district court order enjoins EPA to promulgate ELGs and NSPSs.

In order to comply with the district court order, EPA proposed a specialized definition of "new source" for purposes of part 450 as any source of stormwater discharge associated with construction activity that itself will result in an industrial source from which there will be a discharge of pollutants regulated by a new source performance standard in subchapter N. (All new source performance standards promulgated by EPA for categories of point sources are codified in subchapter N.) See 73 FR 72583. The definition of new source would mean that the land-disturbing activity associated with constructing a particular facility would itself constitute a "new source" when the facility being constructed would be a "new source" regulated by NSPSs under section 306 of the CWA. For example, construction activity that builds a new pharmaceutical plant whose process wastewater is covered by 40 CFR 439.15 would be subject to the NSPS under 40 CFR 450.24, as proposed, for its stormwater discharges associated with the construction activity.

Commenters raised numerous objections to the proposed "new source" definition, arguing that the proposed definition is overly narrow and there is no rational explanation for treating a C&D site for a commercial facility as an existing source, while treating a C&D site for a new iron and steel facility that happens to have NSPSs for its process wastewater as a new source. EPA's proposed definition of "new source" was the result of the difficult application of section 306 to the unique nature of the C&D point source category compared to other industrial categories. Section 306 was part of the 1972 amendments to the CWA, when the focus was on industrial facilities that are traditionally considered "plants" or "factories," such as petroleum refineries, power plants and heavy manufacturing. See e.g., 118 Cong. Rec. 10201, 10208, 33747, 33760, 33763 (1972); A Legislative History of the Water Pollution Control Act Amendments of 1972, 93d Cong., 1st Sess. (Comm. Print 1973). However, the CWA has evolved since 1972, most notably through the WQA of 1987 and the addition of a comprehensive program to address stormwater discharges under section 402(p). As a result, the nature and characteristics of the sources that EPA now regulates under the NPDES program may not, and in the case of C&D sites, do not, necessarily align themselves plainly with the provisions of section 306: however EPA does not believe that this results in C&D sites not being subject to section 306.

After a careful review, based on comments received, EPA has decided to reconsider its proposed definition of "new source." EPA agrees with commenters that it is not the best reading of section 306 for the definition of "new source" for C&D sites to be dependent upon the result of the construction activity or the activity that occurs on the developed site. EPA recognizes there is difficulty in treating a C&D site for a commercial facility not as a new source, while treating a C&D site for a new iron and steel facility that happens to have NSPSs for its process wastewater as a new source. Even within similarly situated industrial categories, there may be facilities that have NSPSs for their process wastewater and other facilities that do not, and that fact is removed from the concerns of this rule regarding discharges of turbidity, sediment and other pollutants associated with construction activity. The concerns of this rulemaking and the nature of C&D sites exist notwithstanding and independently of the nature of the developed site and the activity on that site that leads to discharges of pollutants after completion of construction activity.

While EPA believes it is a reasonable interpretation of the CWA to exclude C&D sites from the definition of "new source" based on the text of section 306, the Agency has determined the better reading of the statute is that C&D sites may be new sources. The term "source" is defined in 306(a)(3) of the CWA to mean "any building, structure, facility, or installation from which there is or may be the discharge of pollutants." While it is not clear that a C&D site would be a "building," "structure," or "installation," the regulatory definition of "facility" means "any NPDES 'point source' or any other facility * * * (including land or appurtenances thereto) that is subject to regulation under the NPDES program." 40 CFR 122.2. Based on the WQA of 1987, EPA promulgated the Phase I and Phase II stormwater regulations which required NPDES permits for stormwater discharges associated with construction activity. See 40 CFR 122.26(b)(14)(x) and 122.26(b)(15). C&D sites are point sources and subject to regulation under the NPDES program due to their discharge of pollutants. Based on EPA's regulatory definition, C&D sites are "facilities," thus EPA interprets them to be "sources," as that term is defined under section 306. The term "construction" is defined as any "placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities and equipment) at premises where such equipment will be used, including preparation work at such premises." CWA section 306(a)(5). The definition of "construction" is broad to include activities that occur, including preparation work, placement of equipment and signing of contracts, before actual construction activity, such as clearing, grading and excavation occurs on the site. This broad, encompassing definition, would allow an owner or operator to begin "construction" of the C&D site without actually beginning construction activity. While it is reasonable, based on a common sense understanding of the term, that an owner or operator cannot construct a construction site as that term is commonly used, "construction" is specifically defined in the CWA and based on that broad definition it is a better interpretation of "construction," that owners or operators of a C&D site can "construct" a C&D site within the meaning of the CWA as interpreted by EPA. See 40 CFR 122.29(a)(4). Given the evolution of the CWA, as discussed above and the focus of the CWA in 1972, it is not illogical that there would be a separate definition for "construction" or that there would be a requirement in section 306 that "sources" be constructed" prior to becoming "new sources." EPA did not regulate discharges associated with construction activity at that time, thus there would be nothing illogical with including a separate definition of

"construction." While section 306 and EPA's regulations on new source determinations appear to emphasize permanent facilities as opposed to relatively temporary sources like C&D sites, EPA is taking into consideration this evolution of the CWA and viewing the statute as whole in determining a reasonable and appropriate reading of section 306 and EPA regulations. "New source" means "any source, the construction of which is commenced after publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source * * *" CWA section 306(a)(2); 40 CFR 122.2. As outlined above, C&D sites are "sources" and owners and operators can construct C&D sites given the broad definition of "construction," thus a C&D site may be a "new source" under section 306 and subject to NSPS.

For purposes of this rule, EPA has defined "new source" as "any source, whose discharges are defined in 40 CFR 122.26(b)(14)(x) and (b)(15), that commences construction activity after the effective date of this rule." Under this definition, the only construction sites that will not be "new sources" are those sites that commenced construction activity before the effective date of this rule. The definition aligns itself with the nature of construction sites, the opportunities to utilize the most effective control technologies and Congress' "recognition of the significantly lower expense of attaining a given level of effluent control in a new facility as compared to the future cost of retrofitting a facility." A Legislative History of the Water Pollution Control Act Amendments of 1972, 93d Cong., 1st Sess. (Comm. Print 1973) at 797. Congress "recognized that new sources could attain discharge levels more easily and at less cost than existing sources which must be retrofitted * * * [and Congress] clearly expressed [a] belief that it would be easier for new sources to attain a particular level of effluent control than it would be for existing sources." *American Iron & Steel* v. *EPA*, 526 F.2d 1027, 1058 (3d Cir. 1975).

EPA has the authority to provide specialized definitions of "new source" to particular point source categories. See 40 CFR 122.29(b); 401.10. As stated above, the substantive standards for BAT and NSPS are based on the best available technology or best available demonstrated control technology which consider both the cost of achieving such effluent reduction and any non-water quality environmental impacts and energy requirements. See CWA sections 304(b)(2)(B) and 306(b)(1)(B). For this final rule BAT is equal to NSPS.

Some commenters raised the issue of the National Environmental Policy Act of 1969 (NEPA) 33 U.S.C. section 4321 et seq. and its relationship to "new sources." Pursuant to CWA section 511(c) the issuance of a NPDES permit under section 402 for the discharge of any pollutant by a "new source" as defined under section 306 may be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and would be subject to the environmental review provisions of NEPA. The issuance of a NPDES permit to a new source by an NPDES-approved state is not a federal action; therefore, issuance of these permits is not subject to NEPA. Forty-six (46) states have NPDES authorization. For the remaining four states, tribal lands, territories, and other areas where EPA is the permitting authority the issuance of any NPDES permit to a new source is subject to the environmental review provisions of NEPA as set out in 40 CFR part 6. The vast majority construction sites in these remaining jurisdictions obtain NPDES permit coverage for discharges associated with construction activity under the EPA CGP. EPA intends to comply with NEPA, as necessary, pursuant to the issuance of the EPA CGP.

XI. Methodology for Estimating Costs to the Construction and Development Industry

In developing today's final rule, EPA used numeric models to estimate the costs of compliance with various regulatory options. This approach was used to estimate the incremental costs associated with the regulatory options at the state and national level. This approach is the same as that used at proposal; however, EPA has updated various models and estimates of costs as well as estimates of annual construction activity, based on comments received as well as other factors.

For the proposal, EPA developed a series of nine model projects (3 site size categories and 3 project types). EPA estimated incremental compliance costs for each of these model projects under the various regulatory options and scaled costs to the national level. EPA used a fixed project duration of nine months for each of the model projects as a basis for estimating compliance costs. The annual amount of construction activity was estimated based on the 1992 and 2001 National Land Cover Dataset (NLCD) available at the time of proposal.

For the final rule analysis, EPA also estimated project-level costs for a series of model projects. The models vary by size (disturbed acres), duration, and type of construction to establish the baseline conditions for factors that can directly influence compliance costs and firm impacts. EPA developed a set of model projects that includes 12 size categories and 12 duration categories. For costing purposes, EPA made a distinction between building and transportation projects. The linear configuration of many transportation projects requires additional considerations for managing stormwater. However, EPA did not consider residential and nonresidential projects of the same size and duration to have appreciably different costs. These two project types (building and transportation) were combined with the size and duration categories to create 288 different model projects. These model projects were then combined with a set of geographic conditions unique to each state, based on a representative metropolitan area within the state, resulting in 14,688 model projects (288 × 51). There were many factors affecting model project cost for each option. The primary factor was the set of applicable technologies and practices considered necessary for meeting each option's regulatory requirements. The costs associated with each set of technologies and practices varied by project size, but they also vary by duration, state, and construction sector. For all four options, the costs for projects under 10 acres were based on non-numeric effluent limitations or BMPs and only varied by size. For Option 1, projects above 10 acres were also assumed to rely upon non-numeric effluent limitations or BMPs and costs only varied by size. For Options 2, 3, and 4, projects that were required to meet numeric limitations had costs that also varied by duration to reflect either the application of PTS or ATS, as well as O&M costs and costs for monitoring.

In developing unit costs for each model project, EPA refined the approach used at proposal. At proposal, EPA estimated annual rainfall and runoff volumes on a per-acre basis for one indicator city in each state. EPA estimated ATS treatment costs using an estimate of $0.02 per gallon. For the final rule analysis, EPA again used rainfall data from one indicator city in each state to estimate annual rainfall and runoff volumes and determined ATS treatment system sizes (based on a design flowrate) needed in each state for each of the model project site sizes. Using data supplied from vendors on the unit cost of various ATS treatment system components contained in the proposed rule record (see DCNs 41130

and 41131), as well as the Development Document EPA estimated the one-time and monthly recurring costs for deploying ATS in each state. Monthly recurring costs included costs for operator labor, treatment chemicals and fuel usage. Using the distribution of projects by site size and duration in each state, EPA was then able to estimate the costs to implement ATS for Options 2 and 3. EPA also estimated incremental storage requirements to impound runoff prior to treatment from the 2-year, 24-hour storm for each indicator city and added additional storage costs if existing state sediment basin sizing requirements were smaller than these volumes. EPA intended to use this analysis at the time of proposal in order to compare results with the $0.02 per gallon approach, but was unable to complete this analysis prior to publication of the proposed rule. The information that EPA used for this approach was, however, included in the docket (see DCN 51201) and commenters provided comment on this approach (See EPA–HQ–OW–2008–0465–1360 in the rulemaking record).

In developing costs for Option 4, EPA estimated the costs for deploying liquid polymer dosing systems and for implementing fiber check dams with PAM addition on sites. EPA also estimated monthly labor needs for sampling personnel, as well as monthly operation and maintenance costs for polymer dosing systems and for fiber check dam replacement and PAM application. EPA then scaled costs to the state and national level. EPA also estimated costs for firms to purchase turbidity meters. Detailed results of this analysis are presented in the Development Document.

From Table XI–1 it is apparent that there was a wide range of project costs. The $490 project cost reflects the use of BMPs on the smallest model project, estimated to be 1.9 acres in size. The model project with the highest cost, for options 2, 3, and 4 are all based on the largest model project with the longest duration, 145 acres over three years. The $390 thousand, under Option 4, represents a 145 acre transportation project in Florida lasting three years, and the $5.5 million project, under Options 2 and 3, represents a three year 145 acre project in Louisiana.

TABLE XI–1—RANGE OF PROJECT COSTS FOR THE FOUR OPTIONS

	Average cost	Median cost	Minimum cost	Maximum cost
Option 1	$8,026	$5,296	$490	$44,832
Option 2	328,322	5,296	490	5,501,864
Option 3	399,371	224,541	490	5,501,864
Option 4	42,207	28,330	490	389,786

For estimating the total annual construction acreage in-scope, EPA relied on industry economic data rather than the NLCD because recent NLCD data is not yet available. EPA used historical construction spending data to derive a long-term trend for construction activity. This allowed EPA to base its estimates on normal industry conditions rather than large fluctuations in activity seen in recent years. Next EPA used data from the U.S. Housing Census, Reed Construction, and the Federal Highway Administration to estimate the relationship between construction spending levels and the average annual quantity of acres developed. This relationship was then combined with the long-term trend to project expected construction acreage for 2008 under normal conditions (see Section XII for additional discussion of this analysis).

XII. Economic Impact and Social Cost Analysis

A. Introduction

EPA's Economic Analysis (see "Supporting Documentation") describes the impacts of today's final rule in terms of firm closures and employment losses, in addition to firm financial performance and market changes. In addition, the report provides information on the impacts of the rule on sales and prices for residential construction. The results from the small business impact screening analysis support EPA's implementation of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Results from the government costs analysis support the implementation of the Unfunded Mandate Reform Act (UMRA). The report also presents identified, quantified, and monetized benefits of the rule as described in Executive Order 12866.

This notice includes related sections such as the cost-effectiveness analysis in Section XIII, benefits analysis in Section XVI, and benefit-cost analysis in Section XVII. In their entirety, these sections comprise the economic analysis (referred to collectively as the "C&D economic analysis") for the final rule. EPA's Environmental Assessment provides the framework for the monetized benefits analysis. See the complete set of supporting documents for additional information on the environmental impacts, social costs, economic impact analysis, and benefit analyses.

The C&D economic analysis, covering subsectors that disturb land (NAICS 236 and 237), uses information from, and builds upon, the 2002 final rule (67 FR 42644; June 24, 2002), the 2004 withdrawal of the final rule (69 FR 22472; April 26, 2004), and the 2008 proposed rule (73 FR 72562). In addition to CWA requirements, EPA has followed OMB guidance on the preparation of the economic analyses for Federal regulations to comply with Executive Order 12866. See Section XX.A of today's notice.

B. Description of Economic Activity

The construction sector is a major component of the United States economy as measured by the gross domestic product (GDP), a measure of the output of goods and services produced domestically in one year by the U.S. economy. Historically, the construction sector has directly contributed about five percent to the GDP. Moreover, one indicator of the economic performance in this industry, housing starts, is also a "leading economic indicator," one of the indicators of overall economic performance for the U.S. economy. Several other economic indicators that originate in the construction industry include construction spending, new home sales, and home ownership.

During most of the 1990s, the construction sector experienced a period of relative prosperity along with the overall economy. Although cyclical, the number of housing starts increased from about 1.2 million in 1990 to almost 1.6 million in 2000, with annual cycles during this period. (U.S. Census Bureau, "Current Construction Reports, Series C20—Housing Starts," 2000, available at *http://www.census.gov/const/www*). At the beginning of the 21st century, the

economy began to slow relative to previous highs in the 1990s. This slower economic growth had a negative impact on construction starts for new commercial and industrial projects. Driven in part by low mortgage interest rates, consumer spending for new homes continued to remain strong through 2005. However, in 2006 the U.S. residential construction market began a rapid decline in activity that continued all the way through 2008. (Global Insights, "U.S. Economic Outlook; Executive Summary," January 2009). In June of 2009, the single-family housing market began to show signs of recovery, while multi-family construction is still in decline. Government spending increased in the first half of 2009, and is expected to accelerate in the near future as the bulk of the infrastructure projects, funded by the 2009 Stimulus bill, will begin in 2010 and 2011. Conversely, the outlook for nonresidential construction is poor as spending on new commercial and industrial properties is decreasing due to the current recession. Overall construction spending is expected to decline through the first quarter of 2010, as declines in private nonresidential and multi-family housing construction is predicted to outweigh the gains from infrastructure and single-family home construction. (Global Insight, "An Update on U.S. Construction Spending," August 2009.) However, overall construction spending is expected to return to positive growth by 2011 and continue this positive trend through 2014, approximately when this rule will be fully implemented in EPA and state NPDES permits. (Global Insight, "U.S. Economic Service," July, 2009.)

1. Industry Profile

The C&D point source category is comprised of sites engaged in construction activity, including clearing, grading and excavation operations. The projects that fall under this category are performed by business establishments (the Census Bureau uses the term "establishment" to mean a place of business; "Employer establishment" means an establishment with employees) that are involved in building construction (NAICS 236) as well as heavy and civil engineering construction (NAICS 237). As a starting point, Table XII–1 shows the number of business establishments whose projects are in the C&D point source category in 1992, 1997, and 2002. Only a portion of these establishments would be covered by the final regulation, because some of these establishments are house remodelers and others who build on sites with less than one acre of disturbed land each year. The NAICS classification system changed between the issuance of the 1997 and 2002 Economic Census.

Table XII–1 shows a sharp decline in the number of developers between 1992 and 1997. The decrease in the number of developers may have been a response to changes in tax laws and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 (Pub. L. 101–73, August 9, 1989) and the 1993 implementing regulations. The objective of FIRREA and the implementing regulations was to correct events and policies that led to a high rate of bankruptcies in the thrift industry in the late 1980s. The regulations changed lending practices by financial institutions, requiring a higher equity position for most projects, with lower loan-to-value ratios, and more documentation from developers and builders. (Kone, D. L. "Land Development 9th ed.," Home Builder Press of the National Association of Home Builders, Washington, DC 2000).

TABLE XII–1—NUMBER OF C&D INDUSTRY ESTABLISHMENTS, 1992, 1997, AND 2002, ECONOMIC CENSUS DATA

NAICS	Description	1992 (No.)	1997 (No.)	2002 (No.)	Change 92–97(%)	Change 97–02(%)
236	Construction of Buildings, except all other Heavy Construction[a].	168,407	191,101	211,629	13.50	10.70
237 except 2372	Heavy Construction, except Land Subdivision	37,180	42,554	49,433	14.50	16.20
2372	Land Subdivision	8,848	8,185	8,403	−7.50	2.70
Total		214,435	241,840	269,465	12.80	11.30

[a] In the 2002 NAICS classification framework, All Other Heavy Construction was assigned among NAICS 236, 237, and 238. To maintain relevant comparisons, 2002 All Other Heavy Construction data were reassigned back into NAICS 237 (Heavy Construction).
Figures do not necessarily add to totals due to rounding.
Source: U.S. Census Bureau (2005).

