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OFFICE OF THE FEDERAL REGISTER

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, January 25, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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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.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, and 178

[USCBP–2010–0041; CBP Dec. 11–01]

RIN 1515–AD68

United States—Oman Free Trade Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection ("CBP") regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States—Oman Free Trade Agreement entered into by the United States and the Sultanate of Oman.

DATES: Interim rule effective January 6, 2011; comments must be received by March 7, 2011.

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 number USCBP–2010–0041.
- *Mail:* 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 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 Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Textile Operational Aspects: Robert Abels, Office of International Trade, (202) 863–6503. Other Operational Aspects: Seth Mazze, Office of International Trade, (202) 863–6567. Audit Aspects: Deaune Volk, Office of International Trade, (202) 863–6575. Legal Aspects: Elif Eroglu, Office of International Trade, (202) 325–0277.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. *See* **ADDRESSES** above for information on how to submit comments.

Background

On January 19, 2006, the United States and the Sultanate of Oman (the "Parties") entered into the U.S.—Oman Free Trade Agreement ("OFTA" or "Agreement"). The stated objectives of the OFTA include creating new employment opportunities and raising the standard of living for the citizens of the Parties by liberalizing and expanding trade between them; enhancing the competitiveness of the enterprises of the Parties in global markets; establishing clear and mutually advantageous rules governing trade between the Parties; eliminating bribery and corruption in international trade and investment; fostering creativity and innovation by improving technology and enhancing the protection and enforcement of intellectual property rights; strengthening the development and enforcement of labor and environmental laws and policies; and establishing an expanded free trade area in the Middle East, thereby contributing to economic liberalization and development in the region.

The provisions of the OFTA were adopted by the United States with the enactment of the United States—Oman Free Trade Agreement Implementation Act (the "Act"), Public Law 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note), on September 26, 2006. Section 206 of the Act requires that regulations be prescribed as necessary (following implementation of the OFTA by presidential proclamation).

On December 29, 2008, President Bush signed Proclamation 8332 to implement the provisions of the OFTA. The proclamation, which was published in the **Federal Register** on December 31, 2008 (73 FR 80289), modified the Harmonized Tariff Schedule of the United States ("HTSUS") as set forth in Annexes I and II of Publication 4050 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 31, incorporating the relevant OFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the OFTA where the special program indicator "OM" appears in parenthesis in the "Special" rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XVI to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the OFTA.

U.S. Customs and Border Protection ("CBP") is responsible for administering the provisions of the OFTA and the Act that relate to the importation of goods into the United States from Oman.

Those customs-related OFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Establishment of Free Trade Area and Definitions), Chapter Two (Market Access), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin), and Chapter Five (Customs Administration).

These implementing regulations incorporate certain general definitions set forth in Article 1.3 of the OFTA. These regulations also implement Article 2.6 (Goods Re-entered after Repair or Alteration) of the OFTA.

Chapter Three of the OFTA sets forth the measures relating to trade in textile and apparel goods between Oman and the United States under the OFTA. The provisions within Chapter Three that require regulatory action by CBP are Article 3.2 (Rules of Origin and Related Matters), Article 3.3 (Customs Cooperation for Textile and Apparel Goods), and Article 3.5 (Definitions).

Chapter Four of the OFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Oman (OFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as specified in the Agreement. Under Article 4.1, originating goods may be grouped in three broad categories: (1) Goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 3–A or Annex 4–A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum value-content, *i.e.*, at least 35 percent of the good's appraised value must be attributed to the cost or value of materials produced in one or both of the Parties plus the direct costs of processing operations performed in one or both of the Parties; and (3) goods that satisfy the product-specific rules set forth in Annex 3–A (textile or apparel goods) or Annex 4–A (certain non-textile or non-apparel goods).

Article 4.2 explains that the term "new or different article of commerce" means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 4.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

Article 4.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the OFTA. Articles 4.5 and 4.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 4.7 through 4.9 consist of additional sub-rules applicable to originating goods, involving packaging and packing materials and containers for retail sale and for shipment, indirect materials, and transit and transshipment. In addition, Articles 4.10 and 4.11 set forth the procedural requirements that apply under the OFTA, in particular with regard to importer claims for preferential tariff treatment. Article 4.14 provides definitions of certain terms used in Chapter Four of the OFTA. The basic rules of origin in Chapter Four of the OFTA are set forth in General Note 31, HTSUS.

Chapter Five sets forth the customs operational provisions related to the implementation and administration of the OFTA.

In order to provide transparency and facilitate their use, the majority of the OFTA implementing regulations set forth in this document have been included within new Subpart P in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which OFTA implementation is more appropriate in the context of an existing regulatory provision, the OFTA regulatory text has been incorporated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new OFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Oman for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, or Bahrain, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of OFTA Article 2.5 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart P

General Provisions

Section 10.861 outlines the scope of new Subpart P, Part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart P, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart P, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.862 sets forth definitions of common terms used in multiple contexts or places within Subpart P, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 of the OFTA and section 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited Subpart P, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.863 sets forth the procedure for claiming OFTA tariff benefits at the time of entry.

Section 10.864, as provided in OFTA Article 4.10(b), requires a U.S. importer, upon request, to submit a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Included in § 10.864 is a provision that the declaration may be used either for a single importation or for multiple importations of identical goods.

Section 10.865 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment under the OFTA. As provided in OFTA Article 4.10(a), this section states that a U.S. importer who makes a claim for preferential tariff treatment for a good is deemed to have certified that the good qualifies for such treatment.

Section 10.866 provides that the importer's declaration is not required for certain non-commercial or low-value importations.

Section 10.867 implements the portion of OFTA Article 4.10 concerning the maintenance of records necessary for the preparation of the declaration.

Section 10.868, which is based on OFTA Article 4.11.1, provides for the denial of OFTA tariff benefits if the importer fails to comply with any of the requirements of Subpart P, Part 10, CBP regulations.

Post-Importation Duty Refund Claims

Sections 10.869 through 10.871 implement OFTA Article 4.11.4, which allows an importer, who did not claim OFTA tariff benefits on a qualifying good at the time of importation, to make a claim for preferential treatment and apply for a refund of any excess duties paid no later than one year after the date of importation.

Rules of Origin

Sections 10.872 through 10.880 provide the implementing regulations regarding the rules of origin provisions of General Note 31, HTSUS, Article 3.2 and Chapter Four of the OFTA, and section 202 of the Act .

Definitions

Section 10.872 sets forth terms that are defined for purposes of the rules of origin.

General Rules of Origin

Section 10.873 includes the basic rules of origin established in Article 4.1 of the OFTA, section 202(b) of the Act, and General Note 31(b), HTSUS.

Paragraph (a) of § 10.873 sets forth the three basic categories of goods that are considered originating goods under the OFTA. Paragraph (a)(1) of § 10.873 specifies those goods that are considered originating goods because they are wholly the growth, product, or manufacture of one or both of the Parties. Paragraph (a)(2) provides that goods are considered originating goods if they: (1) Are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties; (2) are classified in HTSUS provisions that are not covered by the product-specific rules set forth in General Note 31(h), HTSUS; and (3) meet a-35 percent domestic-content requirement. Finally, paragraph (a)(3) states that goods are considered originating goods if: (1) They are classified in HTSUS provisions that are covered by the product-specific rules set forth in General Note 31(h), HTSUS; (2) each non-originating material used in the production of the good in the territory of one or both of the Parties undergoes an applicable change in tariff classification or otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and (3) the goods meet any other requirements specified in General Note 31, HTSUS.

Paragraph (b) of § 10.873 sets forth the basic rules that apply for purposes of determining whether a good satisfies the 35 percent domestic-content requirement referred to in § 10.873(a)(2).

Paragraph (c) of § 10.873 implements Article 4.3 of the OFTA, relating to the simple combining or packaging or mere dilution exceptions to the "new or different article of commerce" requirement of § 10.873(a)(2). Since the language in Article 4.3 of the OFTA (and section 202(i)(7)(B) of the Act) is nearly identical to the language found in section 213(a)(2) of the Caribbean Basin Economic Recovery Act ("CBERA") (19 U.S.C. 2703(a)(2)), § 10.873(c) incorporates by reference the examples and principles set forth in § 10.195(a)(2) of CBP's implementing CBERA regulations.

Originating Textile or Apparel Goods

Section 10.874(a), as provided for in Article 3.2.6 of the OFTA, sets forth a *de minimis* rule for certain textile or apparel goods that may be considered to qualify as originating goods even though they fail to satisfy the applicable change in tariff classification set out in General Note 31(h). This paragraph also includes an exception to the *de minimis* rule.

Section 10.874(b), which is based on Article 3.2.7 of the OFTA, sets forth a special rule for textile or apparel goods classifiable under General Rule of Interpretation 3, HTSUS, as goods put up in sets for retail sale.

Accumulation

Section 10.875, which is derived from OFTA Article 4.4, sets forth the rule by which originating goods or materials from the territory of a Party that are used in the production of a good in the territory of the other Party will be considered to originate in the territory of such other Party. In addition, this section also establishes that a good or material that is produced by one or more producers in the territory of one or both of the Parties is an originating good or material if the article satisfies all of the applicable requirements of the rules of origin of the OFTA.

Value of Materials

Section 10.876 implements Article 4.5 of the OFTA, relating to the calculation of the value of materials that may be applied toward satisfaction of the 35 percent value-content requirement.

Direct Costs of Processing Operations

Section 10.877, which reflects Article 4.6 of the OFTA, sets forth provisions regarding the calculation of direct costs of processing operations for purposes of the 35 percent value-content requirement.

Packaging and Packing Materials and Containers for Retail Sale and for Shipment

Section 10.878 is based on Article 4.7 of the OFTA and provides that retail packaging materials and packing materials for shipment are to be disregarded in determining whether a good qualifies as originating under the OFTA, except that the value of such packaging and packing materials may be included for purposes of meeting the 35 percent value-content requirement.

Indirect Materials

Section 10.879, which is derived from Article 4.8 of the OFTA, provides that indirect materials will be disregarded in determining whether a good qualifies as an originating good under the OFTA, except that the cost of such indirect materials may be included toward satisfying the 35 percent value-content requirement.

Imported Directly

Section 10.880(a) sets forth the basic rule, found in Article 4.1 of the OFTA, that a good must be imported directly from the territory of a Party into the territory of the other Party to qualify as an originating good under the OFTA. This paragraph further provides that, as set forth in Article 4.9 of the OFTA, a good will not be considered to be imported directly if, after exportation from the territory of a Party, the good undergoes production, manufacturing, or any other operation outside the territories of the Parties, other than certain minor operations.

Paragraph (b) of § 10.880 provides that an importer making a claim for preferential tariff treatment under the OFTA may be required to demonstrate, through the submission of documentary evidence, that the "imported directly" requirement was satisfied.

Tariff Preference Level

Section 10.881 sets forth the procedures for claiming OFTA tariff benefits for certain non-originating cotton or man-made fiber apparel goods entitled to preference under an applicable tariff preference level ("TPL").

Section 10.882, which is based on Article 3.2.8, describes the non-originating cotton or man-made fiber apparel goods that are eligible for TPL claims under the OFTA.

Section 10.884 reflects Article 3.2.11 of the OFTA. Paragraph (a) of § 10.884 provides that an importer claiming preferential treatment on a non-originating cotton or man-made fiber apparel good specified in § 10.882 must submit, at the request of the port director, a declaration setting forth all pertinent production information. Paragraph (b) of § 10.884 requires that an importer must retain all records relied upon to prepare the declaration for a period of five years.

Section 10.885 establishes that non-originating cotton or man-made fiber apparel goods are entitled to preferential tariff treatment under an applicable TPL only if they are imported directly from the territory of a Party into the territory of the other Party.

Section 10.886 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart P, Part 10, CBP regulations, including the failure to provide documentation, when requested by CBP, establishing that the good was imported directly from the territory of a Party into the territory of the other Party.

Origin Verifications and Determinations

Sections 10.887 implements OFTA Article 4.11.2 by providing that a claim for OFTA preferential tariff treatment, including any information submitted in support of the claim, will be subject to such verification as CBP deems necessary. This section further sets forth the circumstances under which a claim may be denied based on the results of the verification.

Section 10.888 implements OFTA Article 4.11.3 by providing that CBP will issue a determination to the importer when CBP determines that a claim for OFTA preferential tariff treatment should be denied based on the results of a verification. This section also prescribes the information required to be included in the determination.

Penalties

Section 10.889 concerns the general application of penalties to OFTA transactions and is based on OFTA Article 5.9.

Goods Returned After Repair or Alteration

Section 10.890 implements OFTA Article 2.6 regarding duty treatment of goods re-entered after repair or alteration in Oman.

Part 24

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement section 203 of the Act, providing that the MPF is not applicable to goods that qualify as originating goods of Oman or the United States as provided for under section 202 of the Act.

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional OFTA records maintenance and examination provisions contained in new Subpart P, Part 10, CBP regulations.

Part 163

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support of a claim for preference under the OFTA as an activity for which records must be maintained. Also, the list or records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list)) is also amended to add the OFTA records that the importer may have in support of an OFTA claim for preferential tariff treatment.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the OFTA and the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the OFTA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider comments it receives before issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in these regulations are under review by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.863, 10.864, 10.881, and 10.884. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the OFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the OFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 20 hours.

Estimated average annual burden per respondent: 12 minutes.

Estimated number of respondents: 100.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1179.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Financial and accounting procedures.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for Part 10 continues to read, and the specific authority for new Subpart P is added to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.861 through 10.890 also issued under 19 U.S.C. 1202 (General Note 31, HTSUS) and Pub. L. 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note).

■ 2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, or Oman and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27, 29, 30, and 31, HTSUS, in the country of which the importer is a resident.

* * * * *

■ 3. Add Subpart P to read as follows:

Subpart P—United States-Oman Free Trade Agreement

Sec.

Subpart P—United States-Oman Free Trade Agreement

General Provisions

§ 10.861 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Oman Free Trade Agreement (the OFTA) signed on January 19, 2006, and under the United States-Oman Free Trade Agreement Implementation Act (the Act; 120 Stat. 1191). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the OFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.862 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or

a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* "Claim for preferential tariff treatment" means a claim that a good is entitled to the duty rate applicable under the OFTA to an originating good or other good specified in the OFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty.* "Customs duty" includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation;

(c) *Days.* "Days" means calendar days;

(d) *Enterprise.* "Enterprise" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(e) *Foreign material.* "Foreign material" means a material other than a material produced in the territory of one or both of the Parties;

(f) *GATT 1994.* "GATT 1994" means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(g) *Good.* "Good" means any merchandise, product, article, or material;

(h) *Harmonized System.* "Harmonized System (HS)" means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation,

Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(i) *Heading.* "Heading" means the first four digits in the tariff classification number under the Harmonized System;

(j) *HTSUS.* "HTSUS" means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(k) *Originating.* "Originating" means a good qualifying under the rules of origin set forth in General Note 31, HTSUS, and OFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(l) *Party.* "Party" means the United States or the Sultanate of Oman;

(m) *Person.* "Person" means a natural person or an enterprise;

(n) *Preferential tariff treatment.* "Preferential tariff treatment" means the duty rate applicable under the OFTA to an originating good and an exemption from the merchandise processing fee;

(o) *Subheading.* "Subheading" means the first six digits in the tariff classification number under the Harmonized System;

(p) *Textile or apparel good.* "Textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as "the ATC"), which is part of the WTO Agreement;

(q) *Territory.* "Territory" means:

(1) With respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(r) *WTO Agreement.* "WTO Agreement" means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

Import Requirements

§ 10.863 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for OFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol "OM" as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.864 Declaration.

(a) *Contents.* An importer who claims preferential tariff treatment for a good under the OFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable

change in tariff classification specified in General Note 31(h), HTSUS;

(3) Must include a statement, in substantially the following form: "I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Oman Free Trade Agreement; and

This document consists of ___ pages, including all attachments."

(b) *Responsible official or agent.* The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The declaration must be completed in the English language.

(d) *Applicability of declaration.* The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, "identical goods" means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

§ 10.865 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.863 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the OFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.864 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.866 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.864 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the OFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.867 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.863 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.864 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.880 of this subpart).

Post-Importation Duty Refund Claims

§ 10.869 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.870 of this subpart. Subject to the provisions of § 10.868 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.871(c) of this part.

§ 10.870 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.869 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(3) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.871 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.870 of this subpart, the port

director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim. (1) Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for a refund under this subpart in connection with the liquidation of the entry.

(2) Liquidated entry. If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) Denial of claim. (1) General. The port director may deny a claim for a refund filed under § 10.870 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.868 and § 10.870 of this subpart, or if, following an origin verification under § 10.887 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.887 of this subpart.