Building upon Table XII–1, Table XII–2 shows the number of firms that are expected to be covered under the C&D final regulation. Construction establishments are relatively permanent places of business where the usual business conducted is construction related. Construction firms are an aggregation of construction establishments owned by a parent company that share an annual payroll. EPA estimates that for approximately 99 percent of construction firms there is only one establishment, and those that do have more than one establishment tend to be in the highest revenue categories.

For Table XII–2, EPA subtracted out firms that are engaged in home remodeling (NAICS 236118) from the total of about 269,000 firms in 2002, as they would not be subject to the final regulations. The elimination of remodelers is based on the fact that remodeling and renovation activities generally disturb less than one acre of land, if at all. Thus, the total number of C&D firms would be 178,835.

EPA used data from the Economic Census and other sources to define an average housing density for the nation as a whole (average number of housing units per acre), then used this figure to identify firms to be excluded from regulation based on their likelihood of disturbing less than one acre on a per project basis. EPA believes that these estimates (of firms unaffected by the final options) are conservative, meaning that they potentially overestimate the actual number of firms that will be affected. First, while the regulatory threshold for NPDES regulation applies to each site, EPA excluded firms only if the estimated number of acres disturbed in a whole year falls below the regulatory threshold for needing permit coverage under the NPDES regulations. In addition, the analysis was not adjusted for the portion of a site that is potentially left undisturbed, such as open space and buffers. Furthermore, EPA assumes that all of the housing units built by a firm during a year are covered by NPDES stormwater permits, while in reality the firm could build houses on lots not covered by NPDES

permits. However, the Agency does not have information on the amount of houses that are built within subdivisions, rather than on discrete lots, by these firms.

Based upon these adjustments of the total number of firms, EPA believes there currently are about 81,655 firms that would be covered under the rule. However, the Agency has insufficient data to make any further adjustments to the population of developers and builders covered by the rule.

TABLE XII–2—NUMBER OF FIRMS COVERED BY THE CONSTRUCTION AND DEVELOPMENT FINAL REGULATIONS

NAICS	Industry sector	Firms	
		Number	Percent of total
2361	Residential Building Construction		
236115	New Single-family Housing Construction (except operative builder)	18,269	22
236116	New Multifamily Housing Construction (except operative builder)	2,148	3
236117	New Housing Operative Builder	16,040	20
2362	Nonresidential Building Construction		
236210	Industrial Building Construction	1,752	2
236220	Commercial and Institutional Building Construction	33,399	41
237	Heavy and Civil Engineering Construction		
237310	Highway, Street, and Bridge Construction	10,047	12
Total		81,655	

Source: Economic Analysis.

2. Consideration of Current Economic Conditions

EPA received numerous comments expressing concern regarding the effect the rule may have on the construction industry during the current economic downturn. Although, EPA considers the rule to be affordable even under the current adverse circumstances, EPA recognizes that full immediate implementation of the rule could be disruptive to the industry, and potentially slow the pace of the industry's return to normal levels of activity.

The construction industry is distinguishable from other industries in that it has a comparatively large number of firms, the majority of which are small, that operate on many sites, which are temporary and widely dispersed over a broad geographic area. EPA recognizes that these characteristics could pose potentially greater obstacles to mobilizing the necessary resources for compliance, than those normally faced by industries dealing with a new regulation. By phasing in the regulation starting with a smaller number of larger sites, EPA believes that this will minimize the chance of bottlenecks of resources, and reduce the start-up burden for firms as they plan for implementation and learn new techniques. When new methods or techniques are introduced into the production process and employees gain more experience with the technique it is common for there to be a corresponding increase in the efficiency of performing the new technique. This efficiency gain, often referred to as an experience or learning curve, is likely to occur with both the application of passive treatment systems and the monitoring of performance. The gradual phase-in of the regulation, gives the firms and groups such as industry trade associations time to disseminate information on how to meet requirements in the more cost-effective ways.

Construction is a keystone industry of the economy, comprising 10 percent of U.S. businesses and 6.6 percent of total employment. The steep decline in construction activity since 2006 is considered a major factor in precipitating the recent economic recession. However, the four-year phasing process is expected to give the industry sufficient time to experience several years of growth, before all rule requirements are in effect. In 2014, the year that all projects greater than 10 acres will need to comply with the numeric limit, the economic forecasting firm Global Insights predicts that the industry will experience its fifth consecutive year of positive growth. Forecasts of future activity are always uncertain and Global Insights has tried to provide baseline, positive and pessimistic predictions for several important economic indicators. Housing starts are a considered a key measure of industry health and they are estimated to steadily increase during the five years after promulgation. Table XII–3 shows that even the pessimistic forecast predicts sustained growth albeit at a slower pace.

TABLE XII–3—GLOBAL INSIGHT FIVE-YEAR FORECAST OF HOUSING STARTS

[Seasonally adjusted annual rate]

Year	2009	2010	2011	2012	2013	2014
Pessimistic Forecast (20% probability)	556,000	701,000	1,044,000	1,296,000	1,472,000	1,566,000
Baseline Forecast	556,000	865,000	1,294,000	1,563,000	1,659,000	1,665,000
Optimistic Forecast (20% probability)	556,000	1,096,000	1,542,000	1,785,000	1,882,000	1,886,000

Source: Global Insights, U.S. Economic Outlook, July 2009.

C. Method for Estimating Economic Impacts

EPA has conducted economic impact analyses to examine the economic achievability of each of the four ELG and NSPS options presented in this rule. The analyses used to assess economic achievability are based on conditions of both full implementation of the rule requirements and an estimate of normal business conditions. These normal business conditions reflect the long-term trend based on construction activity data from 1990 through 2008. For more information see the Chapter 4: Analysis Baseline of the Economic Analysis.

An important aspect of the economic impact analysis is an assessment of how incremental costs would be shared by developers and home builders, home buyers, and society. This method is called "cost pass-through" analysis or CPT analysis. Details of this method may be found in Chapter 6 of the Economic Analysis.

The economic analysis conducted for this rule also uses another method called partial equilibrium analysis that builds upon analytical models of the marketplace. These models are used to estimate the changes in market equilibrium that could occur as a result of the final regulation. In theory, incremental compliance costs would shift the market supply curve, lowering the supply of construction projects in the market place. This would increase the market price and lower the quantity of output, i.e., construction projects. If the demand schedule remains unchanged, the new market equilibrium would result in higher costs for finished construction and lower quantity of output. The market analysis is an important methodology for estimating the impacts of the options presented in today's notice.

The economic analysis also reflects comments in the October 2001 final report from the Small Business Advocacy Review (SBAR) Panel submitted to the EPA Administrator as part of the requirements under SBREFA. The SBAR Panel was convened as part of the 2002 rulemaking effort and EPA considers the information in the 2001 report to still be relevant to today's C&D final rule. EPA also voluntarily convened a SBAR Panel on September 10, 2008 in order to gather more information on the potential impacts of the rule on small businesses and held an outreach meeting with Small Entity Representative (SERs) on September 17, 2008. The current economic analysis contains changes to the initial economic analysis done for the proposed rule, which are based on SER comments and comments received during the proposed rule public comment period. A summary of the changes can be found in section VII.D.

EPA estimated the incremental compliance costs for the regulatory options using an engineering cost model that accounts for cost factors such as treatment costs, labor, materials, and operation and maintenance costs. Because some of the erosion and sediment controls considered have design requirements that take into account meteorological and soil conditions, EPA developed compliance costs that take into account regional differences. EPA also took into consideration the additional monitoring and reporting costs that would be incurred by construction permit holders.

EPA estimated both the incremental compliance costs and the economic impacts of each regulatory option at the project, firm, and industry (national) level. The economic impact analysis considered impacts on both the firms in the construction industry, and on consumers who purchase the homes, and buy or rent industrial buildings and commercial and office space. In the case of public works projects, such as roads, schools, and libraries, the economic impacts would accrue to the final consumers, who, in most circumstances, are the taxpaying residents of the community. The sections below summarize each modeling effort. Detailed information on the data, models, methods, and results of the economic impact analyses are available in the Economic Analysis.

1. Model Project Analysis

EPA estimated project-level costs and impacts for a series of model projects. The models vary by size (disturbed acres), duration, geography, and type of construction to establish the baseline conditions for factors that can directly influence compliance costs and firm impacts. Numerous comments by small business representatives and public comments received by the agency suggested that the approach to modeling projects used for the proposal did not sufficiently account for many of the project characteristics that could affect the feasibility and cost of compliance. Characteristics most often sighted were project size, duration, and geographic conditions. As a result, EPA refined the analysis to use a more refined set of model projects that includes 12 different size categories and 12 different duration categories. To account for how project type can affect control costs, EPA partitioned these categories between building and transportation projects to create 288 model project categories. These 288 different model projects were then combined with a set of geographic conditions unique to each state, based on a representative metropolitan area within the state. This resulted in 7,344 model projects (144×51) with distinct size, duration, type and geographic characteristics. EPA used these characteristics to determine what the likely compliance costs would be for each model project under each option considered.

Next EPA determined the frequency of occurrence for each of these 144 model projects within each state. This requires state level information on the distribution of construction projects by size, duration, and type. A comprehensive national data set with this information does not exist. However, this information can be derived for some states based on Notice of Intent (NOI) data. An NOI is submitted to a state permitting authority, by each owner or operator of the C&D site seeking coverage for their project under the state's construction general permit. The information required under an NOI varies from state to state, and state permitting authorities are not required to submit their NOI information to EPA. However, some states have voluntarily submitted their NOI data to the Agency. The Agency identified data sets from four states (California, New York, South Carolina, and South Dakota) containing detailed information on the type of project, the size of the disturbed area, and the period of active construction, which could be used to develop distributions of project size and duration for the residential, commercial & industrial building, and transportation sectors. The Agency used the distribution from each of these states to represent the typical distribution for the region of the country they are in. These four regions were delineated based on similar geography and demographic trends. Table XII–4 shows which representative distribution was assigned to each state. These distributions are then combined with state value of construction data, for each of the three sectors, and revenue per acre estimates to predict how many actual projects are represented by each of the 288 size/duration/type categories. Given the fact there is no comprehensive national data set with this information EPA believes this is a reasonable approach. For more information on this approach see the Technical Development Document.

TABLE XII–4—ASSIGNMENT OF REGIONALLY REPRESENTATIVE PROJECT DISTRIBUTIONS BASED ON NOI DATA FROM FOUR STATES

States with regionally representative NOI data	States assigned regionally representative project distribution
California	Arizona, Colorado, Nevada, New Mexico, Oregon, Texas, Utah, Washington.
New York	Connecticut, Delaware, Dist. of Columbia, Hawaii, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin.
South Carolina	Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Virginia, West Virginia.
South Dakota	Alaska, Idaho, Iowa, Kansas, Montana, Nebraska, North Dakota, Wyoming.

2. Model Firm Analysis

EPA analyzed the impacts of the regulations at the level of the firm by building financial models of representative construction firms. Model firms are broken out by seven revenue ranges for each of the six NAICS sectors aligning with the principal construction business segments expected to be affected by the regulation (See Table XII–2). These revenue ranges and sector breakouts are based on data reported by the Statistics of U.S. Business (SUSB) and the Economic Census. Within each business sector and revenue range model firms are further differentiated based on median, lower quartile, and upper quartile measures of baseline financial performance and condition (i.e., capital returns, profit margins, levels of debt and equity to capital, etc.). Firms in the upper quartile have better than normal financial metrics, while the metrics for firms in the lower quartile are worse than normal. Baseline financing costs (cost of debt and equity) was varied over revenue ranges, with firms in higher revenue ranges having access to more favorable terms. However, the financial data was not sufficiently disaggregated to allow financing terms to vary over the three quartiles. These model firms are used in combination with compliance cost estimates to examine the potential for financial stress, firm closures, employment effects, and increased barriers to the entrance of new firms to the industry. EPA did not base its analysis, as it has for many past ELGs, on actual firm-specific data because the Agency was not provided the time necessary by the district court order to survey the industry through an Information Collection Request and gather such data.

The financial statements for the model firms are constructed to capture two business condition cases for the firm-level analysis: General Business Conditions case that reflects the financial performance and condition of construction industry businesses during normal economic conditions; and Adverse Business Conditions case that is meant to reflect financial performance during weak economic conditions. The two business condition cases are differentiated by the baseline operating financial circumstances of the model firms as well as other important factors in firm financial performance, including cost of debt and equity capital.

a. Assigning Projects and Costs to Model Firms

For a given sector of construction activity, model projects are assigned to model firms based on the each model firm's capacity to perform projects. This capacity is measured in terms of annual acreage of construction and is determined by multiplying the firm's estimated revenue by an average acreage per million dollars of construction. For residential construction activity, the acreage per million dollars was derived from the Census Bureau's Census of Housing. For nonresidential construction activity, information on project acreage and estimated project value from Reed Construction Data is used to derive an average number of acres developed per million dollars of value (Reed Construction, March 2008; see DCN 51017). So for each construction sector within each state, model projects were systematically assigned to the firms with the most capacity for performing the work, until all projects and their associated costs had been assigned. For more information on the methodology for assigning projects to firms see Section 6.1 of the Economic Analysis.

EPA was then able to assess the impact of the annual compliance costs on key business ratios and other financial indicators. Specifically, EPA examined impacts on the following measures: (1) Costs to Revenue Ratio, (2) Pre-Tax Income to Total Assets Ratio, (3) Earnings before Interest and Taxes (EBIT) to Interest Ratio, and (4) change in business value. The first is a simple screening level measure which is used for measuring the impact on small entities. The second and third are financial measures reported by Risk Management Associates (RMA) for median, lower and upper quartiles by sector and business size that were used in constructing the baseline financial statements for the model firms. The change in business value measure is based on application of compliance costs to the model firm financial statements, both as the estimated absolute dollar change in value and the fraction of firms whose net business value becomes negative because of compliance outlays. The impacts of the compliance costs were examined by calculating the values of each ratio with and without the compliance costs.

b. Project-Level Cost Multiplier

EPA accounted for the additional costs incurred by firms for financing the compliance costs via debt and equity over the duration of the project. For the firm-level impact analysis, these financing costs are explicitly accounted for by each model firm's estimated cost of debt and cost of equity, and then by the duration of the individual projects that are assigned to it. However, for the housing affordability analysis, and the estimation of social costs, EPA does not go through the process of assigning projects to firms, so a project-level cost multiplier was developed. This multiplier represents how direct compliance costs translate into the change in the cost of the final product being constructed. To develop this multiplier, EPA created a baseline scenario that incorporated assumptions concerning the costs incurred and revenue earned at each stage of land development and construction. EPA has included the following three principal development stages in developing the project-level multiplier.

(1) *Land acquisition.* The starting point is usually acquisition of a parcel of land deemed suitable for the nature and scale of development envisioned. The developer-builder puts together the necessary financing to purchase the parcel.

(2) *Land development.* The developer-builder obtains all necessary site approvals and prepares the site for the construction phase of the project. Costs

incurred during this stage are divided among "soft" costs for architectural and engineering services, legal work, permits, fees, and testing, and "hard" costs such as land clearing, installing utilities and roads, and preparing foundations or pads. The result of this phase is a parcel with one or more finished lots ready for construction.

(3) *Construction.* The developer-builder undertakes the actual construction activity. A substantial portion of this work may be subcontracted out to specialty subcontractors (foundation, framing, roofing, plumbing, electrical, painting, etc.). In the case of a housing subdivision, marketing often begins prior to the start of this phase, hence, the developer-builder may also incur some marketing costs at this time.

The general approach used in establishing the baseline scenario is to assume normal returns on invested capital and normal operating profit margins to arrive at the sales price for the final product (for example, completed new single-family homes in a residential housing complex, or office space in a new office park). This multiplier was then used to adjust the compliance cost estimates used for the housing affordability analysis and the social cost analysis.

c. Cost Pass-Through

EPA analyzed the impact of today's final rule by adding in the regulatory costs at the appropriate stage of the project life cycle. An important consideration for assessing who ultimately bears the financial burden of a new regulation is the ability of the regulated entity to pass the incremental costs of the rule on to its customers. If the developer-builder can pass all of its costs through to the buyer, the impact of the rule on developer-builders is negligible and the buyer bears all the impact. Conversely, if they are unable to pass any of the cost to buyers through higher prices, then they must assume the entire cost. For the economic impact analysis EPA uses three pass-through cases: zero cost pass-through; full cost pass-through; and partial cost pass-through (85% for residential and 71% for non-residential).

Under the first case, the zero (0%) cost pass-through assumption, the incremental regulatory costs are assumed to accrue entirely to the builder-developer, and appear as a reduction in per-project profits. The sale price of the constructed unit and surrounding lot remains the same as the asking price in the baseline. Using the full (100%) cost pass-through assumption, all incremental regulatory costs are passed through to end consumers. Under this approach, the compliance costs are also adjusted to reflect the developer's cost of debt, equity, and overhead. Consumers experience the impact of the final regulatory options in the form of a higher price for each new building or housing unit. For the partial cost pass-through case, firms are assumed to pass on part of the compliance outlay to other parties. For the partial cost pass-through case, EPA assumes a cost pass-through rate of 85% for residential sectors and 71% for non-residential and non-building sectors. This is the expected average long-term level of cost pass-through based on observed response of market supply and demand to changes in prices for new construction. For more on the method used for determining the level of cost pass-through see Section 8.2 of the Economic Analysis, Analysis of Social Cost of the Economic Analysis. When a sector is stressed, cost pass-through will tend to be below this long-term average (i.e., more costs being borne by builders). Conversely, when a sector is booming, most costs are likely to be passed through.

Information in the record indicates that builders do pass through much of the regulatory costs to customers. This is supported by the academic literature and industry publications. However, the financial impact analysis also calculates results under the two bounding cases, no cost pass-through for firms and full cost pass-through for customers, to assess the ability of these groups to absorb the impact of the regulation under a worst case scenario. The two bounding cases also provide an approximation of the sensitivity of impact estimates to the partial cost pass-through assumptions used for the primary case.