(2) Unliquidated entry. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) Liquidated entry. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

Rules of Origin

§ 10.872 Definitions.

For purposes of §§ 10.872 through 10.880:

(a) *Exporter.* "Exporter" means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good.* "Good" means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties.* "Goods wholly the growth, product, or manufacture of one or both of the Parties" means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer.* "Importer" means a person who imports goods into the territory of a Party;

(f) *Indirect material.* "Indirect material" means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material.* "Material" means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or

manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties.* "Material produced in the territory of one or both of the Parties" means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce.* "New or different article of commerce" means, except as provided in § 10.873(c) of this subpart, a good that:

(1) Has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one of both of the Parties; and

(2) Has a new name, character, or use distinct from the good or material from which it was transformed;

(j) *Non-originating material.* "Non-originating material" means a material that does not qualify as originating under this subpart or General Note 31, HTSUS;

(k) *Packing materials and containers for shipment.* "Packing materials and containers for shipment" means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods.* "Recovered goods" means materials in the form of individual parts that result from:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good.* "Remanufactured good" means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations.* "Simple combining or packaging operations" means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

(o) *Substantially transformed.* "Substantially transformed" means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that the good loses its separate identity in the manufacturing or processing operation and:

(1) The good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(2) The physical properties of the good or material are changed to a significant extent; or

(3) The operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes.

§ 10.873 Originating goods.

(a) *General.* A good will be considered an originating good under the OFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in § 10.872(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 31(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 31(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 31(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 31, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the OFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

§ 10.874 Textile or apparel goods.

(a) *De minimis.* (1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the OFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 31(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 31(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the OFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

§ 10.875 Accumulation.

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.873 of this subpart and all other applicable requirements of General Note 31, HTSUS.

§ 10.876 Value of materials.

(a) *General.* For purposes of § 10.873(b) of this subpart and, except as

provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

(3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

§ 10.877 Direct costs of processing operations.

(a) *Items included.* For purposes of § 10.873(b) of this subpart, the words "direct costs of processing operations", with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

(1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of § 10.873(b) of this subpart, the words "direct costs of processing operations" do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§ 10.878 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.873 of this subpart and General Note 31, HTSUS, except that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.873(b) of this subpart.

§ 10.879 Indirect materials.

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under § 10.873 of this subpart and General Note 31, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.873(b) of this subpart.

§ 10.880 Imported directly.

(a) *General.* To qualify as an originating good under the OFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words "imported directly" mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be "imported directly" only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the OFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was "imported directly" from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

Tariff Preference Level

§ 10.881 Filing of claim for tariff preference level.

A cotton or man-made fiber apparel good described in § 10.882 of this subpart that does not qualify as an originating good under § 10.873 of this subpart may nevertheless be entitled to preferential tariff treatment under the OFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9916.99.20) immediately above the applicable subheading in Chapter 61 or Chapter 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

§ 10.882 Goods eligible for tariff preference claims.

Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Oman from fabric or yarn produced or obtained outside the territory of Oman or the United States are eligible for a TPL claim filed under § 10.881 of this

subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XVI, Chapter 99, HTSUS).

§ 10.883 [Reserved]

§ 10.884 Declaration.

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.882 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

(1) A description of the good, quantity, invoice numbers, and bills of lading;

(2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;

(3) A statement as to any yarn or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

§ 10.885 Transshipment of non-originating apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words "imported directly" mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be "imported directly" only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was "imported directly" from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.885 of this subpart were met.

Origin Verifications and Determinations

§ 10.887 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under § 10.863 or § 10.870 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.888 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.863 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 31, HTSUS, and in §§ 10.863 through 10.886 of this subpart, the legal basis for the determination.

Penalties

§ 10.889 Violations relating to the OFTA.

All criminal, civil, or administrative penalties which may be imposed upon importers or other parties for violations of the U.S. customs or related laws or regulations will also apply to importations subject to the OFTA.

Goods Returned After Repair or Alteration

§ 10.890 Goods re-entered after repair or alteration in Oman.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Oman as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Oman, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, "repairs or alterations" means restoration, renovation, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Oman, are incomplete for their intended use and for which the processing operation performed in Oman constitutes an operation that is

performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Oman after having been exported for repairs or alterations and which are claimed to be duty free.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 4. The general authority citation for Part 24 and the specific authority for § 24.23 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

■ 5. Section 24.23 is amended by adding paragraph (c)(10) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(10) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States—Oman Free Trade Agreement Implementation Act (see also General Note 31, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2009.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 6. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 7. Section 162.0 is amended by revising the last sentence to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the Dominican Republic-Central America-U.S. Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, the U.S.-Bahrain Free Trade Agreement, and the U.S.-Oman Free Trade Agreement are contained in Part 10, Subparts H, I, J, M, N, and P of this chapter, respectively.

PART 163—RECORDKEEPING

■ 8. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 9. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(xii) as paragraph (a)(2)(xiii) and adding a new paragraph (a)(2)(xii) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(xii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Oman Free Trade Agreement (OFTA), including an OFTA importer's declaration.

* * * * *

■ 10. The Appendix to Part 163 is amended by adding new listings under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 10.865 OFTA records that the importer may have in support of an OFTA claim for preferential tariff treatment, including an importer's declaration.

§ 10.883 OFTA TPL certificate of eligibility.

§ 10.884 OFTA TPL declaration.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 11. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 12. Section 178.2 is amended by adding new listings "§§ 10.863, 10.864, 10.881, and 10.884" to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
*	*	*
§§ 10.863, 10.864, 10.881, and 10.884	Claim for preferential tariff treatment under the U.S.-Oman Free Trade Agreement.	1651–0117
*	*	*

* * * * *

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: December 28, 2010.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2010–33350 Filed 1–5–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 40, and 301

[TD 9507]

RIN 1545–BJ13

Electronic Funds Transfer of Depository Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9507) that were published in the **Federal Register** on Tuesday, December 7, 2010 (75 FR 75897) providing guidance relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). The temporary and final regulations provide rules under which depositors must use

EFT for all FTDs and eliminate the rules regarding FTD coupons.

DATES: Effective January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Hara, (202) 622–4910 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9507) that are the subject of these corrections are under section 6302 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9507) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9507), that are the subject of FR Doc. 2010–30526, are corrected as follows:

1. On page 75898, in the preamble, column 3, under the paragraph heading "*9. Business Days and Legal Holidays*", line 8 from the bottom of the page, the language "section 7503, the term "legal holiday"" is corrected to read "section 7503, the term *legal holiday*".

2. On page 75899, in the preamble, column 1, line 19 from the top of the page, the language "transitional relief. Notice 2010– states" is corrected to read "transitional relief. Notice 2010–87 states".

Guy Traynor,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–33357 Filed 1–5–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 301

[TD 9507]

RIN 1545–BJ13

Electronic Funds Transfer of Depository Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9507) that were published in the **Federal Register** on Tuesday, December 7, 2010 (75 FR 75897) providing guidance relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). The temporary and final regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons.

DATES: This correction is effective on January 6, 2011 and is applicable in taxable years ending on or after December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document is under section 6302 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9507) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 40 and 301 are corrected by making the following correcting amendments:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Paragraph 1.** The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 40.6302(c)–3 [Amended]

■ **Par. 2.** Section 40.6302(c)–3, paragraph (c) is amended by removing the language in the third sentence ""legal holiday"" and adding in its place "*legal holiday.*"

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 4.** Part 301 is amended by revising the authority paragraph to read as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 21.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Guy Traynor,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010–33354 Filed 1–5–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–HQ–OW–201; FRL–9247–8]

Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule provides national guidelines for the award of base grants under the Clean Water Act (CWA) section 319(h) nonpoint source (NPS) grants program to Indian tribes in FY 2011 (and subsequent years). In addition, the rule includes a few new administrative changes to clarify the guidelines and make them more user-friendly. The new administrative changes for base grant submissions are: That each EPA Region will now establish its own individual timeframe for tribes to submit application materials for section 319 base grants; the inclusion of information on how to calculate the cost-share/match; and the availability of facsimile submission for section 319 base grant application materials when the tribe coordinates with the appropriate EPA Regional coordinator in advance of the section 319 base grant application deadline.

DATES: This final rule is effective on January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Nancy Arazan, U.S. EPA, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division, *telephone:* (202) 566–0815; *fax:* (202) 566–1333; *e-mail: arazan.nancy@epa.gov.* Also contact the appropriate EPA Regional Tribal NPS Coordinator identified in section XIII and also listed on EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

Affected entities: Tribes that are eligible to receive grants under Section 319 and 518 of the Clean Water Act (CWA).

II. Background

In FY 2010 EPA awarded approximately $4.7 million in base grants to 148 tribes to address high-priority activities aimed at producing improved water quality. We look forward to working with tribes again in FY 2011 and beyond to implement successful projects addressing the extensive nonpoint source (NPS) control needs throughout Indian country. There is continuing recognition that Indian tribes need financial support to implement NPS programs that address critical water quality concerns on tribal lands. EPA will continue to work closely with the tribes to assist them in developing and implementing effective tribal NPS pollution programs.

EPA anticipates that Congress will, for the twelfth year in a row, authorize EPA to award NPS control grants to Indian tribes in FY 2011 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of ⅓ of 1 percent of the total section 319 appropriation. For FY 2011, EPA anticipates awarding section 319 base grants to eligible tribes in the amount of $30,000 or $50,000 of Federal section 319 funding (depending on land area; see Section B, Allocation Formula, for additional information).

Section 319 of the CWA authorizes EPA to award grants to eligible tribes for the purpose of assisting them in implementing approved NPS management programs developed pursuant to section 319(b). The primary goal of the NPS management program is to control NPS pollution through implementation of management measures and practices to reduce pollutant loadings resulting from each category or subcategory of NPSs identified in the tribe's NPS assessment report developed pursuant to section 319(a). Section 319 base funds may be used for a range of activities that implement the tribe's approved NPS management program, including, but not limited to the following: Hiring a program coordinator; conducting NPS education programs; providing training and authorized travel to attend training; updating the NPS management program; developing watershed-based plans; NPS ordinance development; springs protection; low impact development projects/stormwater management; livestock exclusion fencing; septic system rehabilitation; public outreach; and coordination with other environmental programs (tribal, EPA, other federal agency programs, etc.). EPA strongly encourages tribes to use section 319 funding for the development and/or implementation of watershed-based plans to protect unimpaired waters and restore NPS-impaired waters.

EPA awards section 319 base grants non-competitively, and allocates funding using a formula based on land area. Tribes with less than 1,000 sq. mi. (less than 640,000 acres) of land receive a base amount of $30,000, and tribes with over 1,000 sq. mi. (over 640,000 acres) receive a base amount of $50,000. EPA awards additional section 319 funds through a separate competitive process that is aimed at implementation of watershed-based projects and watershed plan development. EPA posts a separate Request for Proposals (RFP) for its competitive grants program under section 319 on an annual basis at *http://www.grants.gov*. Additional information on the competitive grants program under section 319 can be found on EPA's Web site at *http://www.epa.gov/nps/tribal*.

III. Overview of Clean Water Act Section 319 Base Grants to Indian Tribes

A. Environmental Results

EPA has developed guidelines for awarding CWA Section 319 base grants to Indian tribes. These guidelines apply to section 319 base grants awarded from funds appropriated by Congress in FY 2011 and in subsequent years.

Grants awarded under these guidelines will advance the protection and improvement of the Agency's Strategic Plan (see *http://www.epa.gov/ocfo/plan/plan.htm*). In support of Goal 2, Objective 2.2 of the Strategic Plan, and consistent with EPA Order 5700.7, *Environmental Results Under EPA Assistance Agreements* (*see http://www.epa.gov/ogd/grants/award/5700.7.pdf*), it is anticipated that grants awarded under these guidelines will be expected to accomplish various environmental outputs and outcomes as described below. All proposed work plans must include specific statements describing the environmental results of the proposed project in terms of well-defined outputs, and, to the maximum extent practicable, well-defined outcomes that demonstrate how the project will contribute to the overall protection and improvement of water quality. Eligible tribes should contact their EPA Regional Tribal NPS Coordinator for further information about the appropriate Strategic Plan references (*see* section XIII for Agency contact information and also EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal*).

Environmental outputs (or deliverables) refer to an environmental activity, effort, and/or associated work product related to an environmental goal or objective, that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative, but must be measurable during an assistance agreement funding period. Examples of environmental outputs anticipated as a result of section 319 grant awards may include but are not limited to: A watershed-based plan, progress reports, or a particular number of on-the-ground management measures or practices installed or implemented during the project period.

Environmental outcomes mean the result, effect, or consequence that will occur from carrying out an environmental program or activity that

is related to an environmental or programmatic goal or objective. Outcomes may be environmental, behavioral, health-related or programmatic in nature, must be quantitative, and may not necessarily be achieved within an assistance agreement funding period. Examples of environmental outcomes anticipated as a result of section 319 grants to be awarded may include but are not limited to: An increased number of NPS-impaired waterbodies that have been partially or fully restored to meet water quality standards or other water quality-based goals established by the tribes; and/or an increased number of waterbodies that have been protected from NPS pollution.

B. Allocation Formula

Each eligible tribe will receive Federal section 319 base funding in accordance with the following land area scale:

Square miles (acres)	Base amount
Less than 1,000 sq. mi. (less than 640,000 acres)	$30,000
Over 1,000 sq. mi. (over 640,000 acres)	$50,000

The land area scale is the same as used in previous years. EPA continues to rely upon land area as the deciding factor for allocation of funds because NPS pollution is strongly related to land use; thus land area is a reasonable factor that generally is highly relevant to identifying tribes with the greatest needs (recognizing that many tribes have needs that significantly exceed available resources).

C. Eligible Activities

Section 319 base funds may be used for a range of activities that implement the tribe's approved NPS management program, including: Hiring a program coordinator; conducting NPS education programs; providing training and authorized travel to attend training; updating the NPS management program; developing watershed-based plans; and implementing, alone or in conjunction with other agencies or other funding sources, watershed-based plans and on-the-ground watershed projects. In general, base funding should not be used for general assessment activities (e.g., monitoring the general status of reservation waters, which may be supported with CWA section 106 funding). EPA encourages tribes to use section 319 funding, and explore the use of other funding such as CWA section 106 funding, to support project-specific water quality monitoring, data management, data analysis, assessment activities, and the development of watershed-based plans.

IV. Eligibility and Match Requirements

A. Eligible Applicants

To be eligible for NPS base grants, a tribe or intertribal consortium must: (1) Be Federally recognized; (2) have an approved NPS assessment report in accordance with CWA section 319(a); (3) have an approved NPS management program in accordance with CWA section 319(b); and (4) have treatment in a similar manner as a state (TAS) status in accordance with CWA section 518(e). To be eligible for base and competitive NPS grants tribes must meet these eligibility requirements as of the second Friday in October for the applicable fiscal year unless otherwise notified, as announced in the FY 2007 guidelines on October 25, 2006, at 71 FR 62441. Tribes should contact their EPA Regional Tribal NPS Coordinator for further information about the eligibility process (*see* section XIII for Agency contact information and also EPA's website under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal*).

Some tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program. (*See* 40 CFR 35.502.) Individual tribes who are a part of intertribal consortia that is awarded a section 319 base grant may not also be awarded an individual section 319 base grant. (Note that individual tribes may still be eligible to apply for competitive funds if they do not also submit a proposal for competitive funds as part of an intertribal consortium.)

The intertribal consortium is eligible only if the consortium demonstrates that all its members meet the eligibility requirements for the section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit with their proposed work plan to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (*See* 40 CFR 35.504.) In making grant awards to tribes who are part of intertribal consortia, Regions must include a brief finding in the funding package that the tribes have demonstrated the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant.

B. Cost Share/Match

Section 319(h)(3) of the CWA requires that the cost share/match for NPS grants is 40 percent of the total project cost. In general, as required in 40 CFR 31.24, the cost share/match requirement can be satisfied by any of the following: allowable costs incurred by the grantee, subgrantee, or a cost-type contractor, including those allowable costs borne by non-Federal grants; by cash donations from non-Federal third parties; or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10 percent if the tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship (*see* 40 CFR 35.635.) In making grant awards to tribes that provide for a reduced match requirement, Regions must include a brief finding in the funding package that the tribe has demonstrated that it does not have adequate funds to meet the required match.