EPA notes that under certain conditions developers might also attempt to pass regulatory costs back to land sellers. For example, in a depressed market, builders may argue successfully that a regulatory cost increase would make a particular project unprofitable unless the land costs can be reduced. If the land seller is convinced that a residential subdivision project would not proceed, they may be willing to accept a lower price for undeveloped land. The ability of developers to pass such costs back would likely depend on the sophistication of the land owner, their experience in land development projects, knowledge of the local real estate market, and, in particular, their understanding of the regulations and their likely cost. While evidence of cost pass-back to land owners exists for fixed and readily identifiable regulatory costs such as development impact fees, it is unclear whether a builder's claim that costs would be higher due to construction site control regulations would induce land owners to make concessions.

3. Housing Market Impacts

EPA developed models to assess the potential impacts of the regulations on the national housing market. Buyers of new nonresidential properties will also be impacted as costs are passed through to them. However, they account for a minority of the construction projects considered and EPA assumes that this group of customers is not as vulnerable to changes in prices as are households in the market for new homes. Therefore, impacts to purchasers of new nonresidential construction sites were not highlighted as part of the financial impact assessment and are accounted for on a more general basis as part of the analysis of impacts on the national economy.

To analyze the impacts of compliance costs on housing affordability, EPA estimated the level of income that would be necessary to purchase both the median and lower quartile priced new home without the final regulation, and the change in income needed to purchase the median and lower quartile priced new home under each of the regulatory options. To assess how low-income home purchasers might be affected, EPA also looked at the change in income needed for a $100,000 priced home. The Agency then used income distribution data to estimate the change in the number of households that would qualify to purchase the median, lower quartile, and $100,000 priced new home under each of the regulatory options. In this way, EPA attempted to estimate the number of households that may not be able to afford the exact same new home they could under baseline conditions. The housing market analysis was performed at the level of the metropolitan statistical area (MSA) to account for regional differences in housing prices and income. The housing market analysis uses the full cost pass-through assumption, to estimate the worst-case impacts on new single-family home buyers.

When assessing the impact of the rule on housing affordability, EPA acknowledges that even those buyers who are able to afford the same newly built home at the new price may still experience an impact. Many households would continue to qualify to purchase (or rent) a housing unit of approximately the same price (or rent)

as before the C&D regulation, but might instead experience a reduction in some desirable housing attributes.

4. Impacts on the National Economy

The market model generates an estimate of the change in the total value of construction produced by the industry, i.e., industry output. Two effects of the regulation are acting on the market value of construction output. First, the cost of construction activity increases, leading to a price rise and an increase in market value of final projects. Second, the quantity of houses sold is reduced because of the higher price due to compliance costs. The net effect on market value may be either positive or negative, depending on whether the elasticity of demand for housing is less than or greater than 1. There are also secondary impacts in other markets, caused by the shift in consumer spending, necessitated by the increased housing costs, from other goods to housing.

Construction markets vary in the level of activity, structure of the industry, and ultimately cost pass-through potential, from state-to-state and region-to-region. The modeling approach used for the national impact analysis captures such regional variation in the impacts of the final regulatory options by estimating partial equilibrium models at the state level for four major building construction sectors (single-family, multi-family, commercial, and industrial). EPA assumes that all costs for transportation projects are passed through to governmental entities, and therefore there is no reduction in overall construction activity in the transportation sector. The analysis of state- and national-level economic impacts is based on estimating changes to economic output, employment, and welfare measures that result from the estimated baseline market equilibrium to the estimated post-compliance market equilibrium for each construction sector in each state.

A partial equilibrium analysis assumes that the final regulation will only directly affect a single industry; in this case, the four major construction sectors that were considered. Holding other industries "constant" in this way is generally appropriate since the compliance costs of the final regulatory options are expected to result in only marginal changes in prices and quantities and the rule does not directly affect the other industries (HUD, 2006; see DCN 52105).

For the partial equilibrium analysis, EPA uses estimated elasticities of market supply and demand to calculate the impact of incremental costs on the supply curve and, thus, on prices and quantities of construction products under post-compliance conditions.

Economic impacts in the directly affected construction industry can trigger further shifts in output and employment losses in the set of broader U.S. industrial sectors as these changes pass through the economy. The U.S. Department of Commerce uses input-output techniques to derive "multipliers" which indicate, for a given change in one industry's output, how output and employment in the whole U.S. economy will respond. EPA has applied the multipliers from the Regional Input-Output Modeling System, version 2 (RIMS II) to the change in output estimated from the market model to estimate some of the anticipated impacts on national output and employment.

D. Results

1. Project-Level Impacts

For most industries the closure of existing facilities and impediments to the opening of new facilities are a good indication of the impact of a regulation on overall industry activity. However, for the construction industry, the permitted activity is a temporary project rather than ongoing operations at a permanent facility. This is an important distinction, in that it provides construction firms with greater flexibility in how they respond to the rule. Not only can they elect to use one or more technologies to ensure compliance with the rule they can also choose to modify the dimensions and timing of the project to further minimize the effects of the rule on project profitability. Potential projects that are not profitable after considering compliance costs will either be modified to avoid or lessen compliance costs, or they will not be performed. Although EPA cannot predict the number or characteristics of future projects that may not occur due to today's rule, the agency has estimated the percent reduction in total construction activity resulting from the rule, expressed in terms of acreage. Under Option 4 the reduced level of construction activity is 231 acres or 0.03% of the total estimated level of activity. EPA does expect the rule to have an effect on overall project characteristics by providing an incentive to minimize disturbed areas, disturb them for shorter durations, and possibly separating the activity into more phases so that fewer acres are disturbed at any one time.

2. Firm-Level Impacts

EPA has estimated the economic impacts of the final rule at the firm level by estimating the traditional factors considered by EPA under the CWA in determining economic achievability: the number of firm closures, and the number of lost jobs. Since in-scope firms are predominantly small businesses EPA also thought it informative to consider the effects on firm profitability, which is typically considered as part of the RFA analysis. EPA also considered it informative to assess the impact of the rule on the financial health of firms. The construction industry is highly reliant on raising capital to fund projects. A firm's ability to raise capital is based in large part on its credit worthiness and the productivity of its assets. Both of these factors can be affected by an increase in compliance costs. Difficulty raising capital resulting from increased costs may not cause a firm to close but it may cause its business to grow more slowly or actually contract.

The economic impact analysis at the firm level looks at two cases. The first, which is the worst-case scenario, assumes that none of the incremental costs would be passed through to the final consumer, i.e., zero cost pass-through. The second, which is the primary analysis case, considered pass-through. The Agency examined the economic achievability of options assuming zero-pass through, because it presents the worst-case scenario (i.e., the largest impacts to the firm). The second case (partial cost pass-through) is the primary analysis case because EPA believes this is more reflective of typical circumstances based on EPA's review of the academic literature and its discussions with industry officials who indicate that under normal business conditions most costs are passed through to the final consumer and are not absorbed by firms in the industry.

EPA analyzed economic impacts at the firm level. The firm is the entity responsible for managing financial and economic information. Moreover, the firm is responsible for maintaining and monitoring financial accounts. For the C&D category, most of the business establishments, as defined by the Census Bureau, are firms. Likewise, a small number of establishments are entities within a larger firm. A small percentage of firms have multiple establishments and some firms are regional or national in scope.

Table XII–5 presents two economic indicators that measure impacts to firms. These indicators are presented using the partial cost pass-through case,

which represents the firms' expected ability to pass costs through to buyers, and the no cost pass-through case.

TABLE XII–5—FIRMS EXPECTED TO INCUR FINANCIAL STRESS

	Option 1	Option 2	Option 3	Option 4
Firms Incurring Deterioration in Financial Performance (Partial Cost Pass-through)				
Number Incurring Effect	31	1,181	5,398	169
% of All In-scope Firms	0.0%	1.4%	6.6%	0.2%
% of Firms Incurring Cost	0.1%	3.9%	17.7%	0.6%
Firms Incurring Deterioration in Financial Performance (No Cost Pass-through)				
Number Incurring Effect	123	2,448	18,461	534
% of All In-scope Firms	0.2%	3.0%	22.6%	0.7%
% of Firms Incurring Cost	0.4%	8.0%	60.5%	1.8%
Potential Closures Due to Negative Net Business Value (Partial Cost Pass-through)				
Number Incurring Effect	30	430	1,254	147
% of All In-scope Firms	0.0%	0.5%	1.5%	0.2%
% of Firms Incurring Cost	0.1%	1.4%	4.1%	0.5%
Number of Jobs	1,464	33,044	67,443	7,257
% of In-scope Firm Employees	0.1%	1.8%	3.6%	0.4%
Potential Closures Due to Negative Net Business Value (No Cost Pass-through)				
Number Incurring Effect	172	2,251	7,449	840
% of All In-scope Firms	0.2%	2.8%	9.1%	1.0%
% of Firms Incurring Cost	0.6%	7.4%	24.4%	2.8%
Number of Jobs	7,010	155,364	319,030	35,450
% of In-scope Firm Employees	0.4%	8.4%	17.2%	1.9%

Source: Economic Analysis.

The first measure estimates the potential decrease in the number of firms considered financially fit. Deterioration of firm financial performance is based on assessing the impact of costs on two financial measures (Pre-Tax Income/Total Assets and Earnings before Interest and Taxes/Interest). EPA estimated the fraction of firms in the various sector and revenue ranges whose financial indicators decline below the lower quartile for these two measures, as reported by Risk Management Associates (RMA). For each sector and revenue category, whichever of the two measures have the greatest decline is used to represent the impact on financial performance. For additional information on EPA's analysis of the change in financial position, see Section 6.2, Estimating the Change in Model Firm Financial Performance and Condition, from the Economic Analysis.

The second measure indicates the number of firms who are no longer profitable as a result of the rule. This is an indicator of the number of likely firm closures and is a commonly used measure of economic impacts under the CWA. These numbers represent the impact on firms with thin profit margins who are most vulnerable to impacts from cost increases, and they do not represent the effects of a reduction in the overall quantity of construction activity as a result of the C&D rule. Both phenomena can result in reduced activity and job losses, but they are two separate measures of impact that are not necessarily wholly additive or overlapping.

Construction is a highly competitive industry that is characterized by many small firms with a relatively high turnover and low barriers to entry. Firms routinely expand and contract their workforce in response to work load and as a result many workers laid off when a firm closes are rehired by new and other existing more financially healthy firms. Therefore, job losses due to firm closures are in many cases a temporary displacement of the workforce. By contrast, job losses due to market contraction result from an overall reduction in the volume of construction and not necessarily from the closure of a firm. Table XII–6 shows the estimated number of job losses within the construction industry resulting from a reduction in overall construction activity due to each of the options considered. These job losses can be considered a more lasting effect until market conditions change again.

TABLE XII–6—CHANGE IN EMPLOYMENT LEVELS DUE TO DECREASED INDUSTRY ACTIVITY, ASSUMING PARTIAL COST PASS-THROUGH

	Option 1	Option 2	Option 3	Option 4
Employment Effect from Reduced C&D Industry Output				
Estimated Permanent Reduction in Construction Jobs	83	3,370	5,802	560

Source: Economic Analysis.

For more information on job losses due to market contraction, see Chapter 9 Economy-wide Analysis in the Economic Analysis.

Table XII–7 presents one economic indicator, the relationship of compliance cost to firms' annual revenue. A comparison between costs and revenues is typically done prior to any consideration of the pass-through of costs to buyers. This comparison provides a simple measure of possible impacts on firm profitability and it is used under the RFA to determine if a rule has the potential to have a significant impact on a substantial number of small entities. Even under the more severe No Cost Pass-through case, firms whose costs exceed 1% of revenue are only 0.3 percent of the approximately 82 thousand in-scope firms for the selected Option 4. Furthermore, there are no firms whose costs exceed 3% of revenue for the selected Option 4.

TABLE XII–7—COST TO REVENUE

Option	Costs exceeding 1% revenue			Costs exceeding 3% revenue		
	Number of firms	Percent of firms in-scope	Percent of firms incurring costs	Number of firms	Percent of firms in-scope	Percent of firms incurring costs
Partial Cost Pass-through Case						
Option 1	0	0.0	0.0	0	0.0	0.0
Option 2	873	1.1	2.9	81	0.1	0.3
Option 3	3,573	4.4	11.7	225	0.3	0.7
Option 4	0	0.0	0.0	0	0.0	0.0
No Cost Pass-through Case						
Option 1	0	0.0	0.0	0	0.0	0.0
Option 2	4,717	5.8	15.5	2,399	2.9	7.9
Option 3	14,021	17.2	46.0	9,126	11.2	29.9
Option 4	276	0.3	0.9	0	0.0	0.0

Source: Economic Analysis.

The construction industry has historically been a relatively volatile sector, and is subject to wider swings of economic performance than the economy as a whole. EPA has used historical financial and census data for the construction industry to discern long-term trends within the market fluctuations. EPA based its primary economic analysis on data that reflects average long-term performance rather than a temporary high or low. The industry is currently experiencing a period of weakness that is likely to persist until residential markets work through the current inventory of unsold homes, credit markets improve, and the general economy returns to a better condition. As such, there will continue to be considerable uncertainty regarding the likely length and severity of the current slump in the construction industry. EPA realizes that the rule will be promulgated during this low period for the industry, and there may be concerns that additional compliance costs, associated with the rule, could have a greater than normal impact on construction firms and potentially slow the industry recovery. To some degree, this will be offset, by the four year phase in of the numeric limitation and monitoring requirements, which is part of today's rule. Additionally, the rule will not be fully implemented, with the associated costs to the industry, until 5 years after the effective date of this rule, sometime in 2015, when all EPA and state construction general permits have gone through their five year permit cycle and new permits are issued incorporating the requirements of this rule. See CWA section 402(b)(1)(B). The time period could be longer if it takes permitting authorities more time to issue revised permits. However, using historical census and financial data for the industry EPA identified periods of weakness for various industry sectors and used them to develop a secondary analysis that represents potential impacts of additional compliance costs during a period of adverse economic circumstances. Three key assumptions EPA used to represent adverse conditions for the industry were that there would be a contraction in overall market activity, firms would finance projects under less favorable terms and no costs incurred by the firm as a result of compliance would be passed through to the buyer. Table XII–8 below shows the results of the adverse analysis case. The number of firms experiencing impacts reflects the market contraction, so they are not directly comparable to the primary analysis case, since they represent differing levels of regulated activity. However, the adverse case analysis shows that the percentage of in-scope firms incurring financial stress is 0.5% of in-scope firms and the percentage of in-scope firms at risk of closure in the adverse case is 0.9%. However, even with the greater impacts seen under the adverse analysis case, the percentage of total firms experiencing financial hardship is very small under any of the metrics considered, with respect to the final option. Another important consideration for the adverse analysis case is that under the no-cost pass through assumption, there are no secondary impacts on small builders or affordability effects for buyers.

TABLE XII–8—ADVERSE IMPACT ANALYSIS RESULTS

Impact analysis concept	Option 1	Option 2	Option 3	Option 4
Costs Exceeding 1 Percent of Revenue:				
Number of Firms	0	2,037	6,960	105
% of Firms In-Scope	0.0%	3.5%	11.8%	0.2%

TABLE XII–8—ADVERSE IMPACT ANALYSIS RESULTS—Continued

Impact analysis concept	Option 1	Option 2	Option 3	Option 4
% of Firms Incurring Cost	0.0%	11.6%	39.8%	0.6%
Costs Exceeding 3 Percent of Revenue:				
Number of Firms	0	751	3,401	0
% of Firms In-Scope	0.0%	1.3%	5.8%	0.0%
% of Firms Incurring Cost	0.0%	4.3%	19.4%	0.0%
Firms Incurring Financial Stress:				
Number of Firms	71	3,163	8,168	315
% of Firms In-Scope	0.1%	5.4%	13.9%	0.5%
% of Firms Incurring Cost	0.4%	18.1%	46.7%	1.8%
Firms With Negative Business Value (Potential Closures):				
Number of Firms	180	1,041	2,966	547
% of Firms In-Scope	0.3%	1.8%	5.0%	0.9%
% of Firms Incurring Cost	1.0%	6.0%	17.0%	3.1%

Source: Economic Analysis.

Since EPA expects that the effluent guidelines requirements will be implemented over time as states revise their general permits (EPA expects full implementation within five years of the effective date of the final rule, in 2015), EPA has used macroeconomic forecasts of construction activity to assess when the industry is likely to return to its long-term trend. (Global Insight, "U.S. Economic Service," July, 2009) Based on these forecasts, EPA anticipates that the industry activity will have recovered to the long-term trend during the period when the rule is being fully implemented.

3. Impacts on Governments

EPA has analyzed the impacts of today's final rule on government entities. This analysis includes the cost to governments for compliance at government-owned construction project sites (construction-related). For construction-related costs, EPA assumed that 100 percent of the incremental compliance costs that contractors incur at government-owned construction sites are passed through to the government. EPA also estimated the additional administrative costs that government entities would incur for reviewing the additional monitoring reports associated with the turbidity monitoring requirements of Options 2, 3, and 4. Table XII–9 shows the costs that government entities are expected to incur at federal, state, and local levels.

TABLE XII–9—TOTAL COSTS BY GOVERNMENT UNIT

[Millions 2008 $]

	Option 1	Option 2	Option 3	Option 4
Compliance Costs				
Federal	$3.8	$87.1	$166.9	$17.7
State	8.1	178.1	323.0	35.3
Local	46.2	1,022.3	1,854.0	202.4
Administrative Costs				
Federal	0.0	0.0	0.0	0.0
State	0.0	2.2	6.2	6.2
Local	0.0	0.0	0.0	0.0
Total Costs				
Federal	3.8	87.1	166.9	17.7
State	8.1	180.3	329.2	41.5
Local	46.2	1,022.3	1,854.0	202.4
State Government Total Revenues	1,097,829	1,097,829	1,097,829	1,097,829
Total Costs as % of Total Revenues	0.00	0.02	0.03	0.00
Local Government Total Revenues	1,083,129	1,083,129	1,083,129	1,083,129
Total Costs as % of Total Revenues	0.00	0.09	0.17	0.02

Source: Economic Analysis.

The additional government costs associated with today's rule are not expected to have a significant impact on state and local governments as they account for less than a tenth of a percent of state government revenues and less than a tenth of a percent of estimated local government revenues. For additional information on the effect of the rule on government entities see the UMRA analysis in Chapter 14 of the Economic Analysis.