Performance Partnership Grants (PPG) enable tribes to combine funds from more than one environmental program grant into a single grant award. Tribes seeking to incorporate their section 319 base grant funds into a PPG must first apply for section 319 base funding following the program's specific requirements (separate work plan and complete budget) in order to qualify to put grants into a PPG. If the tribe includes the section 319 grant as a part of an approved PPG, the cost share/match requirement may be reduced to 5 percent of the total cost of the work plan budget for the first 2 years in which the tribe receives a PPG; after 2 years, the cost share/match may be increased up to 10 percent of the work plan budget (as determined by the Regional Administrator). (*See* 40 CFR 35.536.)

Where the stated purpose is to include the section 319 base grant in a PPG, a tribe may prepare a budget and proposed work plan based upon the assumption that EPA will approve the waiver amount for PPGs under 40 CFR 35.536. If a proposed PPG work plan differs significantly from the section 319 work plan approved for funding, the Regional Administrator must consult with the National Program Manager. (See 40 CFR 35.535.) The purpose of this consultation requirement is to address the issue of ensuring that a project which is awarded section 319

base funding is implemented once included with other grant programs in a PPG.

If the tribe does not or cannot include the section 319 base grant as part of an approved PPG, or chooses to withdraw the section 319 grant from their PPG, the tribe must then meet the match requirements identified in section IV.B above and, as applicable, negotiate a revised work plan with the EPA Regional Tribal NPS Coordinator.

The following table demonstrates a 40% (section 319 required cost share/match), 10% (if undue hardship requested), or 5% (if work plan combined in a PPG) cost share/match on a section 319 *base grant* Federal request of either $30,000 or $50,000. If applicants have additional questions regarding cost share/match calculations, please contact the EPA Regional Contact identified in section XIII.

MATCH CALCULATION TABLE FOR TRIBES ELIGIBLE FOR $50,000 OF BASE FUNDING (> 1,000 MI²)

Total project cost	Nonfederal match (percent)	Federal share (percent)	Nonfederal match	Federal share
$83,333	40	60	$33,333	$50,000
55,556	10	90	5,556	50,000
52,632	5	95	2,632	50,000

MATCH CALCULATION TABLE FOR TRIBES ELIGIBLE FOR $30,000 OF BASE FUNDING (< 1,000 MI²)

Total project cost	Nonfederal match (percent)	Federal share (percent)	Nonfederal match	Federal share
$50,000	40	60	$20,000	$30,000
33,333	10	90	3,333	30,000
31,579	5	95	1,579	30,000

Example Calculation:

a. If you know the total project costs:

(1) Multiply the total project costs by the cost-share/match percentage needed.

(2) The total is your cost-share/match amount.

For example:

If you are requesting $30,000 of base funding, and your total project cost = $50,000, and you need 40 percent cost-share/match, so $50,000 × .40 = $20,000 (cost-share/match).

or

b. If you know the total federal funds requested ($30,000 for this example):

(1) Divide the total federal funds requested by the maximum federal share allowed.

(2) Subtract the federal funds requested from the amount derived in step 1.

(3) The amount derived from step 2 is the nonfederal match.

For example:

(1) If the federal funds requested = $30,000 and the recipient cost-share/match is 10 percent, the federal share = 90% or 0.90. $30,000 ÷ 0.90 = $33,333 (total project cost).

(2) $33,333 − $30,000 = $3,333

(3) The nonfederal match = $3,333

V. Application Requirements for Base Grants

A. Address To Request Application Package for Base Grants

Grant application forms, including Standard Form (SF) 424, are available at *http://www.epa.gov/ogd/grants/how_to_apply.htm* and by mail upon request by calling the EPA Grants and Interagency Agreement Management Division (GIAMD) at (202) 564–5320. Tribes may also contact their EPA Regional Tribal NPS Coordinator for further information about the application process (*see* section XIII for Agency contact information and also EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal*).

B. Content and Form of Application Submission for Base Grants

Please note that only the proposed work plan and budget, including all of the components outlined in the section immediately below, need to be included in the initial application for base grants (*see* section VI for submission dates and times).

To apply for section 319 base grants, you must submit a proposed work plan and budget to the appropriate EPA Regional Tribal NPS Coordinator (*see* section XIII for Agency contact information and also EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal*). You may submit the proposed work plan and budget as either a hard copy or an electronic submission. If you submit a hard copy proposed work plan and budget, you have the option to submit it by U.S. Postal Mail, express delivery service, hand delivery, or courier service only. If you choose to submit the work plan and budget via fax, you must coordinate this with your EPA Regional Tribal NPS coordinator one week in advance of the section 319 base grant application deadline. The EPA Regional Tribal NPS coordinator must acknowledge the tribe's intention to submit via fax. If you submit a hard copy proposed work plan and budget, you are encouraged (not required) to include a compact disc (CD) with the electronic version of the proposed work plan. If you submit your proposed work plan electronically, it should be sent to the appropriate EPA Regional Tribal NPS Coordinator at the e-mail address listed in section XIII of this announcement and also on EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal*.

The specific content and form of the proposed work plan for the award of section 319 base grants is as follows:

1. Proposed Work Plan

Tribes must submit a work plan to receive base funding. All work plans must be consistent with the tribe's approved NPS management program and conform to legal requirements that are applicable to all environmental program grants awarded to tribes (*see* 40 CFR 35.507 and 35.515) as well as the grant requirements which specifically apply to NPS management grants (*see* 40 CFR 35.638). As provided in those regulations, and in accordance with EPA Order 5700.7, *Environmental Results under EPA Assistance Agreements*, all work plans must include:

a. Description of each significant category of NPS activity to be addressed;

b. Work plan components including cost estimate for each work plan component;

c. Work plan commitments for each work plan component, including anticipated environmental outputs and outcomes (as required by EPA Order 5700.7) and the applicant's plan for tracking and measuring its progress towards achieving the expected outputs and outcomes;

d. Total grant budget breakdown;

e. Estimated work years for each work plan component;

f. Roles and responsibilities of the recipient and EPA in carrying out the work plan commitments; and

g. Reporting schedule and a description of the performance evaluation process that will be used that accounts for: (a) A discussion of accomplishments as measured against work plan commitments and anticipated environmental outputs and outcomes; (b) a discussion of the cumulative effectiveness of the work performed under all work plan components; (c) a discussion of existing and potential problem areas; and (d) suggestions for improvement, including, where feasible, schedules for making improvements.

2. Work Plan To Develop a Watershed-Based Plan

If a tribe submits a work plan to develop a watershed-based plan, it must include a commitment to incorporate the nine components of a watershed-based plan identified in section VII.B below.

3. Work Plan To Implement a Watershed-Based Plan

If a tribe submits a work plan to implement a watershed-based plan, it must be accompanied by a statement that the Region finds that the watershed-based plan to be implemented includes the nine components of a watershed-based plan identified in section VII.B below.

VI. Submission Dates and Times for Proposed Work Plans for Base Grants

Beginning in FY 2011, eligible tribes must submit to the appropriate EPA Regional Tribal NPS Coordinator proposed work plans for base funding by a date established by the Regional office (*see* section XIII for Agency contact information; Agency contact information is also posted on EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal*). Application submission due dates and times for each of the Regions will be posted on the tribal NPS Web site: *http://www.epa.gov/nps/tribal*. The EPA Regional Tribal NPS Program Coordinator or the assigned CWA Section 319 Grants Project Officer will review the proposed work plan and budget for base funding and, where appropriate, recommend improvements to the plan by a specified date determined by the Region. The tribe must submit a final work plan and budget by a specified date determined by the Region. The Regions will determine the due date for final grant applications. Regions must set their base grant proposed work plan submission deadlines no later than March 1st, and need to notify EPA Headquarters of base grant award recipients by March 31st.

Submission dates and times for proposed work plans for NPS base grant funding for years beyond FY 2011 are described in section XI below.

VII. Watershed-Based Plans

A. Overview of Watershed-Based Plans

EPA strongly encourages tribes to use section 319 funding for the development and/or implementation of watershed-based plans to protect unimpaired waters and restore NPS-impaired waters. EPA also encourages tribes to explore the use of other funding such as CWA section 106 funding to support the development of watershed-based plans. EPA believes that watershed-based plans provide the best means for preventing and resolving NPS problems and threats. Watershed-based plans provide a coordinating framework for solving water quality problems by providing a specific geographic focus, integrating strong partnerships, integrating strong science and data, and coordinating priority setting and integrated solutions. This section outlines the specific information that should be included in all watershed-based plans that are developed or implemented using section 319 funding. This information correlates with the elements of a watershed-based plan outlined in the NPS grants guidelines for States (see *FY 2004 Nonpoint Source Program and Grants Guidelines for States and Territories*, available at *http://www.epa.gov/owow/nps/cwact.html*). One significant difference from the State guidelines is that a watershed-based plan for tribes provides for the integration of "water quality-based goals" (*see* element (3) below), whereas the State guidelines call for specific estimates of load reductions that are expected to be achieved by implementing the plan. EPA has incorporated this flexibility for tribes in recognition that not all tribes have yet developed water quality standards and many tribes may need additional time and/or technical assistance in order to develop more sophisticated estimates of the NPS pollutants that need to be addressed. Where such information does exist, or is later developed, EPA expects that it will be incorporated as appropriate into the watershed-based plan.

To the extent that information already exists in other documents (*e.g.*, NPS assessment reports or NPS management programs), the information may be incorporated by reference into the watershed-based plan. Thus, the tribe need not duplicate any existing process or document that already provides needed information.

B. Components of a Watershed-Based Plan

1. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the goal identified in element (3) below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed (*e.g.*, X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

2. A description of the NPS management measures that will need to be implemented to achieve a water quality-based goal described in element (3) below, as well as to achieve other watershed goals identified in the watershed-based plan, and an identification (using a map or a description) of the critical areas for which those measures will be needed to implement the plan.

3. An estimate of the water quality-based goals expected to be achieved by implementing the measures described in element (2) above. To the extent possible, estimates should identify specific water quality-based goals, which may incorporate, for example: Load reductions; water quality standards for one or more pollutants/uses; NPS total maximum daily load allocations; measurable, in-stream reductions in a pollutant; or improvements in a parameter that indicates stream health (*e.g.*, increases in fish or macroinvertebrate counts). If information is not available to make specific estimates, water quality-based goals may include narrative descriptions and best professional judgment based on existing information.

4. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon to implement the plan. As sources of funding, tribes should

consider other relevant Federal, State, local and private funds that may be available to assist in implementing the plan.

5. An information and education component that will be used to enhance public understanding and encourage early and continued participation in selecting, designing, and implementing the NPS management measures that will be implemented.

6. A schedule for implementing the NPS management measures identified in the plan that is reasonably expeditious.

7. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

8. A set of criteria that can be used to determine whether the water quality-based goals are being achieved over time and substantial progress is being made towards attaining water quality-based goals and, if not, the criteria for determining whether the watershed-based plan needs to be revised.

9. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under element (8) above. EPA recognizes the difficulty of developing the information described above with precision and, as these guidelines reflect, believes that there must be a balanced approach to address this concern. On one hand, it is absolutely critical that tribes make, at the subcategory level, a reasonable effort to identify the significant sources; identify the management measures that will most effectively address those sources; and broadly estimate the expected water quality-based goals that will be achieved. Without such information to provide focus and direction, it is much less likely that a project that implements the plan can efficiently and effectively address the NPSs of water quality impairments. On the other hand, EPA recognizes that even with reasonable steps to obtain and analyze relevant data, the available information at the planning stage (within reasonable time and cost constraints) may be limited; preliminary information and estimates may need to be modified over time, accompanied by mid-course corrections in the watershed plan; and it often will require a number of years of effective implementation to achieve the goals. EPA fully intends that the watershed planning process described above should be implemented in a dynamic and iterative manner to assure that projects implementing the plan may proceed even though some of the information in the watershed plan is imperfect and may need to be modified over time as information improves.

C. Scale and Scope of Watershed-Based Plans

The watershed-based plan should address a large enough geographic area so that its' implementation addresses all of the significant sources and causes of impairments and threats to the waterbody in question. EPA recognizes that many tribes may face jurisdictional limitations outside reservation boundaries. To the extent possible, EPA encourages tribes to engage other partners and include mixed ownership watersheds when appropriate to solve the water quality problems (*e.g.*, tribal, Federal, State, local and private lands). While there is no rigorous definition or delineation for this concept, the general intent is to avoid single segments or other narrowly defined areas that do not provide an opportunity for addressing a watershed's stressors in a rational and economical manner. At the same time, the scale should not be so large as to minimize the probability of successful implementation.

Once a watershed-based plan that contains the information identified above has been established, it can be used as the foundation for preparing annual work plans. Like the NPS management program approved under section 319(b), a watershed-based plan may be a multi-year planning document. Whereas the NPS management program provides overall program guidance to address NPS pollution on tribal lands, a watershed-based plan focuses NPS planning on a particular watershed identified as a priority in the NPS management program. Due to the greater specificity of a watershed-based plan, it will generally have considerably more detail than a NPS management program, and identified portions may be implemented through highly specific annual work plans. While the watershed-based plan can be considered a subset of the NPS management program, the annual work plan can be considered a subset of the watershed-based plan.

A tribe may choose to implement the watershed-based plan in prioritized portions (*e.g.*, based on particular segments, other geographic subdivisions, NPS categories in the watershed, or specific pollutants or impairments), consistent with the schedule established pursuant to item (f) above. In doing so, tribes may submit annual work plans for section 319 grant funding that implement specific portions of the watershed-based plan. A watershed-based plan is a strategic plan for long-term success; annual work plans are the specific "to-do lists" to achieve that long-term success.

VIII. General Grant Requirements

A. Grant Requirements

A listing and description of general EPA regulations applicable to the award of assistance agreements may be viewed at *http://www.epa.gov/ogd/AppKit/appplicable_epa_regulations_and_description.htm.*

All applicable legal requirements including, but not limited to, EPA's regulations on environmental program grants for tribes (*see* 40 CFR 35.500 to 35.735) and regulations specific to NPS grants for tribes (*see* 40 CFR 35.630 to 35.638), apply to all section 319 grants.

B. Non-Tribal Lands

The following discussion explains the extent to which section 319 grants may be awarded to tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) Activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation; and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

1. Activities That Are Related to Waters Within a Reservation

Section 518(e) of the CWA provides that EPA may treat an Indian Tribe as a State for purposes of section 319 of the CWA if, among other things, "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation" (*see* 33 U.S.C. 1377(e)(2)). EPA already awards grants to tribes under section 106 of the CWA for activities performed outside of a reservation (on condition that the tribe obtains any necessary access agreements and coordinates with the State, as appropriate) that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of State borders. EPA has concluded that grants awarded to an Indian tribe pursuant to section 319 may similarly be used to perform eligible section 319 activities outside of a reservation if: (1) The activity pertains to the management and protection of waters within a reservation; and (2) just as for on-reservation activities, the tribe meets all other applicable requirements.

2. Activities That Are Unrelated to Waters of a Reservation

As discussed above, EPA is authorized to award section 319 grants to tribes to perform eligible section 319 activities if the activities pertain to the management and protection of waters within a reservation and the tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319 grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including "usual and accustomed" hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

C. Administrative Costs

Pursuant to CWA section 319(h)(12), administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with the grant shall not exceed 10 percent of the grant award. The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer are not subject to this limitation. It is common for work plans to include many of the above-stated exceptions to administrative costs. For example, most BMPs implemented by tribes are considered demonstration projects and would fall under the administrative cost exemption. Note that indirect cost rates are set by Department of Interior for the tribe and are independent of indirect costs mentioned in CWA.

D. Satisfactory Progress

For a tribe that received section 319 funds in the preceding fiscal year, section 319(h)(8) of the CWA requires that the Region determine whether the tribe made "satisfactory progress" during the previous fiscal year in meeting the schedule of activities specified in its approved NPS management program. The Region will base this determination on an examination of tribal activities, reports, reviews, and other documents and discussions with the tribe in the previous year. Regions must include in each section 319 base grant award package (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the tribe has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in its NPS management program. The Regions must include brief explanations that support their determinations.

E. Operation and Maintenance

Each section 319 grant must contain a condition requiring that the tribe assure that any management practices implemented for the project be properly operated and maintained for the intended purposes during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. Management practices and projects that are damaged or destroyed due to a natural disaster (*e.g.*, earthquakes, storm events, floods, etc.) or events beyond the control of the grantee are exempt from this condition.

The condition must require the tribe to assure that any subrecipient of section 319 funds similarly include the same condition in the subaward. Additionally, such condition must reserve the right of EPA and the tribe, respectively, to conduct periodic inspections during the life span of the project to ensure that operation and maintenance are occurring, and shall state that, if it is determined that participants are not operating and maintaining practices in an appropriate manner, EPA or the tribe, respectively, will request a refund for the project supported by the grant.