4. Community-Level Impacts

EPA has estimated community-level impacts based upon the incremental costs of the final rule at the household level. The household impacts are those that would affect local communities in terms of the costs of housing. EPA's analysis considers the impacts on the price of housing based on the increase/decrease in the price of three representative houses (median, lower quartile, and $100,000). Table XII–10 shows the change by selected option in the price per house. It is important to note that these costs would not apply to all new houses built in the U.S., but rather only to those houses that are part of construction projects that are subject to the given regulatory option. Each of the options are assumed to affect all new homes sales, which are approximately 12.6 percent of total annual home sales. This is a slight over estimate because it includes those new

houses built in projects less than 1 acre and those that are built in localities where erosion and sediment controls are more stringent than the ones being promulgated today.

The table also provides estimates of the expected change in monthly payments under each option for the median and lower quartile priced home. The monthly mortgage payments were calculated using the median and lower quartile priced house for each Metropolitan Statistical Area (MSA) in the country. For the MSA's, the weighted average median price for a home is $356,000, the 5th percentile is $117,000, and the 95th percentile is $498,000. For the lower quartile priced home, the weighted average is $251,000, the 5th percentile is $70,000, and the 95th percentile is $371,000. The U.S. Census does not report lot sizes for the upper or lower quartile. Instead the Census reports the median for all new single-family homes and the median for new single-family homes that are attached (townhomes). Housing census data indicates that lower-priced homes have a greater likelihood of having a smaller lot size (U.S. Census Characteristics of New Housing, 2006). To account for this factor, EPA performed the affordability analysis for the lower-quartile price home twice, using both the median lot size for all single family homes and the median lot size for attached single family homes. To assess the impacts on those households that were just able to afford a house at the low end of the housing market, EPA also included an analysis of the expected change in monthly payments for a new house valued at $100,000.

TABLE XII–10—CHANGE IN MONTHLY MORTGAGE PAYMENT FOR NEW SINGLE-FAMILY HOME (FULL COST PASS-THROUGH)

	Option 1	Option 2	Option 3	Option 4
New Single-Family Median Priced Home on Median Sized Lot				
Price Change New Single-Family Home on Median Sized Lot	$59	$2,231	$4,093	$415
Baseline Mortgage Payment ($/month)	$1,953	$1,953	$1,953	$1,953
New Mortgage Payment ($/month)	$1,954	$1,969	$1,982	$1,956
% Change	0.02%	0.80%	1.45%	0.14%
New Single-Family Lower Quartile Priced Home on Median Sized Lot				
Price Change New Single-Family Home on Median Sized Lot	$59	$2,231	$4,093	$415
Baseline Mortgage Payment ($/month)	$1,352	$1,352	$1,352	$1,352
New Mortgage Payment ($/month)	$1,352	$1,367	$1,380	$1,355
% Change	0.03%	1.15%	2.10%	0.21%
New Single-Family Lower Quartile Priced Home on Median Sized Attached Lot				
Price Change New Single-Family Home on Median Sized Attached Lot	$20	$745	$1,367	$139
Baseline Mortgage Payment ($/month)	$1,352	$1,352	$1,352	$1,352
New Mortgage Payment ($/month)	$1,352	$1,357	$1,361	$1,353
% Change	0.01%	0.38%	0.70%	0.07%
New Single-Family $100,000 Priced Home on Median Sized Lot for Attached Single-Family Home				
Price Change New Single-Family Home on Median Sized Attached Lot	$20	$745	$1,367	$139
Baseline Mortgage Payment ($/month)	$681	$681	$681	$681
New Mortgage Payment ($/month)	$681	$686	$691	$682
% Change	0.02%	0.76%	1.39%	0.14%

Source: Economic Analysis.

The increase in mortgage payments attributable to the final options compared to the estimated mortgage payment for the median price of a new house in the U.S., currently about $1,953, is a small percentage of the overall payment. For these costs, the average monthly mortgage payment would increase by $1, $16, $29, and $3 per month for Options 1, 2, 3, and 4, respectively. For the analysis, EPA assumes that buyers finance approximately 80% of the home purchase price using a 30-year conventional fixed rate mortgage with an interest rate of 7.39%.

EPA also estimated how the change in home prices would affect mortgage availability. EPA estimated that 1,249 prospective home purchasers seeking to buy a new median priced single-family home would be affected by the final rule, of which 354 would no longer qualify using a 29% housing payment-to-income ratio. At the lower end of the housing market, 518 prospective home purchasers seeking to buy a new $100,000 priced single-family attached home would be affected by the final rule, of which 246 would no longer qualify using a 29% housing payment-to-income ratio. However, these are only specific points along the spectrum of housing prices and therefore do not represent the total number of households that would have to make a different homebuying decision as a result of the rule. For more information on the affordability analysis see Section 7, Analysis of Single-Family Housing Affordability Impacts, of the Economic Analysis.

5. Foreign Trade Impacts

As part of its economic analysis, EPA has evaluated the potential for changes in U.S. trade (imports, exports) of construction-related goods and services. A significant component of the U.S. C&D category operates internationally, and, in addition, numerous foreign firms that participate in this category also operate in the U.S. EPA judged that the potential for U.S. construction firms to be differentially affected by the final rule is negligible. The final rule will be implemented at the project level, not the firm level, and will affect projects within the U.S. only. All firms undertaking such projects, domestic or

foreign, will be subject to the final rule. U.S. firms doing business outside the U.S. will not be differentially affected compared to foreign firms, nor will foreign firms doing business in the U.S.

This final rule could theoretically stimulate or depress demand for some construction-related goods. To the extent that the final rule acts to depress the overall construction market, demand for conventional construction-related products may decline. This decline may be offset by purchase of goods and services related to erosion and sediment control. Overall, EPA does not anticipate that any shifts in demand for such goods and services resulting from the rule would have a significant implication for U.S. and foreign trade.

6. Impacts on New Firms

The construction sector is a relatively fluid industry, as documented in the industry profile, with low barriers to entry and considerable entry and exit activity from year to year. As a result, the potential employment losses or capital idling effects of weakness in a specific firm are likely to be offset by changing levels of activity in other existing firms or entry of new firms into the local market. In addition, existing firms would need to meet the same requirement, and therefore would not obtain a competitive advantage over new entrants.

EPA conducted an analysis to assess the impacts on new firms that choose to enter the C&D point source category. This analysis uses a method called "barrier to entry" and is relevant to determining BADT for NSPS. EPA examined the ratio of compliance costs to current and total assets to determine if new market entrants could find it more difficult to assemble the capital requirements to start a project than would existing firms. The methodology is conservative, because it doesn't account for the fact that a firm would typically be expected to finance 20 percent of the incremental compliance costs from their own financial resource to obtain the loan, not the full amount as assumed here.

For the selected regulatory option (Option 4), the increase in financing requirement varies from approximately 0.0 percent to 4.1 percent of baseline assets depending on the firms size and business sectors. This comparison assumes that the new firm's compliance outlay would be financed and recorded on its balance sheet. To the extent that the compliance outlay is financed and recorded not on the firm's baseline sheet but as part of a separate project-based financing for each individual project, this comparison is likely to be overstated, perhaps substantially. EPA does not consider the increase in financing requirements to pose a significant barrier to entry for potential businesses and projects.

This analysis likely overstates the costs that will need to be financed by new entrants to the industry. For the economic analysis, industry firms were grouped into one of seven revenue ranges. Firms with higher revenues are considered to be more capable of performing larger projects. This assumption formed the basis for assigning model projects and their associated compliance costs to model firms. Under Option 4, compliance costs for projects under 10 acres are considerably less than they are for projects 10 acres and above. EPA believes that most new entrants will likely be small firms starting in one of the lower revenue ranges considered for the economic analysis, and so they will likely be performing projects less than 10 acres.

7. Social Costs

EPA's analysis of social costs for each option contains three cost components: (1) Firm compliance costs; (2) incremental increase in government administrative costs; and (3) deadweight loss (loss of economic efficiency in the construction market). When summed, these three cost categories comprise the total social costs for each option.

EPA has conducted a social cost analysis for each option. The Economic Analysis provides the complete social cost analysis for the final regulation. The firm-level estimate compliance cost, however, does not account for the potential affect of the final options on the quantity of construction activity/units performed in the various construction markets. Compliance costs for each final option have the effect of increasing builder/developer costs, which can cause a leftward shift in the market's supply curve. Part of the increased costs may raise the price of new housing, with the balance of increased costs being absorbed by the builder, depending on the relative elasticities of supply and demand. The resulting shift in market equilibrium may also reduce the quantity of construction units produced in a given market.

EPA has estimated a state-by-state linear partial equilibrium market model for each construction building sector to estimate this potential market effect on the quantity of output. The estimated change in the quantity of output produced in each construction market segment is then used to not only adjust the firm-level resource cost of compliance, but also to compute the economic value of the reduction in construction output, and estimate the total loss of consumer and producer surplus, referred to as the deadweight loss. Table XII–11 shows the change in cost due to the quantity effect (i.e. reduction in market activity), the dead weight loss, and their combined effect on total costs.

TABLE XII–11—TOTAL SOCIAL COST OF OPTIONS [MILLIONS OF $2008]

	Option 1	Option 2	Option 3	Option 4
Total Costs, Unadjusted for Quantity Effect	$176	$4,866	$9,090	$953
Change in Costs Due to Quantity Effect	0.01	10	31	0.29
Total Costs, Adjusted for Quantity Effect	176	4,856	9,059	952
Total Dead Weight Loss	0.0	5.0	15.5	0.15
Additional Government Administrative Costs	0.0	2.2	6.2	6.2
Total Social Cost of the Regulation	175.7	4,863.1	9,081.1	958.7

8. Small Business Impacts

Section XX.C of today's notice provides EPA's Regulatory Flexibility Analysis (RFA) analyzing the effects of the rule on small entities. For purposes of assessing the economic impacts of today's final rule on small entities, small entity is defined by the US Small Business Administration (SBA) size standards for small businesses and RFA default definitions for small governmental jurisdictions. The small entities regulated by this final rule are small land developers, small residential construction firms, small commercial, institutional, industrial and manufacturing building firms, and small heavy construction firms.

Table XII–12 shows the impacts of the final rule using the one percent and three percent revenue tests, a method used by EPA to estimate the impacts on small businesses for the regulatory options.

TABLE XII–12—SMALL BUSINESS ANALYSIS FOR OPTIONS, 1% AND 3% REVENUE TESTS

Option	1% revenue test		3% revenue test	
	Number of small firms	Percent of small firms	Number of small firms	Percent of small firms
Partial Cost Pass-through Case				
Option 1	0	0.0	0	0.0
Option 2	593	0.8	60	0.1
Option 3	3,008	3.9	187	0.2
Option 4	0	0.0	0	0.0
No Cost Pass-through Case				
Option 1	0	0.0	0	0.0
Option 2	3,454	4.5	1,843	2.4
Option 3	11,889	15.4	8,106	10.5
Option 4	230	0.3	0	0.0

Source: Economic Analysis.

Under the No Cost Pass-through case, Table XII–12 shows that for the selected option (Option 4), less than a thousand small firms would be likely to incur direct costs exceeding one percent of revenue, which accounts for less than one percent of the approximately 78 thousand small in-scope firms. Therefore, EPA does not consider the selected option to have the potential to cause a significant economic impact on a substantial number of small entities. EPA acknowledges that additional small builders may experience secondary impacts in the form of higher lot prices as larger developers attempt to pass some of their compliance costs through to them. The ability of large developers to pass-through costs to builders will vary based on market conditions in the same manner that the pass-through rate to the purchaser of the finished construction can vary. Additionally, as noted above, some of these small builders may also be copermittees who are required to be in compliance with these standards. To the extent they are copermittees, they are not accounted for in the firms incurring costs. However, all costs have been attributed to firms. Allocating costs over a broader number of firms may or may not increase the estimated impacts, but spreads the costs over a larger number of firms.

XIII. Cost-Effectiveness Analysis

For many effluent limitations guidelines, EPA performs a cost-effectiveness (C–E) analysis using toxic-weighted pound equivalents. The C–E analysis is useful for describing the relative efficiency of different technologies. The pollutant removals estimated for today's final rule are all based on sediment and sediment bound nutrients. While EPA expects that today's rule would also result in a significant reduction of other pollutants associated with sediment at construction sites, such as turbidity, metals, organics, oil and grease, pesticides and herbicides, the Agency has not quantified these reductions. The Agency does not have a methodology for converting sediment, measured as TSS or turbidity, into toxic-weighted pound equivalents for a C–E analysis. Instead, EPA compared the cost of each regulatory option to the pounds of sediment removed. This unweighted pollutant removal analysis is meaningful because it allows EPA to compare the cost effectiveness of one option against another, and to other sediment reduction efforts. Table XIII–1 shows a comparison of the cost-effectiveness of the options for controlling sediment discharges. Details on the estimates of sediment reductions can be found in Section XV.B.

TABLE XIII–1—COST-EFFECTIVENESS OF OPTIONS

	Option 1	Option 2	Option 3	Option 4
Compliance Cost (millions 2008$)	$176	$4,866	$9,090	$953
Sediment Removed (million lbs/yr)	1,743	3,616	4,507	3,971
Cost per Pound Removed ($/lb)	0.10	1.35	2.02	0.24

Source: Economic Analysis.

XIV. Non-Water Quality Environmental Impacts

Under sections 304(b) and 306(b) of the CWA, EPA is to consider the "non-water quality environmental impacts" (NWQEI) when promulgating ELGs and NSPSs. EPA used various methods to estimate the NWQEI for each of the options considered for today's final rule.

A. Air Pollution

EPA estimates that today's final rule would have no significant effect on air pollution because the final rule would not significantly alter the use of heavy equipment at construction sites. Accordingly, the levels of exhaust emissions from diesel-powered heavy construction equipment and fugitive dust emissions generated by construction activities would not change substantially from current conditions as a result of the final rule. The final rule, which relies on the use of passive treatment, typically does not utilize large diesel-powered or gasoline pumps. The only anticipated use of pumps would be due to the use of small metering pumps to introduce polymer in certain situations. These pumps

would only use a trivial amount of energy and would produce only a trivial amount of air emissions. On certain sites, it may be necessary to remove accumulated sediment from basins and traps. In these cases, construction equipment may need to periodically remove accumulated sediment. In these cases, additional emissions due to construction equipment may occur. EPA estimates that the final rule will result in the removal of approximately 1,986,000 tons of sediment annually. EPA estimates that increased emissions from construction equipment to remove this quantity of sediment would be approximately 0.0009 percent of current industry emissions. Table XIV–1 shows the expected emissions due to the final rule.

TABLE XIV–1—AIR EMISSIONS DUE TO FINAL RULE

Parameter	Emissions (pounds/year)
Reactive organic gases	4,707
Carbon monoxide	15,335
Nitrogen oxides	43,970
Sulfuric oxides	45
Particulate matter	1,809
Carbon dioxide	4,167,800
Methane	424

B. Solid Waste Generation

Generation of solid waste could be affected under today's final rule because of the large volumes of sediment containing polymers or other chemicals that may accumulate in sediment basins and traps and behind check dams and other sediment control structures. Where permittees are using polymers or other chemicals to treat stormwater, then sediment accumulated in sediment basins, traps or in drainage channels may need to be handled as solid waste, depending on the nature of the chemical used. However, most permittees using chemical additives are expected to select polymers that would enable the operator to apply solids (i.e., sediment) on-site as fill material to avoid the transportation and disposal costs associated with hauling off-site.

C. Energy Usage

The consumption of energy as a result of today's final rule is not expected to be significant because the operations that currently consume energy (both direct fossil fuel use and electricity) will not be changing to any substantial degree during land disturbance. PTS utilize little or no energy, hence no significant increase in fuel consumption by the industry is anticipated. However, removal of accumulated sediment would require use of construction equipment, which would increase diesel fuel and gasoline consumption by the industry. However the additional fuel consumption for these activities is expected to be small compared to current consumption for this industry. EPA estimates that gasoline and diesel fuel consumption due sediment removal would be approximately 76,000 gallons per year as a result of the final rule. This represents an increase in fuel usage by the industry of approximately 0.0009 percent over current usage, which was estimated at approximately 8.3 billion gallons per year in 2002 (2002 Economic Census, U.S. Census Bureau). In addition, polymers such as polyacrylamide are produced from petroleum, so additional polyacrylamide usage to treat construction site stormwater discharges would result in increased petroleum consumption. However, usage on construction sites is not expected to significantly increase demand for acrylamide. U.S. acrylamide demand in 2001 was estimated to be approximately 253 million pounds, and additional usage on construction sites would be approximately 4.56 million pounds per year if all discharges from all regulated sites were to use PAM at a dosage of 2 mg/L. Therefore, additional petroleum and energy consumption due to PAM production and usage is expected to be small. See section 11 of the TDD for additional discussion.

XV. Environmental Assessment

A. Surface Water Impacts From Discharges Associated With Construction Activity

In its Environmental Assessment (see "Supporting Documentation"), EPA evaluated environmental impacts from stormwater discharges associated with construction activity.

As discussed in Section VIII, stormwater discharges associated with construction activity have been documented to increase the loadings of several pollutants to receiving surface waters. The most prominent and widespread pollutant discharges from construction sites are turbidity and sediment. Discharges of metals, nutrients, and petroleum hydrocarbons have also been documented. Other pollutants discharged from construction sites include polycyclic aromatic hydrocarbons (PAHs) and other toxic organic compounds.

Pollutants other than sediment and turbidity derive from construction equipment and materials, natural soil constituents, and contamination existing prior to the start of construction activity at a site. Construction activities mobilize sediments and other pollutants by disturbing soil and altering stormwater discharge quantity and patterns during precipitation events and from exposure of rainfall and runoff to construction materials. Excavation dewatering and irrigation of revegetation areas, if not properly managed, can mobilize pollutants during dry weather.

Surface water effects from construction site discharges include physical, chemical and biological changes. Physical and chemical changes include modified stream flow and elevated levels of turbidity, suspended solids and other pollutants. Biological changes include reduced organism abundance, modified species composition, and reduced species diversity.

Sediment and turbidity are the primary pollutants in discharges associated with construction activity and are also significant sources of water quality impairment. Nitrogen and phosphorus, also present in construction site discharges, contribute significantly to water quality impairment as well. EPA's *Wadeable Streams Assessment* (2006) is a statistical survey of the smaller perennial streams and rivers that comprise 90 percent of all perennial stream miles in the coterminous United States. Excess nitrogen, phosphorus, and streambed sedimentation are among the most widespread stressors examined in the survey. According to the survey, 25 percent of streams have "poor" streambed sediment condition, 31 percent have "poor" phosphorus condition, and 32 percent have "poor" nitrogen condition relative to reference streams. The risk of having poor biological condition was two times greater for streams scoring "poor" for nutrient or streambed sediment condition than for streams that scored "good."