The life span of a project will be determined on a case-by-case basis, tailored to the types of practices expected to be funded in a particular project, and should be specified in the grant condition. For assistance in determining the appropriate life span of the project, tribes may wish to examine other programs implementing similar practices, such as the U.S. Department of Agriculture's conservation programs. For example, for conservation practices, it may be appropriate to construct the life span consistent with the life span for similar conservation practices as determined by the Commodity Credit Corporation (pursuant to the implementation of the Environmental Quality Incentives Program). Following the approach used in many Federal funding programs, practices will generally be operated and maintained for a period of at least 5 to 10 years.

F. Reporting

As provided in 40 CFR 31.40, 31.41, 35.507, 35.515, and 35.638, all section 319 grants must include a set of reporting requirements and a process for evaluating performance. Some of these requirements have been explicitly incorporated into the required work plan components that all tribes must include in order to receive section 319 grant funding.

The work plan components required for section 319 funding, specifically those relating to work plan commitments and timeframes for their accomplishment, facilitate the management and oversight of tribal grants by providing specific activities and outputs by which progress can be monitored. The performance evaluation process and reporting schedule (both work plan components) also establish a formal process by which accomplishments can be measured. Additionally, the satisfactory progress determination (for tribes that received section 319 funding in the preceding fiscal year) helps ensure that tribes are making progress in achieving the goals in their NPS management programs.

Regions will ensure that the required evaluations are performed according to the negotiated schedule (at least annually) and that copies of the performance evaluation reports are placed in the official files and provided to the recipient.

IX. Technical Assistance to Tribes

In addition to providing NPS grant funding to tribes, EPA remains committed to providing continued technical assistance to tribes in their efforts to control NPS pollution. During the past fifteen years, EPA has presented many workshops to tribes nationwide to assist them in developing: (1) NPS assessments to further their understanding of NPS pollution and its impact on water quality; (2) NPS management programs to apply solutions to address their NPS problems; and (3) specific projects with effective on-the-ground solutions. The workshops have provided information on related EPA and other programs that can help tribes address NPS pollution, including the provision of technical and funding assistance. Other areas of technical assistance include watershed-based planning, water quality monitoring, section 305(b) reports on water quality, and section 303(d) lists of impaired waters. EPA intends to continue providing NPS Webcasts and workshops to interested tribes in FY 2011 (and beyond) and to provide other appropriate technical assistance as needed. EPA also intends to include special emphasis in the trainings on the development and implementation of watershed-based plans that are designed to address on-the-ground water quality improvements. The National

Partnership for Environmental Technology Education (PETE) has entered into a multi-year contract with the U.S. Environmental Protection Agency (EPA) to develop a nationwide tribal training program for the Office of Grants and Debarment (OGD) and the Office of Small Business Programs (OSBP). This cutting-edge program will involve a multi-faceted approach to provide tribes, U.S. Territories and Insular Areas with training in the proper management of EPA funds through assistance awards, and OSBP's Disadvantaged Business Enterprise Rule (DBE) rule. The online training can be found at: *http://www.petetribal.org.*

X. Anticipated Deadlines and Milestones for FY 2011 Base Grants

Deadline for tribes to be eligible for 319 grants.	October 8, 2010.
Tribes submit base grant proposed work plan to Region	Determined by Region (no later than March 1, 2011).
Region comments on tribe's base grant proposed work plan	Determined by Region.
Tribes submit final base grant work plan to Region	Determined by Region.

Other than the date EPA will use to determine eligibility to receive 319 grants, the dates above are the anticipated dates for those actions.

XI. Anticipated Deadlines and Milestones for Base Grants Beyond FY 2011

Listed below are the anticipated deadlines and milestones for NPS base grants for years beyond FY 2011 unless otherwise announced. Beyond FY11, Regions must set their base grant proposed work plan submission deadlines no later than the first Friday in March, and need to notify EPA Headquarters of base grant award recipients no later than the last Friday in March.

The deadlines and milestones below refer to the dates within the particular fiscal year for which the tribe is applying for NPS base grants. Each year, the specific dates will be posted on EPA's Web site at *http://www.epa.gov/nps/tribal.* Tribes should also contact their EPA Regional Tribal NPS Coordinator for further information about deadlines and milestones for years beyond FY 2011 (*see* EPA's Web site under "EPA Tribal NPS Coordinators" at *http://www.epa.gov/nps/tribal for Agency contact information*).

Deadline for tribes to be eligible for 319 grants.	Second Friday in October.
Tribes submit base grant proposed work plan to Region	Determined by Region (but no later than the first Friday in March).
Region comments on tribe's base grant proposed work plan	Determined by Region.
Tribes submit final base grant work plan to Region	Determined by Region.

XII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect state, local or tribal governments. These revisions clarify the current requirements and provide flexibility. This action 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. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the Agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit its final action in its report to Congress under the Act.

XIII. Agency Contacts: EPA Headquarters and Regional Tribal NPS Coordinators

EPA Headquarters—Nancy Arazan, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division, *telephone:* 202–566–0815; *e-mail: arazan.nancy@epa.gov.*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont—Beth Edwards; *mailing address:* U.S. EPA Region I, 5 Post Office Square, Suite 100, Boston, MA 02109; *telephone:* 617–918–1840; *e-mail: Edwards.beth@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands—Rick Balla; *mailing address:* U.S. EPA Region II, 290 Broadway–24th Floor (MC DEPP:WPB), New York, New York 10007; *telephone:* 212–637–3788; *e-mail: balla.richard@epa.gov:*

Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC—Fred Suffian; *mailing address:* U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; *telephone:* 215–814–5753; *e-mail: suffian.fred@epa.gov.*

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee—Yolanda Brown; *mailing address:* U.S. EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303; *telephone:* 404–562–9451; *e-mail: brown.yolanda@epa.gov.*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin—Daniel Cozza; *mailing address:* U.S. EPA Region V, 77 West Jackson Blvd. (MC: WS–15J), Chicago, IL 60604; *telephone:*

312–886–7252; *e-mail: cozza.daniel@epa.gov.*

*Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas*George Craft; *mailing address:* U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202; *telephone:* 214–665–6684; *e-mail: craft.george@epa.gov.*

Region VII—Iowa, Kansas, Missouri, Nebraska—Jennifer Ousley; *mailing address:* U.S. EPA Region VII, 901 N 5th Street, (MC:WWPDWWSP) Kansas City, KS 66101; *telephone:* 913–551–7498; *e-mail: ousley.jennifer@epa.gov.*

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming—Mitra Jha; *mailing address:* U.S. EPA Region VIII, 1595 Wynkoop St. (MC: 8EPR–EP), Denver, CO 80202; *telephone:* 303–312–6895; e-mail: *jha.mitra@epa.gov.*

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam—Tiffany Eastman; *mailing address:* U.S. EPA Region IX, 75 Hawthorne Street (MC: WTR–10), San Francisco, CA 94105; *telephone:* 415–972–3404; *e-mail: eastman.tiffany@epa.gov.*

Region X—Alaska, Idaho, Oregon, Washington—Krista Mendelman; *mailing address:* U.S. EPA Region X, 1200 6th Avenue, Suite 900 (MC: OWW–137), Seattle, WA 98101; *telephone:* 206–553–1571; *e-mail: mendelman.krista@epa.gov.*

Dated: December 29, 2010.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2011–16 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 76, No. 4
Thursday, January 6, 2011

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AC28

General Administrative Regulations; Good-Performance Refunds

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations by adding a new subpart Y to provide a Good-Performance Refund (GPR) to producers who have demonstrated favorable crop insurance performance evidenced by a very limited number of claims experienced over a specified number of years participating Federal crop insurance programs. The GPR will recognize an individual producer's contributions to favorable program performance as authorized under section 508(d)(3) of the Federal Crop Insurance Act (Act). In addition, new or beginning producers demonstrating favorable crop insurance performance may also be recognized for initial participation in the program.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 21, 2011 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled "Good-Performance Refund Proposed Rule", by any of the following methods:

- *By Mail to:* Leiann Nelson, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0801, P.O. Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Leiann Nelson, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-Mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Leiann Nelson, Senior Underwriter, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7394.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

A Regulatory Impact Analysis has been completed and is available to interested persons from the Kansas City address listed above. In summary, the analysis finds that the benefits of Good Performance Refunds will outweigh the expenses of the program. Good Performance Refunds will return a portion of producer paid premium back to producers who purchase crop insurance for their risk management needs, pursue loss prevention and loss reduction methods, and demonstrate good farming practices, providing, in effect, a premium discount to individual producers demonstrating a series of good years with very few losses in their insurance history.