In addition, EPA's Assessment TMDL Tracking and Implementation System (ATTAINS) provides information on water quality conditions reported by the states to EPA under Sections 305(b) and 303(d) of the Clean Water Act. According to ATTAINS (as of September 17, 2009), turbidity contributes to impairment of 26,278 miles of assessed rivers and streams, 1,008,276 acres of assessed lakes, and reservoirs, and 240 square miles of assessed bays and estuaries. The total area of impaired surface waters due to turbidity is probably underestimated due to the low percentage of surface waters that have been assessed. See the Environmental Assessment for

additional information on the *Wadeable Streams Assessment* and ATTAINS.

Discharges from construction sites impair or place additional stress on already impaired surface waters. Multiple states have identified construction activity as a source of impairment for surface waters within their jurisdiction.

Ecological impacts from sediment and turbidity discharges to surface waters can be acute or chronic and vary in severity depending on the quantity of sediment and turbidity discharged, the nature of the receiving waterbody and aquatic community, and the length of time over which discharges take place. Sediment and turbidity can depress aquatic organism growth, reproduction, and survival, leading to declines in organism abundance and changes in community species composition. Threatened and Endangered (T&E) and other special status species are particularly susceptible to adverse habitat impacts. According to the United States Fish and Wildlife Service, increased sedimentation is one of the main contributors to the demise of some fish, plants, and invertebrates.

There are numerous ways in which sediment and turbidity affect aquatic communities. Sediment deposition on waterbody beds can bury benthic communities, smothering fish eggs and other benthic organisms and severing connections to organisms in the water column. Sedimentation also modifies some benthic habitats by filling crevices and burying hard substrates, making recolonization by the previously existing community difficult unless the sediment is removed.

In the water column, elevated turbidity levels block light needed for photosynthesis by submerged aquatic vegetation (SAV), resulting in its reduced growth or death. Because SAV is a primary producer depended upon by many other organisms in aquatic ecosystems, its loss or reduction can create a cascade of impacts through aquatic communities, lowering community health and productivity. Increased turbidity also impairs the ability of visual predators (e.g., many fish species) to forage successfully. Increased sediment concentrations in the water column can impair fish gill function, reducing the ability of fish to breathe. These and other processes by which sediment and turbidity discharges impair aquatic ecosystems are discussed in more detail in the Environmental Assessment.

Increased sediment and turbidity levels in surface waters also adversely affect direct human uses of water resources. These uses include navigation channels, reservoirs, drinking water supply, industrial process water supply, agricultural water supply, and recreational use. Property values also depend in part on the quality of nearby surface waters, though these may reflect the values already discussed and not necessarily represent a separate benefit.

Sediment deposition on riverbeds and in harbors can fill and impede use of navigable channels. Between 1995 and 2008, the U.S. Army Corps of Engineers (USACE) funded nearly 3,400 dredging projects at a cost of more than $9 billion (2008 dollars) to remove more than 2.6 billion cubic yards of sediment from U.S. navigable waters (United States Army Corps of Engineers Dredging Database 2009). Reservoirs and lakes serve a variety of functions, including drinking water storage, hydropower supply, flood control, and recreation. Sediment deposition on reservoir and lake beds reduces their capacity to serve these functions. An increase in sedimentation rate reduces the useful life of these waters unless measures are taken to reclaim their capacity. In waters serving as a drinking water source, elevated turbidity, suspended sediment, and other pollutants degrade water quality, and may require increased treatment levels.

Sediment can also have negative effects on industrial activities. Suspended sediment increases the rate at which hydraulic equipment, pumps, and other equipment wear out, causing accelerated depreciation of capital equipment. Sediment can also clog water intakes at power plants and other industrial facilities and drinking water intakes.

Elevated levels of sediment and other pollutants in irrigation water used for agriculture can harm crops and reduce agricultural productivity. Suspended sediment can form a crust over a field, reducing water absorption, inhibiting soil aeration, and preventing emergence of seedlings. Sediment can also coat plant leaves, inhibiting plant growth and reducing crop value and marketability. Other pollutants can damage soil quality.

Sediment deposition in river channels, ditches, stormwater basins and culverts reduces their capacity and can increase flood levels and frequency, increasing the level of adjoining property damage from flooding. Sediment and turbidity can degrade surface water appearance, lowering property values near impacted surface waters and the desirability of surface waters for recreational activities such as boating, fishing, and swimming.

Sediment and turbidity are the primary pollutants known to be associated with construction activity, but as stated earlier in this section, other pollutants such as nitrogen, phosphorus and metals are also discharged from construction sites. These pollutants can also harm aquatic ecosystems. Additional qualitative information on the environmental impacts associated with all pollutants from construction sites is provided in the Environmental Assessment. The remaining discussion in this section describes EPA's quantitative analysis of discharge levels and water quality impacts associated with sediment, nitrogen, and phosphorus from construction sites.

B. Quantification of Sediment Discharges Associated With Construction Activity

EPA used a model project approach to estimate baseline sediment loads and to estimate loading reductions for the C&D industry under the regulatory options evaluated. EPA used RUSLE to estimate loads and load reductions at the RF1 scale. This approach consisted of the following steps:

- Developing a series of model projects of differing sizes, durations and types based on an analysis of NOI data;
- Determining RF1-level estimates for RUSLE and hydrologic parameters using national GIS data layers, supplemented with BPJ estimates of parameters for which data were not available;
- Estimating baseline and option-specific estimates of sediment loads for each RF1. For Option 1, estimates were developed based on changes in the RUSLE practice factors and cover factors from baseline. For Options 2, 3 and 4, estimates were developed using a concentration approach for acres subject to turbidity limitations, and the Option 1 approach for acres not subject to turbidity limitations; and
- Summing RF1 loads to the national level.

For Options 2 and 3, EPA used a TSS value of 25 mg/L as an approximation of the level of sediment contained in discharges following ATS. For Option 4, EPA used a TSS value of 250 mg/L as an approximation of the level of sediment contained in discharges following the application of passive treatment. EPA calculated removals based on the change in concentration between baseline conditions and the respective level under the regulatory options. Under baseline conditions, modeled TSS concentrations for RF1s ranged from approximately 8 to 8,200 mg/L, with a median value of approximately 1,550 mg/L. Estimated

sediment loading reductions for the options can be found in Table XIII–1.

C. Quantification of Surface Water Quality Improvement From Reducing Discharges Associated With Construction and Development Activity

This section describes the methodology EPA used to quantitatively assess national water quality impacts from construction activity sediment, nitrogen, and phosphorus discharges and the water quality benefits expected from today's rule. This analysis has been revised since the proposed rule in that it expands the quantitative analysis of the water quality benefits beyond sediment reductions to include reductions in nitrogen and phosphorus discharges from construction sites. Other pollutant discharges associated with construction activity (e.g., toxic organic compounds and metals) also create water quality impacts, but the information available to EPA on their discharge is insufficient to quantitatively analyze their impacts. These pollutants are instead discussed qualitatively in the Environmental Assessment document.

The water quality impact analysis utilized estimates of sediment discharges from construction sites throughout the coterminous United States. EPA estimated discharges under current conditions as well as under the requirements set forth in today's rule.

To estimate improvements to water quality from reducing construction site discharges, EPA used SPARROW models. SPARROW is a statistically-based modeling approach developed by the United States Geological Survey that relates surface water quality component levels to attributes of contributing watersheds. EPA used national versions of the models that allow quantification of water quality in the RF1 surface water network which encompasses approximately 700,000 miles of the largest, perennial rivers and streams and associated lakes, reservoirs, and estuarine waters in the coterminous United States. The sediment, nitrogen, and phosphorus versions of SPARROW allowed EPA to estimate baseline concentrations of suspended sediment, nitrogen, and phosphorus, respectively, in these surface waters, as well as levels of sediment accumulation in reservoirs.

Following estimation of baseline water quality conditions, EPA used the SPARROW sediment model to quantify the reductions in surface water suspended sediment concentrations and sediment accumulation in reservoirs associated with reducing sediment discharges from construction sites under today's rule. To quantify water quality improvements from reducing nitrogen and phosphorus discharges, EPA used results from the SPARROW sediment, nitrogen, and phosphorus models' estimation of baseline water quality conditions to estimate watershed-level relationships between suspended sediment and nitrogen and phosphorus loading from land-related sources. EPA used these relationships to estimate the surface water reductions in nitrogen and phosphorus associated with surface water sediment reductions as estimated by the SPARROW sediment model for conditions under today's rule. Additional description of this analysis is provided in the Environmental Assessment.

For certain estuarine waters, EPA also used the Dissolved Concentration Potential (DCP) approach developed by the National Oceanic and Atmospheric Administration (NOAA) to estimate suspended sediment concentrations. This model estimates ambient concentrations of conserved contaminants that are subject to mixing and dilution when introduced to estuaries. EPA used the DCP approach for those estuarine waters for which available data on flow was insufficient to estimate suspended sediment concentrations. NOAA has provided DCP factors for most major estuaries in the coterminous United States. These factors allow estimation of estuarine TSS concentrations without detailed numerical simulation modeling. Additional description of this analysis is provided in the Environmental Assessment.

Construction activity in the United States is unevenly distributed among watersheds. It is highly concentrated in some areas and is sparse or absent in others. For this reason, EPA presents in this discussion the results of its water quality analysis for two different sets of watersheds. The first set includes all RF1 watersheds containing more than 1 acre of annual construction activity, or 93% of all construction acres. This set contains all RF1 watersheds for which EPA estimated reductions in construction site sediment discharges and encompasses approximately 412,000 RF1 surface water miles ("All"). The second set contains the 10 percent of RF1 watersheds in "All" with the highest number of construction acres ("Top 10%"). This set encompasses 58 percent of all construction activity and therefore reflects conditions associated with the majority of construction activity in the coterminous United States. This set encompasses approximately 64,000 RF1 surface water network miles.

EPA estimates that construction sites in "All" RF1 watersheds discharge approximately 5.2 billion pounds of sediment per year under current conditions. Construction discharges elevate suspended sediment, nitrogen, and phosphorus levels, on average, 2.4 mg/L, 0.02 mg/L, and 0.0060 mg/L, respectively, beyond what they would otherwise be in 412,000 RFI surface water miles. They also cause deposition of 1.7 million cubic yards of sediment in reservoirs each year.

The rule will reduce construction site sediment discharges from "All" RF1 watersheds by approximately 4 billion pounds per year. TSS, nitrogen, and phosphorus concentrations in affected surface waters are expected to decrease approximately 2 mg/L, 0.015 mg/L, and 0.0058 mg/L respectively, on average. Sediment deposition in reservoirs is expected to fall by more than 1.3 million cubic yards annually. In the "Top 10%" set of watersheds, TSS, nitrogen, and phosphorus levels are expected to decrease approximately 4 mg/L, 0.049 mg/L, and 0.024 mg/L respectively, on average. Average TSS, nitrogen, and phosphorus concentration reductions are greater for "Top 10%" watersheds because construction sites exert a stronger influence on water quality in these areas. Current median concentrations of TSS, nitrogen, and phosphorus in RF1 reaches receiving construction site discharges are 289 mg/L, 1.65 mg/L, and 0.25 mg/L, respectively.

Because surface waters transport pollutants downstream, water quality will also improve in additional reaches downstream of those reaches directly receiving construction site pollutants. EPA's analysis indicates that today's rule will improve water quality in more than 431,000 miles of surface waters, or approximately 69% of the more than 627,000 miles in the RF1 surface water network for the coterminous United States assessed in EPA's analysis.

The numbers above reflect average surface water conditions over very large geographic areas and long time scales. They do not convey the spatial and temporal variability in pollutant concentrations seen in actual surface waters. Construction sites are dispersed throughout the United States, but they comprise only approximately 0.04% of total land area in the coterminous United States on an annual basis. In addition, as described earlier in this section, construction acreage concentrates in a relatively small number of watersheds. It is notable that, despite their small land area, construction sites impact a large proportion of the nation's surface

waters. Temporally, most construction site discharges are driven by precipitation events and are therefore highly episodic. In-stream turbidity, TSS, nitrogen, phosphorus and other pollutant concentrations in surface waters deriving from construction site discharges are typically higher during and shortly after precipitation events and lower during periods in between precipitation events. For these reasons, the most highly visible impacts from construction sites are observed in surface waters immediately downstream of construction sites during and immediately following precipitation events. During these periods, suspended sediment levels can rise from several to hundreds of milligrams per liter above those observed immediately upstream of construction sites. Likewise, turbidity levels can rise from tens to hundreds of NTUs. With the cessation of precipitation and movement and dilution of pollutants as water flows downstream, suspended pollutant concentrations decline (deposited sediment and associated pollutants, however, can persist). EPA's quantification of water quality impacts from construction site discharges reflects an averaging of these discharge events both over time and over the 412,000 miles of surface waters directly impacted by construction site discharges in today's rule.

EPA did not attempt to quantify pollutant discharges from other construction site sources, such as discharges from dewatering activities, vehicle and equipment washing, and erosion and deposition by wind. Since these discharges may occur at any time during the construction project and are not necessarily tied to storm events, EPA expects that these discharges would influence receiving water quality during inter-event periods and that benefits would accrue if these discharges were reduced from baseline levels. EPA, however, lacked data and an appropriate methodology for quantifying the nature and extent of these potential discharges.

Estimates from EPA's national quantitative analysis of water quality impacts were used for a quantitative analysis of the economic benefits of today's rule. This analysis is discussed in Section XVI.

XVI. Benefit Analysis

EPA has assessed the potential benefits associated with the final rule by identifying various types of benefits that can result from reducing the level of turbidity, sediment and other pollutants being discharged from construction sites. Where possible, EPA has attempted to quantify and monetize benefits attributable to the regulatory options. Section III of the Environmental Impact and Benefits Assessment, describes in more detail the analytical framework for the benefits analysis.

A. Benefits Categories Estimated

Discharges of turbidity, sediment, nutrients, and other pollutants from construction activity can have a wide range of effects on down stream water resources. As discussed in Section XV, there are numerous potential impacts to local aquatic environments, but there are also consequences for human welfare, which are discussed here. Human activities and uses affected by construction discharge-related environmental changes include recreation, commercial fishing, public and private property values, navigation, and water supply and use. Sediments, nutrients, and other pollutants in discharges from C&D sites can also cause environmental changes that affect the non-use values (values that do not depend on use of the resource) that individuals have from knowing that environmental resources are in good condition. These existence services, sometimes described as "ecological benefits," are reflected under the Clean Water Act as aquatic life, wildlife, and habitat designated uses.

Stormwater control measures reduce the amount of sediment that reaches waterways from C&D sites. As sediment loads are reduced, TSS, nutrient, and turbidity levels in adjacent waters decline, which in turn increases the production of environmental services that people and industry value. These environmental services valued by industry and the public include: Recreation, public and private property ownership, navigation, water supply and use, and existence services. Table XVI–1 provides a summary of various water related activities and their associated environmental services potentially impacted by discharges of sediment from C&D sites.

TABLE XVI–1—SUMMARY OF BENEFITS FROM REDUCING SEDIMENT RUNOFF FROM CONSTRUCTION SITES

Activity	Environmental service potentially affected by runoff from construction sites	Benefits category
Recreation: —Outings —Boating —Swimming —Fishing	Aesthetics, water clarity, water safety, degree of sedimentation, weed growth, fish and shellfish populations.	Non-market direct use.
Commercial Fishing and Shellfishing	Fish and shellfish populations	Markets.
Property Ownership	Aesthetics, safety of property from flooding, property value.	Markets.
Water Conveyance and Supply: —Water conveyance —Water storage —Water treatment	Turbidity, degree of sedimentation	Avoided Costs.
Transportation	Degree of sedimentation	Avoided Costs.
Water Use: —Industrial —Municipal —Agricultural	Turbidity	Avoided Costs.
Knowledge (No Direct Uses)	Environmental health and ecosystem function	Non-market non-use value.

However, not all of the changes in these services can be readily quantified as it requires a thorough understanding of the relationship between changes in water pollutant loads and production of environmental services. This problem is exacerbated by the fact that both the pollutant source and load reductions are relatively small, sporadic, numerous,

and dispersed over a wide area when compared to more traditional sources of pollutants, such as a wastewater treatment plant. As a result of the difficulty in assessing changes in each environmental service associated with an activity listed in Table XVI–1, EPA chose to focus on two main categories of benefits: Avoided costs and non-market benefits. The specific categories of avoided costs considered were: reservoir dredging, navigable waterway dredging, and drinking water treatment and sludge disposal. Non-market benefits considered were improvements in recreational activities and existence value from improvements in the health of aquatic environments.

B. Quantification of Benefits

Reduced costs for water treatment, water storage, and navigational dredging are three benefit categories that EPA is using to estimate the benefits of the final rule. EPA used estimates of changes in sediment deposition and in-stream TSS concentrations from the SPARROW model runs to quantify the reduction in the amount of sediment that would need to be dredged from reservoirs and the reduction in the amount of TSS that must be removed from the source water used for the production of potable water. The SPARROW results provided these changes for each waterbody in the RF1 network (approximately 60,000 stream segments). This allowed EPA to associate these changes with data from the US Army Corps of Engineers on navigable waterways that are routinely dredged; EPA data on source water for drinking water treatment plants; and USGS data on the location of reservoirs used for hydroelectric power, flood control, a source for drinking water, and recreation.

SPARROW results also allowed for the estimated change in TSS and nutrient concentrations in the RF1 network to be mapped to a Water Quality Index (WQI). The index is used to map changes in pollutant parameters, such as TSS and nutrients, to effects on human uses and support for aquatic and terrestrial species habitat. Implementation of the WQI involves the transformation of parameter measurements into subindex values that express water quality conditions on a common scale of 0 to 100. For the pollutant TSS, a unique subindex curve was developed for each of the 85 Level III ecoregions using baseline TSS concentrations calculated in SPARROW at the RF1 reach-level. The SPARROW generated concentration change estimates for sediment and sediment-bound nutrients were used to measure improvement along the WQI for each RF1 watershed. Section 10.1.1 of the Environmental Assessment Document provides detail on the WQI index and its application to the benefits analysis for the C&D regulation. The WQI presents water quality by linking to suitability for various human uses, but does not in itself identify associated changes in human behavior. Behavioral changes and associated welfare effects are implied in the benefit transfer approach for measuring economic values. The use of benefit transfer allows the results from economic valuation studies in the published literature to be used to generate WTP estimates associated with changes in the WQI. For more on the benefit transfer approach see Appendix G Meta-Analysis Results from the Environmental Impact and Benefits Assessment.

The benefits analysis results are shown in Table XVI–2. The NMB_i terms are included to demonstrate that the monetized benefits represent an unknown portion of total benefits of the rule, and are likely to vary with the options.

TABLE XVI–2—ANNUAL BENEFITS (MILLION 2008 $) FOR OPTIONS

	Regulatory Options			
	Option 1	Option 2	Option 3	Option 4
Avoided Costs:				
Reservoir Dredging	$1.4	$2.9	$3.6	$3.2
Navigable Waterway Dredging	1.3	2.6	3.3	2.9
Drinking Water Treatment	1.2	1.8	2.1	1.8
Total Avoided Costs [a]	3.8	7.2	8.9	7.9
Welfare Improvements	210.3	352.9	413.4	361.0
Total Annual Benefits [a b]	214.1+NMB_1	360.1+NMB_2	422.3+NMB_3	368.9+NMB_4

[a] Totals may not add due to rounding.
[b] NMB_i are the non-monetized benefits of the ith Option.
Source: Economic Analysis; Environmental Assessment.

XVII. Benefit-Cost Comparison

EPA has conducted a comparison of monetized benefits to costs of the C&D effluent guidelines detailed in today's notice. The benefit-cost analysis may be found in the complete set of support documents. Sections XII, XV, and XVI of this notice provide additional details of the benefit-cost analysis. Table XVII–1 provides the results of the benefit-cost analysis. A discount rate of 3% was used to annualize costs and benefits.

TABLE XVII–1—TOTAL ANNUALIZED BENEFITS AND COSTS OF OPTIONS (YEAR 2008 $)

Option	Social costs (2008 $ millions per year)	Benefits [a] (2008 $ millions per year)
Option 1	$175.8	$214.1 + NMB_1
Option 2	4,863.1	$360.1 + NMB_2
Option 3	9,081.1	$422.3 + NMB_3
Option 4	958.7	$368.9 + NMB_4

[a] NMB_i are the non-monetized benefits of the i^{th} Option.
Source: Economic Analysis; Environmental Assessment.

XVIII. Approach To Determining Effluent Limitations and Standards

The same basic procedures apply to the calculation of all effluent limitations guidelines and standards for this industry, regardless of whether the technology basis is BAT or NSPS. For simplicity, the following discussion refers only to effluent limitations guidelines; however, the discussion also applies to new source performance standards. The numeric limitation is 280 NTU, expressed as a maximum daily discharge limitation. Chapter 6 of the TDD provides a detailed description of the data and methodology used to develop the long-term average,

variability factor, and limitation and standard for today's final rule.

A. Definitions

The limitation for turbidity, as presented in today's notice, is expressed as a maximum daily discharge limitation. Definitions provided in 40 CFR 122.2 state that the "maximum daily discharge limitation" is the "highest allowable 'daily discharge.'" Daily discharge is defined as the "'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling."

B. Percentile Basis for Limitations, Not Compliance

EPA promulgates limitations that sites are capable of complying with at all times by properly operating and maintaining their processes and treatment technologies. EPA established these limitations on the basis of percentiles estimated using data from sites with well-operated and controlled processes and treatment systems. However, because EPA uses a percentile basis, the issue of exceedances (i.e., values that exceed the limitations) or excursions is often raised in public comments on limitations. For example, comments often suggest that EPA include a provision that allows a facility to be considered in compliance with permit limitations if its discharge exceeds the specified daily average limitation one day out of 100. As explained in Section 6 of the TDD, the limitation was never intended to have the rigid probabilistic interpretation implied by such comments. The following discussion provides a brief overview of EPA's position on this issue.

EPA expects that all sites subject to the limitation will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because sites using well-designed and operated treatment systems have demonstrated that this can be done. Sites that are designed and operated to achieve the long-term average effluent levels used in developing the limitation should be capable of compliance with the limitation at all times, because the limitation incorporates an allowance for variability in effluent levels about the long-term average. The allowance for variability is based on control of treatment variability demonstrated in normal operations.

EPA recognizes that, as a result of the requirements in 40 CFR part 450, some dischargers may need to improve treatment systems, process controls, and/or treatment system operations in order to consistently meet the new effluent limitation and/or standard. As noted previously, however, given the fact that the promulgated limitation reflects an allowance for variability and the demonstrated ability of sites to achieve the LTA, the limitation is achievable.

XIX. Regulatory Implementation

A. Monitoring Requirements

EPA is requiring the monitoring of turbidity in stormwater discharges from C&D sites subject to the numeric limitation in order to determine whether the numeric limitation is being met. The NRC report highlighted that one of the weakest areas of the stormwater program is the lack of monitoring. NRC at 329. Until today, EPA has not required any monitoring requirements beyond visual inspections for discharges associated with construction activity, although some NPDES-authorized states (e.g., California, Georgia, Oregon, Vermont, and Washington) have imposed monitoring requirements on construction operators in their permits. See relevant state permit requirements in the rulemaking record (DCNs 42104, 42108–42111). Now that EPA is adopting a numeric effluent limitation for turbidity for certain construction sites, permits authorizing discharges associated with construction activity from those sites are required to include monitoring requirements in NPDES permits for discharges associated with construction activity. Pursuant to the NPDES regulations, the permit must specify the type, interval, and frequency of sampling "sufficient to yield data which are representative of the monitored activity" and must require monitoring for specific pollutants that are limited in the permit. 40 CFR 122.48(b); see also 122.44(j)(1)(i). While the final rule does not enumerate the specific requirements (i.e., frequency, location, etc.) regarding the monitoring of turbidity in discharges from construction sites EPA emphasizes that compliance monitoring is required of permittees and that pursuant to EPA's NPDES regulations permitting authorities must specify requirements and procedures in their NPDES permits for representative sampling to ensure effective monitoring.

While monitoring is routine in industrial discharge permits, EPA acknowledges that for most permitting authorities, including EPA; the inclusion of monitoring requirements in individual or general construction permits is new. EPA also recognizes that while it is appropriate to provide sufficient flexibility for permitting authorities to design monitoring protocols that are appropriate for their specific permits, given the particular circumstances in their jurisdiction, it will be important for EPA to provide additional guidance on monitoring of stormwater discharges from construction sites so that permitting authorities have a general sense of how to structure requirements that are consistent with today's rule. For that reason, EPA intends to provide monitoring guidance prior to the issuance of the next EPA CGP to provide a technical resource guide to permit writers in establishing monitoring requirements in their construction permits.

The following is a discussion of a number of significant issues implicated by the numeric turbidity limitation and the requirement to monitor discharges from certain construction activities:

Applicability of Numeric Turbidity Limitation and Monitoring Requirements: The turbidity limitation and monitoring requirements apply to construction activities that disturb 10 or more acres of total land area at one time. The 10-acre disturbance threshold includes non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale. Smaller construction activities occurring at the same time, but in separate and distinct areas of a project site, which together disturb 10 or more acres of land, are also required to meet the sampling requirements. This clarification is consistent with EPA's NPDES stormwater regulations, which require permits for smaller scale disturbances that are part of a common plan of development or sale. See definition of large and small construction activities at 40 CFR 122.26(b)(14)(x) and (15), respectively.

The numeric limitation and monitoring requirements only apply when the total disturbed area is 10 or more acres. Therefore, when stabilization of disturbed areas reduces the amount of total disturbances to less than 10 acres, the numeric limitation no longer applies and monitoring of discharges is no longer required. This provision creates an incentive for large sites to stabilize disturbed areas as quickly as possible, thereby reducing the turbidity in stormwater discharges from the site. This is also an incentive to phase construction activities so that less than 10 acres are disturbed at any one time. EPA recognizes that as construction activity progresses, less area of the construction site will consist of disturbed land. At present under the

EPA CGP, the Agency regulates stormwater discharges associated with construction activity until the owners or operators file a Notice of Termination to cease permit coverage. Often owners or operators must stabilize the construction site before a Notice of Termination is submitted to terminate permit coverage. Therefore, EPA is applying the numeric limitation to sites that disturb 10 or more acres at one time until such time as the site has stabilized disturbed areas bringing the total disturbance below 10 acres, recognizing that discharges may continue after this time. The non-numeric effluent limitations, at 40 CFR 450.21, of this rule would still apply to any continuing discharges. With this threshold, EPA expects that the turbidity limitation may not apply at some sites during some periods of construction activity when less than 10 acres are disturbed at one time. EPA has made this determination for various reasons (see section X.G) while still controlling the discharge of pollutants from C&D sites during the majority of land disturbing activities.

EPA emphasizes that the applicability of the turbidity limitation is tied to acres disturbed at one time, not to the ultimate amount of land disturbance on a site. Thus, the applicability of the numeric effluent limitation and monitoring based on a size threshold of disturbed land differs from the applicability provisions of the NPDES regulations at 40 CFR 122.26(b)(14) and (15) that determine whether discharges associated with construction activity need NPDES permit coverage. Under the 40 CFR 122.26 permit coverage is required for any site that will result in land disturbance of equal to or greater than one acre or will result in disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. For example, a construction site that ultimately disturbs over 1 acre at any point during the construction activity must obtain NPDES permit coverage, even if at all points during construction activity the total disturbed land area at one time is less than 1 acre. However, for purposes of the applicability of the numeric effluent limitation and monitoring requirement in the final rule a construction site could ultimately disturb 10 or more acres, but as long as that site does not disturb 10 or more acres *at one time*, monitoring and compliance with the turbidity limitation would not be required.

An example may help to illustrate how EPA will implement the 10-acre threshold trigger for requiring sampling.

Examples of when individual disturbances of less than 10 acres are required to sample:

- If construction activities as part of a large residential subdivision that disturb 5 acres of land in one lot, and, at the same time, 5 acres of land in another lot, and the two lots are not adjacent to one another, samples of the discharges from these sites would be required pursuant to 40 CFR 450.22(a). Sampling is required under this scenario because together the two land disturbances measure 10 or more acres, and they are considered part of the same common plan of development or sale. However, no discharge sampling would be required if the two construction projects under this same scenario disturb less than 10 acres of land total at the same time.
- Alternatively, if one of the 5-acre projects occurs at a different time than the other, such that at no time are 10 or more acres being disturbed at the same time, then sampling is not required for these activities. In the same way, if one of the 5-acre projects has achieved final stabilization in accordance with 40 CFR 450.21(b) by the time the other 5-acre project commences, then no sampling is required because the combined acreage of ground disturbance at one time is less than 10 acres.

Daily Maximum Limitation: EPA's numeric effluent limitation is a daily maximum limitation; meaning that permittees may sample the turbidity in their discharges multiple times over the course of a day and the average of all measurements may not exceed the limitation. During any given day, samples may be averaged to determine the average turbidity for the day. It is this average daily value that must be below the limitation specified in the rule. If one or more individual samples are above the limitation, but the average turbidity for the day is below the limitation, then discharges for that day are deemed to be in compliance with the limitation. This takes into consideration the variability of the discharge and allows higher levels of turbidity to be discharged temporarily, such as may occur during an intense period of rainfall. As explained previously, if a site has difficulty complying with the limitation on an ongoing basis, then the site should improve its controls, operations, and/or maintenance.

If the permitting authority samples the discharge, those samples may be averaged with the measurements taken by the permittee for the same discharge event. For example, if the permittee takes three samples and the permitting authority takes one sample, then these four samples may be averaged to determine the daily value. As another example, if the permitting authority takes a sample or samples, but the discharger did not sample, then the permitting authority can use its sample or samples for determining compliance.

Sampling Frequency: EPA is leaving the specific monitoring requirements to the discretion of each permitting authority, including such issues as the sampling frequency during any one discharge event and the number of discharge events that must be sampled. EPA would, however, discourage the practice of allowing the number of monitoring samples to vary arbitrarily merely to allow a site to achieve a desired average concentration, i.e., a value below the limitation that day. Additionally, as discussed above, EPA's NPDES regulations state that the permit must specify the type, interval, and frequency of sampling sufficient to yield data which are representative of the monitored activity. EPA expects that enforcement authorities would prefer, or even require, monitoring samples at some regular, pre-determined frequency. In general, EPA expects that, at a minimum, three samples per day will need to be collected at each discharge point while a discharge is occurring. In reviewing its data used as a basis for the limitation, EPA notes that 95 percent of daily values are based upon three or more samples per day which demonstrates the need for multiple samples. The recently-issued California Construction General Permit offers one method of ensuring that at least three samples are collected from the discharge event by requiring that turbidity samples be collected three times per day for the duration of the discharge event. See State Water Resources Control Board NPDES General Permit for Storm Water Discharges Associated with Construction Activities, Attachment E, p. 12. Permitting authorities may require more frequent monitoring than three samples per day in order to obtain representative sampling, and permittees may elect to perform more frequent monitoring. For example, the permit could specify that sampling must begin within one hour of the start of the discharge, and must continue until the discharge ends or until the end of the working day. The permit could also include exceptions to the minimum sampling frequency for circumstances such as adverse weather conditions (such as high winds or lightning) or intense rainfall, which would cause a reasonable person to believe that the safety of the sample collection personnel would be in jeopardy. In such

instances, the permit might specify that sampling be conducted as soon as it is deemed safe by the sampling personnel. If, at the start of the next working day, there continues to be a discharge, then sampling should resume until the discharge ends or until the end of the working day.

NPDES permitting authorities will also need to determine the minimum number of discharge events during which monitoring is required. It is EPA's general view that any storm event or snowmelt that generates a discharge from the construction site should be monitored since this is the surest way to determine the effectiveness of the site's passive controls during all phases of active construction.

Testing Methodology: The permitting authority must specify in NPDES permits the requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods used. 40 CFR 122.48(a). Thus, permittees may elect to use automated samplers and/or turbidity meters with data loggers, if approved by the permitting authority. Each sample must be analyzed for turbidity using methods approved by the permitting authority, but EPA expects that the use of a properly calibrated field turbidimeter is sufficient. EPA is also leaving up to the permitting authority the applicable reporting requirements on the permitees sampling of their discharges from C&D sites.

Monitoring from Linear Construction Activities: EPA believes that the permitting authority should exercise discretion when determining the monitoring locations and monitoring frequency for linear construction projects. For instance, the permitting authority might choose, for example, to utilize representative sampling at certain discharge locations that are representative of the discharge characteristics of other locations. EPA views the use of representative sampling points as being acceptable for linear projects due to the potential unique nature of these projects. Because of the size of linear projects, there may be dozens or more discharge points spaced over a large geographic area. In addition, accessing certain areas of the project during a storm event (such as areas that have recently been stabilized) may not be possible without significant disruption of the stabilization measures in place (such as might occur if it would be necessary to drive a vehicle over an area that has been recently stabilized in order to access the discharge point). EPA would generally recommend that permitting authorities concentrate on those areas of linear projects that are actively being constructed and not concentrate on areas that have been completed and stabilized. An example, for a project such as a pipeline or underground utilities, would be those areas where trenching activities are occurring.

Exception for Larger Storm Events: The numeric limitation applies to all discharges from the site except on days when total precipitation during that day exceeds the local 2-year, 24-hour storm event. Even when total precipitation during the day exceeds the local 2-year, 24-hour storm permittees must comply with the non-numeric effluent limitations § 450.22(c) through § 450.22(h). If the total precipitation on a day exceeds this amount, then the turbidity limitation would not apply to discharges for that day. However, the numeric effluent limitation is applicable to all discharges from the site on subsequent days if there is no local 2-year, 24-hour storm event during those days. Although the limitation would not apply on days with precipitation greater than the 2-year, 24-hour event, permittees would still be expected to monitor discharges during that day. Permitting authorities may extend the standard to larger or less frequent storm events if it is determined that the 2-year, 24-hour storm is not adequate for a particular project or larger geographic area. Controls would then need to be designed to handle these less frequent storm events and the corresponding larger volumes of stormwater.

Although the numeric limitation would not apply on days where precipitation exceeds the 2-year, 24-hour event, permittees must still complywith the non-numeric effluent limitations § 450.22(c) through § 450.22(h). Also, permittees would still be required to manage the discharges from the site, and if passive treatment techniques are being utilized, permittees would still be expected to utilize those techniques. So for example, if a polymer dosing system is being utilized, permittees would be expected to continue dosing polymer and to continue managing the stormwater after the point at which the 2-year, 24-hour storm precipitation amount was exceeded. The limited short-term exemption from the numeric effluent limitation is not an exemption from the requirement to manage discharges. In addition, it would be inappropriate for permittees to intentionally discharge large volumes of stormwater on these days, or to bypass treatment in addition to likely not being in compliance with the non-numeric effluent limitations in 40 CFR 450.21 and thus their NPDES permit. If a basin is being utilized, it is expected that the primary outlet would be utilized for the discharge (unless overflow occurs). Intentionally bypassing the primary outlet would be inconsistent with the non-numeric effluent limitations of the rule.

EPA selected the 2-year, 24-hour storm event as the limiting event for determining compliance in recognition of the fact that passive controls can only be expected to consistently meet a numeric limitation to the level that they are designed to function. Typically, construction site controls are designed to manage stormwater up to a certain design storm event. For larger storm events, basins will likely overflow. Likewise, channels and conveyances will overtop and may begin to erode unless they are armored with materials such as flexible channel liners. EPA considered basing compliance on a 1-year storm, a 2-year storm and a 5-year storm. A 1-year storm has a 100% chance of occurring in any given 12 month period, a 2-year storm has a 50% chance of occurring in any 12 month period and a 5-year storm has a 20% chance of occurring in any 12 month period. To EPA's knowledge, designing for a 5-year storm is not common practice on construction sites, with the exception of emergency spillways on basins. However, many states require that basins and other controls be designed to manage a 2-year storm. Given that designing controls to manage runoff from a 2-year 24-hour storm provides a reasonable compromise between designing for a larger storm (at more expense) and allowing multiple discharges per year to potentially exceed the limitation (as would be the case with a smaller storm) EPA selected the 2-year storm as the maximum compliance storm event.