The Good Performance Refund program will specifically encourage sound management practices as well as encouraging insured producers to continue participation in the crop insurance program. Benefits to insured's who qualify for the program based on their individual number of insured years and losses, will be cash refunds of premium based on their out-of-pocket premium amount. Cash refunds are estimated on average to be slightly over $1,000 for the 2011 refund and will vary annually depending on the number of producers qualifying, and, once qualified, the individual insured's number of years of insurance history and amount of insurance purchased. The return of some previously paid premium dollars may be used to offset anticipated increases in the costs of production inputs or higher crop insurance premiums due to higher crop prices and, in some cases, higher volatility of prices. With these higher anticipated costs, these benefits allow producers to continue purchasing higher levels of crop insurance.

The GPR program will, additionally, encourage insureds not to claim small or insignificant losses so they may qualify for a refund later. Small losses present administrative costs to insurance providers, the government, and taxpayers that can add up program-wide. Any reduction of these types of losses can result, long-term, in decreases in administrative costs of the program as well as possible decreases for future premium rates and corresponding subsidy amounts, thus benefiting insureds, insurance providers, the government and taxpayers.

GPR costs to the government are estimated at $75 million annually.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), there are no paperwork implications involved with this rule.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local; and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. GPR payments for the Federal crop insurance program are calculated using the same method for all producers regardless of the size of their farming operation. The amount of work required of the insurance companies will not increase because the information must already be collected under the present regulations, policies and procedures approved by the FCIC and by the Risk Management Agency of the United States Department of Agriculture (RMA), and the GPR payments will be issued by RMA on behalf of FCIC. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Section 508(d)(3) of the Federal Crop Insurance Act (Act) authorizes the Federal Crop Insurance Corporation (FCIC) to provide a performance-based premium discount to a producer of an agricultural commodity who has good insurance or production experience relative to other producers of that agricultural commodity in the same area and as determined by the FCIC.

The proposed rule will implement a GPR program to producers meeting the qualifications for years of participation in the Federal crop insurance program combined with a limited number of losses, demonstrating favorable program performance. In addition, any new or beginning producers may be recognized for initial participation in the program who also demonstrated favorable program performance.

GPR payments will not exceed $75 million unless FCIC makes an announcement of an alternative amount in a notice published in the Federal Register. Based on the net paid premium of qualifying producers and the total amount designated for GPR payments, a premium percentage will be determined to apply to all producers who meet the program qualification requirements.

Good cause is shown to provide a shortened comment period because the provisions of this rule are straightforward, so a shortened comment period still allows enough time for the public to provide meaningful comments.

While the premium to purchase buy-up levels of coverage in the Federal crop insurance program already receive substantial subsidies, these subsidies are not tied to an individual producer's performance. The good performance refund will provide a tool to encourage producers to mitigate small losses.

Producers will soon be making decisions regarding the upcoming crop year so knowing and understanding the benefits of this rule will allow producers to take more timely actions to purchase the necessary buy-up levels of coverage required for qualification for a good performance refund, and to reduce or prevent small losses that could otherwise jeopardize their future qualifications for such refund. To the extent losses are mitigated or reduced in the Federal crop insurance program, premium rates also may be lower, in turn reducing program costs to producers, the government, and taxpayers.

A longer comment period, such as a 60 day period, would delay the implementation of this rule and the payment of any refunds hereunder, until well after the normal spring planting season for most 2011 crops. By delaying these refunds, producers will not be able to use them to help finance their 2011 spring operations. In addition, in the coming weeks, producers will be making decisions regarding the upcoming crop year so knowing and understanding the benefits of this rule will allow producers to take more timely actions to purchase the necessary buy-up levels of coverage required for qualification for a good performance refund, and to reduce or prevent small losses that could otherwise jeopardize their future qualifications for such refund. To the extent losses are mitigated or reduced in the crop insurance program, premium rates also may be lower, in turn reducing program costs to producers, the government, and taxpayers.

The agency believes that requirements governing the payment of a good performance refund are straightforward. There are a limited number of ways that such refunds can be provided within the context of the Federal crop insurance program. Therefore, a lengthy delay of implementation of the program is unnecessary and contrary to providing the benefits to producers receiving these refunds in time for them to be used to help finance their spring 2011 operations. For the reasons stated above, good cause is shown to limit the comment period to 15 days for this rule as a lengthy comment period is not practicable and would be contrary to the public interest.

The GPR is applicable to the 2011 and succeeding calendar years as long as funds are available for GPR payments.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to add a new

subpart Y to 7 CFR part 400 to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart Y—Good-Performance Refunds

Sec.

Authority: 7 U.S.C. 1506(1), 1506(o).

Subpart Y—Good-Performance Refunds

§ 400.800 Basis and applicability.

(a) The regulations contained in this subpart describe the eligibility requirements, rules, and criteria for receiving a Good-Performance Refund (GPR).

(b) GPR payments will be made annually generally during the first quarter of the calendar year, provided funds are available.

§ 400.801 Definitions.

Base period. A period of crop insurance program performance used to determine an individual producer's net paid premium including the base year and nine years prior to the base year. For example: If the base year is 2009, the base period includes years 2000 through 2009.

Base year. The last crop year that has been completed and all claims would normally have been paid. The base year is used to establish the base period. For example: A payment for the 2011 calendar year will be based on information containing the producer's crop insurance experience with a base year of 2009 because claims for the 2010 crop year would not all have been finalized. For a 2012 calendar year payment the base year would be 2010.

Buy-up coverage level. A level of coverage greater than catastrophic risk protection. This level of insurance may also be referred to as "additional coverage."

FCIC. Has the same meaning as contained in section 1 of the Common Crop Insurance Policy Basic Provisions (Basic Provisions) (7 CFR § 457.8).

Net paid premium. For the base period, total premium for all crops and units insured by the producer less the total premium subsidy and any indemnities received. Indemnities will include all payments for all claims except those designated as replant payments.

New or beginning producers. A producer who has not participated in any farming or ranching operation, either as a primary entity or as a person having a SBI in the operation, for any crop year prior to the two crop years immediately preceding the base year. Example: New or beginning producers for a GPR payment authorized for the 2011 crop year could have been involved as a primary operator or a SBI in any farm or ranch in 2007, 2008, and 2009 but could not have been a primary operator or have a SBI in any farm or ranch for any crop year prior to 2007.

Percentage of net paid premium. A percentage determined by FCIC and used to calculate the GPR, based on the total funds determined by FCIC to be available for the GPR program and the total net paid premium of all qualified producers. The percent of net paid premium will not exceed 15 percent. (The percentage of net paid premium is adjusted to account for the minimum and maximum allowable payments and new or beginning producer payments.)

Positive net paid premium. When the net paid premium is greater than one.

Substantial beneficial interest (SBI). Has the same meaning as contained in section 1 of the Basic Provisions and any applicable procedures.

§ 400.802 Eligibility requirements.

To be eligible for a GPR payment, a producer must:

(a) Have been a participant in any Federal crop insurance program at the buy-up coverage level for at least one insurance policy that earned premium for the base year.

(b) Not be determined to be ineligible in accordance with the Basic Provisions or subpart U of this part, for the crop year subsequent to the base year. For example, if the 2009 crop year is the base year, the insured must not be determined to be ineligible for the 2010 crop year.

(c) Have used the same social security number or employer identification number to identify the primary insured entity throughout the base period.

(d) Meet the following good-performance requirements of:

(1) In the case of a producer with seven to ten years of program participation during the base period:

(i) Not more than 1 year with a reported loss, and

(ii) Have a positive net paid premium for the program participation period; or

(2) In the case of a program with four to six years of program participation during the base period of having no years with a reported loss.

§ 400.803 New or beginning producers.

(a) New or beginning producers will be eligible for a GPR payment for any given year when GPR payments are made, unless FCIC publishes an announcement, as specified in § 400.805, stating otherwise.

(b) New or beginning producers must meet the requirements of §§ 400.802(a), (b), and (c).

(c) New or beginning producers will be required to sign a certification statement that they meet the requirements to be designated as a new or beginning producer in order to be eligible for a GPR payment.

(d) New or beginning producers must demonstrate favorable program performance by participating in the Federal crop insurance program for the most