Monitoring Locations: The numeric limitation applies to all discharges from C&D sites. However, diffuse stormwater, such as non-channelized flow through a silt fence or other perimeter control that infiltrates into a vegetated area, and does not then discharge to surface waters, would not generally require sampling. EPA is encouraging (although not requiring) permittees to utilize dispersion of stormwater to vegetated areas and infiltration of stormwater instead of discharging it from the site. EPA encourages increased usage of such techniques, where appropriate. This is consistent with the concept of Low Impact Development (LID) techniques as well as the zero discharge goal of the Clean Water Act. Some projects present unique monitoring challenges, such as projects that are adjacent to or actually within waterbodies. Examples include

locks, dams, piers, and stream stabilization activities. For these types of projects, permitting authorities may need to exercise discretion when considering appropriate monitoring locations for discharges.

Sampling Times: Although EPA has left the issue of when sampling is required during any given discharge event to the discretion of the permitting authority, it is EPA's general view that sampling should be conducted, at a minimum, during normal business hours at a project. This can generally be considered to be between the hours of 6 a.m. and 6 p.m., or when workers are normally present on the construction site. The exception would be if unsafe conditions, such as heavy rain or lightning, would cause a reasonable person to determine that sampling would be dangerous.

Notification to Permitting Authorities: Although not a requirement in today's rule, permitting authorities may want to consider requirements in their permits and consider mechanisms by which permittees would notify the permitting authority when they have exceeded the 10 acre disturbed land threshold and monitoring would be required at a particular project.

B. Implementation

While pursuant to the CRA this entire rule is effective February 1, 2010 the numeric effluent limitation and the associated monitoring requirements for sites with 20 or more acres of land disturbed at one time will become applicable to discharges associated with construction activity 18 months following the effective date of this final rule on August 2, 2010. The numeric effluent limitation and the associated monitoring requirements for sites with 10 or more acres of land disturbed at one time will become applicable to discharges associated with construction activity four years following the effective date of this final rule on February 2, 2014. The non-numeric effluent limitations in Option 4 will become applicable when the rule is effective or 60 days after the final rule is published in the **Federal Register** on February 1, 2010.

Once EPA has promulgated effluent limitations and standards under CWA sections 301 and 306, and those limitations and standards become effective, the permitting authority must incorporate those limitations into NPDES permits as effluent limitations. 40 CFR 122.43–44. For discharges associated with construction activity, once the ELGs and NSPSs become effective the permitting authority must include permit limitations at least as stringent as those promulgated in this regulation in any individual NPDES permits or in the next construction general permit issued after the effective date of this regulation. EPA anticipates that the permitting authorities, particularly those whose construction general permits will expire within the next 18 months, would like time to develop guidance on the new requirements given the change in focus from past construction permits of non-numeric effluent limitations and BMPs to numeric limitations and monitoring requirements. EPA is aware of at least 10 states whose construction general permits are scheduled to expire within the first 18 months after the effective date of this final rule, in addition to the 4 states and other jurisdictions who are permitted by the EPA CGP, proposed to expire on June 30, 2011. In order to provide permitting authorities time to develop guidance on the requirements of this rule, including monitoring requirements, EPA is providing a 18 month lead time for the permitting authorities between the effective date of this final rule and when the numeric limitation and monitoring requirements are applicable to stormwater discharges associated with construction activity. The C&D ELG, including the numeric limitations and monitoring requirements, will be effective February 1, 2010, even though the numeric limit will not be applicable to discharges for 18 months from the effective date of this rule for sites with 20 or more acres of land disturbed at one time and four years after the effective date for sites with 10 or more acres of land disturbed at one time. Thus, the permitting authorities whose construction general permits will expire after the effective date of the C&D ELG must still incorporate the numeric limitation and monitoring requirements into their newly issued CGPs even though it will not be applicable until 18 months from the effective date for sites with 20 or more acres of land disturbed at one time and four years after the effective date for sites with 10 or more acres of land disturbed at one time. After the effective date of this rule, permitting authorities must incorporate the requirements into newly issued permits. Without an 18 month lead time in the applicability of the numeric limitation and monitoring requirements permitting authorities and the permittees in those states would have, what EPA believes, an unreasonably short time period to digest these new requirements and plan accordingly. While it is impossible to determine exactly how much time is necessary for permitting authorities and permittees, EPA weighed the need to provide enough time, for the reasons stated below, against the desire to apply these important numeric limitations and monitoring requirements in a timely manner in order to achieve important reductions in pollutant discharges from C&D sites and determined that 18 months for sites with 20 or more acres of land disturbed at one time and four years for sites with 10 or more acres of land disturbed at one time are reasonable periods of time.

In this rule EPA has determined that passive treatment technologies and a numeric effluent limitation with monitoring requirements is BAT and NSPS. As discussed above, it is clear that passive technologies are technologically available, as they are used widely throughout the U.S., however before this rule there were no nationwide numeric limitations or monitoring requirements connected with the construction industry, and particularly with the use of passive treatment technology at C&D sites. Monitoring requirements are a critical part of any numeric limitation. Given the sea change to the regulated industry there may be implementation issues associated with incorporation of monitoring requirements into permits, for example, permitting authorities may specify the frequency of monitoring; the location of monitoring; The duration of monitoring in relation to storm events; the samples that will be representative of the flow and characteristics of the discharges from the C&D site; whether it will approve the use of automated samplers and/or turbidity meters with data loggers; and establish procedures for analyzing the sample for turbidity and appropriate quality assurance/quality control procedures. The 18 month period will also allow permitting authorities to develop any necessary training or certification programs. An important factor in the effective implementation and compliance with this rule will be the permitting authority being able to digest the numeric limitation and monitoring requirements and developing guidance and outreach to the regulated community to provide assistance so the requirements are understood and can be effectively met by owners and operators of C&D sites. This will provide the regulated industry with the guidance, knowledge and tools necessary in order to effectively monitor their discharges in order to ensure they are meeting the numeric limitation.

In addition to the reasons stated above regarding the permitting authority having the time to develop guidance to assist C&D site operators, for this industry, it is necessary to allow it a

period of time to become accustomed to monitoring discharges and understand how different passive approaches impact the level of turbidity in their stormwater discharges. Allowing a phase-in of the monitoring requirements and turbidity limitation will allow the industry time to adjust their controls to determine what the most effective passive technology or combination of technologies are to reduce levels of turbidity, and to train personnel on any new techniques or technologies implemented at the site, how to sample and analyze stormwater discharges, and how to correctly apply polymers or treatment chemicals, if necessary, without causing environmental harm. As noted previously, the monitoring requirements are a critical part of the numeric limitation developed as BAT and NSPS and the establishment of a numeric limitation and monitoring requirements for discharges associated with the construction industry represents a sea change for the industry and permitting authorities. This change is in line with the technology forcing nature of the CWA; however, it may require significant time and resources for many construction firms to adapt their operations in light of the new stormwater control measures.

Learning how to use what for many firms will be new control techniques will likely require some initial period of adjustment, modification, and revision to ensure that the selected control measures achieve the required discharge limitation. EPA would expect that most of the firms affected in the first phase will be relatively large firms with in-house expertise or access to the necessary resources to implement passive treatment technologies. Because, as noted, the final rule requires a significant change in the controls necessary for the discharges associated with construction activity from current practices for many firms, there may be, at least in the near term, a limited universe of available expertise in passive treatment in the form of available guidance information and trained engineering personnel specialized in these treatment measures. EPA also expects that expertise and understanding will grow over time and that technologies may well both improve and decrease in cost. In these circumstances, phasing in the application of the numeric limitations provides time to facilitate the efficient development and transfer of this expertise, and allows the industry to explore opportunities for cost savings.

EPA estimates that sites which disturb 20 or more acres at any one time represent 48 percent of all sites subject to the numeric limits. The pollutant reduction associated with these sites is estimated to represent 69 percent of the pollutants discharged by construction sites. Expanding the application of the numeric limit after two and a half years to sites that disturb 10 or more acres at any one time will achieve a 77 percent sediment reduction over baseline discharges. EPA has determined that phasing the application of the limitation ensures that effective progress is made towards achieving the pollutant reductions and benefits associated with BAT and BADT while providing the construction industry with additional time to implement the regulation in recognition of the current economic downturn.

EPA plans to work closely with states and industry to ensure effective implementation of this rule. EPA will also monitor progress with respect to a range of variables, including appropriate technologies and their performance, costs, and overall industry conditions, with the ability to make adjustments if warranted.

C. Upset and Bypass Provisions

A "bypass" is an intentional diversion of the streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n).

Because much of today's rule includes requirements for the design, installation, and maintenance of erosion and sediment controls, EPA considered the need for an additional bypass-type provision in regard to large storm events. However, EPA did not specifically include such a provision in the text of the regulation because the rule only requires dischargers to meet a numeric turbidity limitation for discharges on days with storm events smaller than the 2-year, 24-hour storm. Because EPA is not establishing requirements for control of larger storm events, specific bypass provisions were not necessary. Standard upset and bypass provisions are generally included in all NPDES permits, and EPA expects this will be the case for construction stormwater permits issued after this rule becomes effective.

D. Variances and Waivers

The CWA requires application of effluent limitation guidelines established pursuant to section 301 to all direct dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of ELGs for categories of existing sources for toxic, conventional, and nonconventional pollutants. "Ability to Pay" and "water quality" waivers do not apply to conventional or toxic pollutants (e.g., TSS, PCBs) and, therefore, do not apply to today's rule. However, the variance for Fundamentally Different Factors (FDFs) may apply in some circumstances.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation provided for the FDF modifications from the BPT and BAT limitations for toxic and nonconventional pollutants and BPT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for modifications for PSES. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. *Chemical Manufacturers Assn* v. *NRDC*, 479 U.S. 116 (1985).

Subsequently, in the Water Quality Act of 1987, Congress added new section 301(n) of the Act explicitly to authorize modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of a FDF variance must be based solely on (1) information submitted during rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limitations. EPA regulations provide for an FDF variance for indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. An FDF variance is not available to a new source subject to NSPS. See *E.I. du Pont de Nemours v. Train*, 430 U.S. 112, 138–39 (1977).

E. Safe Drinking Water Act Requirements

EPA is encouraging the use of stormwater dispersion and infiltration to manage stormwater discharges from construction activity. By using dispersion and infiltration techniques, permittees may be able to significantly reduce or even eliminate discharges in certain situations. While permittees may choose to utilize infiltration practices such as infiltration trenches and wells to manage postconstruction stormwater discharges, EPA does not expect that permittees will utilize these practices to any great degree during the construction phase because sediment may cause clogging of these practices and therefore reduce their useful life. However, it is important to note that certain types of infiltration practices used to manage stormwater from construction activity may be subject to regulation under the Safe Drinking Water Act's (SDWA) Underground Injection Control (UIC) program and EPA's implementing regulations at 40 CFR parts 144–147. SDWA established the UIC program to provide safeguards so that injection wells do not endanger current and future underground sources of drinking water (USDWs) (42 U.S.C. 300h). The UIC program is implemented by Federal and state government agencies that oversee underground injection activities in order to prevent contamination of USDWs.

Some infiltration practices may involve injection into a well, which is defined as a bored, drilled, driven shaft, or dug hole that is deeper than its widest surface dimension, or an improved sinkhole, or a subsurface fluid distribution system (40 CFR 144.3). In those cases, the infiltration practices would be regulated under the UIC program as a Class V well. For example, an infiltration trench that includes an assemblage of perforated pipes, drain tiles, or similar mechanism intended to distribute fluids below the surface would probably be considered a Class V injection well. Also, commercially manufactured stormwater infiltration devices such as pre-cast or pre-built proprietary subsurface detention vaults, chambers or other devices designed to capture and infiltrate stormwater runoff are generally considered Class V wells. Drywells, seepage pits, and improved sinkholes are also generally considered to be Class V wells if water is directed to them and their depth is greater than their widest surface dimension or they are connected to a subsurface fluid distribution system.

Typically, Class V wells are authorized by rule and do not require a permit if the owner or operator submits inventory information to the State, if it has primary enforcement responsibility for the UIC Class V program, or EPA, and complies with the other requirements for Class V wells. The state or EPA regional UIC program director with primacy for the UIC Class V program should be contacted when these types of infiltration practices are planned to assist in determining whether they are Class V wells.

There are some geologic settings that are so sensitive that contaminated stormwater may move too rapidly through the soil profile for sufficient pollution removal. As a result, USDWs may be threatened. The source water assessments required under the 1996 Amendments to the Safe Drinking Water Act are good sources of information on sensitive geologic settings for public water supplies, as is EPA's *Source Water Practices Bulletin: Managing Stormwater Runoff to Prevent Contamination of Drinking Water* (Office of Water, EPA 816–F–007, July 2009).

F. Other Clean Water Act Requirements

Compliance with the provisions of this rule would not exempt a discharger from any other requirements of the CWA.

XX. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in Section 8.3, Comparison of Social Cost and Monetized Benefits in Chapter 8 of the Economic Analysis. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. Table XX–1 provides the results of the benefit-cost analysis.

TABLE XX–1—TOTAL ANNUALIZED BENEFITS AND COSTS OF THE REGULATORY OPTIONS

Option	Social costs (2008 $ millions per year)	Benefits[a] (2008 $ millions per year)
Option 1	$175.8	$214.1 + (NMB)$_1$
Option 2	4,863.1	360.1 + (NMB)$_2$
Option 3	9,081.1	422.3 + (NMB)$_3$

TABLE XX–1—TOTAL ANNUALIZED BENEFITS AND COSTS OF THE REGULATORY OPTIONS—Continued

Option	Social costs (2008 $ millions per year)	Benefits [a] (2008 $ millions per year)
Option 4	958.7	368.9 + $(NMB)_4$

[a] NMB_i are the non-monetized benefits of the i^{th} Option.

Source: Economic Analysis; Environmental Assessment.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them.

EPA is establishing mandatory monitoring requirements for construction sites under authority of Clean Water Act (CWA) Section 308 to demonstrate compliance with effluent limitations and standards for turbidity promulgated under today's rule. Sediment, created as a result of construction activity and measured by turbidity, is the primary pollutant that causes water quality impairment for streams and rivers. It is also one of the leading causes of lake and reservoir water quality impairment and wetland degradation. The sediment entrained in stormwater discharges from construction activity can harm aquatic ecosystems, increase drinking water treatment costs, and degrade recreational uses of impacted waters. Sediment can also accumulate in rivers, lakes, and reservoirs, leading to the need for dredging or other mitigation. Additionally, Section 402(a)(2) of the CWA directs EPA to prescribe permit conditions to assure compliance with requirements "including conditions on data and information collection, reporting and such other requirements as [the Administrator] deems appropriate."

EPA estimates a total annual burden to regulated construction sites larger than 10 acres and regulatory authorities, as a result of the monitoring requirements of this final rule, of 3,018,750 hours and average annual costs of $91,978,103. These are based on the following assumptions:

- *Total number of projects ongoing at some point in a year, but not necessarily active for the entire year:* 39,361.
- *Average reporting frequency:* monthly.
- *Average number of monitoring reports submitted per year:* 7.07.
- *Total number of DMR reports submitted per year:* 278,251.
- *Average burden hours per response:* 10.85 (10.30 hours per permittee, 0.55 hour per permitting authority).

These estimates account for full implementation of the monitoring requirements which will not occur for 4 years after the effective date of this rule. EPA will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval which requests approval for only a portion of this burden reflecting the implementation of the rule over the next three years. Upon expiration of that ICR, EPA will update the clearance request to reflect full implementation of the numeric limitations in the subsequent request.

In addition, EPA estimates annual capital costs to the industry of $7,085,890. The capital cost to the industry is based on the use of one turbidimeter per active site per year (28,922) and the annual purchase of a turbidimeter calibration kit, for a total annual cost of $245 per project. For the states, EPA estimates start-up costs of $1,564,000, based on an average expected cost of $31,280 per state for equipment purchases and program set-up. Annualized over 10 years, this cost is $3,667 per state. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection 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 the purposes of assessing the impacts of today's rule on small entities, small entity is defined as either a: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA does not anticipate any impacts on small organizations and impacts on small governments are discussed under the UMRA analysis section. The RFA provides that EPA generally define small businesses according to the size standards established by the Small Business Administration (SBA). The SBA established criteria for identifying small businesses is based on either the number of employees or annual revenues (13 CFR 121). These size standards vary by NAICS (North American Industrial Classification System) code. For the C&D industry NAICS categories (236 and 237) the small business annual revenue threshold is set at $33.5 million. The SBA sets the small business threshold for NAICS 2372 (Land Subdivision of NAICS 237) at $7 million. However, for the purpose of the economic analysis, EPA allocated this sector amongst the four primary building construction sectors: Single-family housing, multifamily housing, industrial building, and commercial and institutional building construction. By merging the land subdivision sector with sectors that have a higher small business revenue threshold, there is likely to be an overestimate of the number of these firms considered small businesses. However, according to the 2002 Economic Census, 93 percent of firms in the land subdivision sector made less than $5 million annually, and 98 percent made less than $10 million. So nearly all the firms in this sector would already be considered a small

business under $7 million threshold, and merging this sector with the four primary building construction sectors, will not have a meaningful affect on the estimate of small businesses for this industry.

In order to gather more information on the potential impacts of today's rule on small businesses, EPA used the discretion afforded to it under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), to convene a Small Business Advocacy Review (SBAR) Panel for this rulemaking on September 10, 2008. EPA held an outreach meeting with Small Entity Representative (SERs) on September 17, 2008. A list of SERs and the outreach materials sent to SERs are included in the docket (see DCN 41115–41133). EPA prepared a report that summarizes information obtained from the Panel, which is also included in the docket. (see DCN 41136).

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Overall, EPA estimates that in a typical year there will be 82,000 in-scope firms, and of this total, approximately 78,000, or about 96 percent, are defined as small businesses. Under Option 4, EPA estimates that only 230 small businesses would experience costs exceeding 1 percent of revenue and no small businesses would incur costs exceeding 3 percent of revenue. Both numbers represent very small percentages of the in-scope small firms. The 230 firms estimated to incur costs exceeding 1 percent of revenue represent about 0.3 percent of all estimated potentially in-scope small businesses. Therefore, EPA does not consider the selected option to have the potential to cause a significant economic impact on a substantial number of small entities.

All of the options considered for the final rule require the use of BMPs. As the rule applies to construction projects and not directly to firms, the most effective way for EPA to minimize impacts to small firms was by crafting options that did not impose significant costs on small projects. EPA's final rule does this by establishing an acreage threshold for the numeric turbidity limitation.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Of the four options considered for the final rule option, one was the least costly. However, EPA concluded that option one was not technology forcing and did not reflect ; therefore, it did not meet CWA objectives. Of the remaining three options, EPA selected the least costly, most cost-effective or least burdensome option, satisfying section 205 requirements.

As part of the financial impact analysis, EPA looked specifically at the impact on government entities resulting from both compliance with construction site requirements and from administering the additional monitoring reports submitted by in-scope firms. Table XX–2 shows the results of this analysis. The estimated administrative costs are conservative, as they do not take into account that part of the NPDES permit program is administered by the federal government. For more information on how this analysis was performed, see Section 14–1 Assessing Costs to Government Entities in Chapter 14 of the Economic Analysis.

TABLE XX–2—IMPACTS OF REGULATORY OPTIONS ON STATE & LOCAL GOVERNMENTS (MILLION 2008 $)

	Option 1	Option 2	Option 3	Option 4
Compliance Costs:				
Federal	$3.8	$87.1	$166.9	$17.7
State	8.1	178.1	323.0	35.3
Local	46.2	1,022.3	1,854.0	202.4
Administrative Costs:				
Federal	0.0	0.0	0.0	0.0
State	0.0	2.2	6.2	6.2
Local	0.0	0.0	0.0	0.0
Total Costs:				
Federal	3.8	87.1	166.9	17.7
State	8.1	180.3	329.2	41.5
Local	46.2	1,022.3	1,854.0	202.4
Total	58.1	1,289.7	2,350.1	261.6

Source: Economic Analysis.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant

Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

After performing an assessment of the economic impacts on small government entities, EPA determined that the rule would not significantly or uniquely affect small governments, and therefore did not develop a small government agency plan as specified in UMRA. This rule does not impose any requirements uniquely on small governments. The assessment of impacts on small governmental entities involved three steps: (1) Identifying small government entities (i.e., those serving populations of less than 50,000, (5 U.S.C. 601[5])), (2) estimating the share of total government costs for the regulatory options incurred by small governments, and (3) estimating the potential impact from these costs based on comparison of small government compliance costs with small government revenue and outlays. For details of this analysis see Section 14.2 Assessing Costs and Impacts on Small Government Entities in Chapter 14 of the Economic Analysis. Table XX–3 has the results of the small government entity impact analysis. The table shows that under Option 4, total small government costs are estimated to be only 0.08% of total small government revenue, and under no option considered did total small government costs exceed 1% of total small government revenues.

TABLE XX–3—IMPACTS OF REGULATORY OPTIONS ON SMALL GOVERNMENT UNITS (MILLION 2008 $)

	Option 1	Option 2	Option 3	Option 4
Compliance Costs:				
Small Government Entities	$21.7	$480.5	$871.4	$95.1
Administrative Costs:				
Small Government Entities	0.0	0.0	0.0	0.0
Total Costs:				
Small Government Entities	21.7	480.5	871.4	95.1
Small Government Impact Analysis Concepts:				
Total Revenues	125,515	125,515	125,515	125,515
Total Costs as % of Total Revenues	0.02%	0.38%	0.69%	0.08%
Capital Outlay	13,455	13,455	13,455	13,455
Total Costs as % of Total Capital Outlay	0.16%	3.57%	6.48%	0.71%
Construction Outlay Only	8,529	8,529	8,529	8,529
Total Costs as % of Total Construction Outlay	0.25%	5.63%	10.22%	1.12%

Source: Economic Analysis.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA initiated consultations with the governmental entities affected by this rule. EPA took and responded to comments from government entities on the earlier proposed C&D rule and on this rule. To help characterize the potential impacts to government entities, EPA has gathered state government data regarding NOI submissions, and from U.S. Census data and Reed Construction Data. EPA has compiled information on how much construction activity is undertaken by government entities. EPA has routinely consulted with EPA regional offices who maintain direct and regular contact with state entities. Finally, EPA met directly with and solicited data from all the state Stormwater Coordinators who attended EPA's Annual Stormwater Conference in 2007. During 2008 and 2009, EPA attended several conferences and workshops to present information on the Agency's C&D rule. These meetings were open to the public and widely attended.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), directs agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."

Although EPA expects the final rule would have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and state governments, EPA has concluded that this final rule has federalism implications as defined by the Executive Order. As previously noted, it is estimated to impose substantial direct compliance costs on State and local governments combined. Accordingly, EPA provides the following federalism summary impact statement as required by section 6(b) of Executive Order 13132. As noted in the UMRA section above, EPA consulted with State and local governments early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. While EPA did not consult with State and local elected officials, the Agency did consult with all of the state Stormwater Coordinators in attendance at EPA's Annual Stormwater Coordinator's conferences in 2008 and 2009. EPA also attended several conferences where governmental officials were present, such as the International Erosion Control Association (IECA) conference in February 2009, the MAC–IECA conference in September 2009, and the Northwest Environmental Business Council meeting in March of 2009. In general, the concerns EPA heard included the costs of the regulation as related to publicly funded projects, increased burden and the lack of dedicated funding sources for permitting authorities to implement and enforce the new requirements given that permitting authorities are already over-burdened.

EPA also tried to mitigate compliance costs on State and local governments by incorporating a disturbed acreage threshold of 10 acres for applicability of the turbidity limitation. Although EPA does not have comprehensive data on construction projects conducted by state and local governments, EPA believes that a large proportion of building projects undertaking by these entities are likely to fall below this threshold. Building projects constructed by local governments are typically projects such as schools, libraries, recreation centers, parks, office buildings, etc., which EPA believes would tend to have construction footprints smaller than 10 acres. And like private projects, those that are bigger may be able to use sequencing to prevent more than 10 acres from being disturbed at one time. Likewise, many local government non-building projects are likely to have smaller construction footprints as well. EPA expects that the majority of local government non-building projects

would be activities such as small-scale road improvements, sewer and water line repair projects, and other miscellaneous construction activities with smaller amounts of land disturbance. With respect to state government projects, highway construction projects are the one category of construction undertaken by state governments that are likely to be the most significantly impacted by the final rule requirements, since many of these projects may exceed 10 acres disturbed at one time. However, as highway projects constitute a significant portion of construction projects nationwide, EPA has no reasonable basis for exempting these projects from regulation. As discussed above, EPA has included a number of provisions to facilitate compliance with the numeric limitation, including phase-in of the limitation, an exemption from the limitation on days when precipitation exceeds the 2-year, 24-hour storm event, and averaging of monitoring samples over a full day for determining compliance with the limitation. EPA expects that many state government building projects would fall below the 10 acres disturbed threshold.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

"Policies that have Tribal implications" is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. This final rule does not have tribal implications. It will not have substantial direct effects 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. Today's final rule contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is based on technology performance, not health or safety risks.

H. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additional fuel may be required for construction equipment conducting excavation and soil moving activities. EPA determined that the additional fuel usage would be very small, relative to the total fuel consumption at construction sites and the total annual U.S. fuel consumption.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Pub. L. 104–113, section 12(d); 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Agency is not aware of any consensus-based technical standards for the types of controls contained in final rule and did not receive any comments to this effect from the public.

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

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

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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The final rule will reduce the negative effects of discharges from construction sites in the nation's waters to benefit all of society, including minority communities.

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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 a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 1, 2010.

L. Judicial Review

In accordance with 40 CFR 23.2, today's rule is considered promulgated

for the purposes of judicial review as of 1 p.m. Eastern Standard Time, December 15, 2009. Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and new source performance standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under Section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought to enforce these requirements.

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 23, 2009.

Lisa P. Jackson,

Administrator.

■ 40 CFR part 450 is added as follows:

PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

Subpart A—General Provisions

Sec.

Subpart B—Construction and Development Effluent Guidelines

Authority: 42 U.S.C 101, 301, 304, 306, 308, 401, 402, 501 and 510.

Subpart A—General Provisions

§ 450.10 Applicability.

(a) This part applies to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 CFR 122.26(b)(14)(x) and (b)(15).

(b) The provisions of § 450.22(a) do not apply to discharges associated with interstate natural gas pipeline construction activity.

(c) The New Source Performance Standards at § 450.24 apply to all new sources and are effective February 1, 2010.

(d) The BPT, BCT and BAT effluent limitations at § 450.21 through 450.23 apply to all sources not otherwise covered by paragraph (c) of this section and are effective February 1, 2010.

§ 450.11 General definitions.

(a) *New Source.* New source means any source, whose discharges are defined in 40 CFR 122.26(b)(14)(x) and (b)(15), that commences construction activity after the effective date of this rule.

(b) [Reserved]

Subpart B—Construction and Development Effluent Guidelines

§ 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT).

(a) *Erosion and Sediment Controls.* Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

(1) Control stormwater volume and velocity within the site to minimize soil erosion;

(2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;

(3) Minimize the amount of soil exposed during construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and

(7) Minimize soil compaction and, unless infeasible, preserve topsoil.

(b) *Soil Stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority.

(c) *Dewatering.* Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

(d) *Pollution Prevention Measures.* Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(e) *Prohibited Discharges.* The following discharges are prohibited:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(f) *Surface Outlets.* When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

§ 450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a

minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Beginning no later than August 2, 2010 during construction activity that disturbs 20 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale; and no later than February 2, 2014 during construction activity that disturbs ten or more acres of land area at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale, the following requirements apply:

(1) Except as provided by paragraph (b) of this section, the average turbidity of any discharge for any day must not exceed the value listed in the following table:

Pollutant	Daily maximum value (NTU)[1]
Turbidity	280

[1] Nephelometric turbidity units.

(2) Conduct monitoring consistent with requirements established by the permitting authority. Each sample must be analyzed for turbidity in accordance with methods specified by the permitting authority.

(b) If stormwater discharges in any day occur as a result of a storm event in that same day that is larger than the local 2-year, 24-hour storm, the effluent limitation in paragraph (a)(1) of this section does not apply for that day.

(c) *Erosion and Sediment Controls.* The limitations are described at § 450.21(a).

(d) *Soil Stabilization.* The limitations are described at § 450.21(b).

(e) *Dewatering.* The limitations are described at § 450.21(c).

(f) *Pollution Prevention Measures.* The limitations are described at § 450.21(d).

(g) *Prohibited Discharges.* The limitations are described at § 450.21(e).

(h) *Surface Outlets.* The limitations are described at § 450.21(f).

§ 450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best conventional pollutant control technology (BCT). The effluent limitations are described at § 450.21.

§ 450.24 New source performance standards reflecting the best available demonstrated control technology (NSPS).

Any new source subject to this subpart must achieve, at a minimum, the following new source performance standards representing the degree of effluent reduction attainable by application of the best available demonstrated control technology (NSPS): The standards are described at § 450.22.

[FR Doc. E9–28446 Filed 11–30–09; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 74, No. 229

Tuesday, December 1, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, DECEMBER

62675–63058..... 1

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

Last List November 10, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 2009

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
December 1	Dec 16	Dec 22	Dec 31	Jan 5	Jan 15	Feb 1	Mar 1
December 2	Dec 17	Dec 23	Jan 4	Jan 6	Jan 19	Feb 1	Mar 2
December 3	Dec 18	Dec 24	Jan 4	Jan 7	Jan 19	Feb 1	Mar 3
December 4	Dec 21	Dec 28	Jan 4	Jan 8	Jan 19	Feb 2	Mar 4
December 7	Dec 22	Dec 28	Jan 6	Jan 11	Jan 21	Feb 5	Mar 8
December 8	Dec 23	Dec 29	Jan 7	Jan 12	Jan 22	Feb 8	Mar 8
December 9	Dec 24	Dec 30	Jan 8	Jan 13	Jan 25	Feb 8	Mar 9
December 10	Dec 28	Dec 31	Jan 11	Jan 14	Jan 25	Feb 8	Mar 10
December 11	Dec 28	Jan 4	Jan 11	Jan 15	Jan 25	Feb 9	Mar 11
December 14	Dec 29	Jan 4	Jan 13	Jan 19	Jan 28	Feb 12	Mar 15
December 15	Dec 30	Jan 5	Jan 14	Jan 19	Jan 29	Feb 16	Mar 15
December 16	Dec 31	Jan 6	Jan 15	Jan 20	Feb 1	Feb 16	Mar 16
December 17	Jan 4	Jan 7	Jan 19	Jan 21	Feb 1	Feb 16	Mar 17
December 18	Jan 4	Jan 8	Jan 19	Jan 22	Feb 1	Feb 16	Mar 18
December 21	Jan 5	Jan 11	Jan 20	Jan 25	Feb 4	Feb 19	Mar 22
December 22	Jan 6	Jan 12	Jan 21	Jan 26	Feb 5	Feb 22	Mar 22
December 23	Jan 7	Jan 13	Jan 22	Jan 27	Feb 8	Feb 22	Mar 23
December 24	Jan 8	Jan 14	Jan 25	Jan 28	Feb 8	Feb 22	Mar 24
December 28	Jan 12	Jan 19	Jan 27	Feb 1	Feb 11	Feb 26	Mar 29
December 29	Jan 13	Jan 19	Jan 28	Feb 2	Feb 12	Mar 1	Mar 29
December 30	Jan 14	Jan 20	Jan 29	Feb 3	Feb 16	Mar 1	Mar 30
December 31	Jan 15	Jan 21	Feb 1	Feb 4	Feb 16	Mar 1	Mar 31

Public Laws

111th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 111th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 111th Congress for $307 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

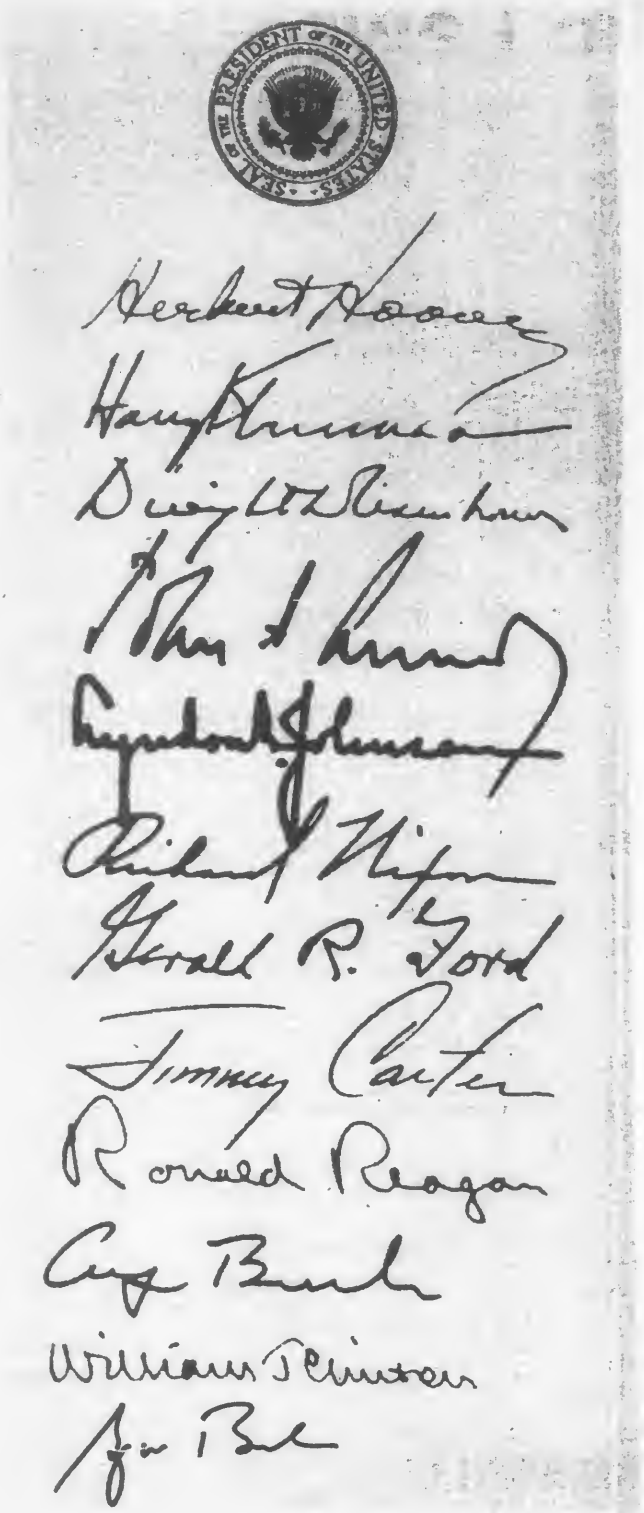
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

2/09

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1997
(Book I) $69.00
(Book II) $78.00

1998
(Book I) $74.00
(Book II) $75.00

1999
(Book I) $71.00
(Book II) $75.00

2000–2001
(Book I) $68.50
(Book II) $63.00
(Book III) $75.00

George W. Bush

2001
(Book I) $70.00
(Book II) $65.00

2002
(Book I) $72.00
(Book II) $79.00

2003
(Book I) $66.00
(Book II) $69.00

2004
(Book I) $80.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954
(Rev 08/07)

Order Now!

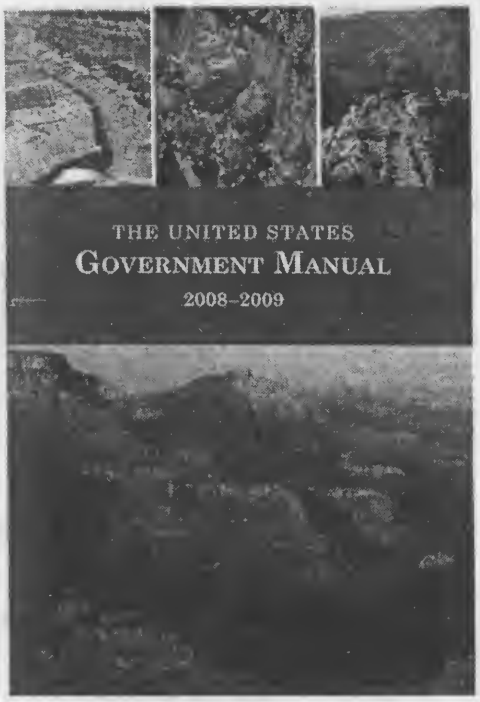
The United States Government Manual 2008/2009

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$29 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code
*7917

☐ **YES**, please send me ——— copies of **The United States Government Manual** 2008/2009.
S/N 069–000–00168–8 at $29 ($40.60 foreign) each.

Total cost of my order is $ ———— . **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/08

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

111th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 111th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 111th Congress for $307 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/09

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper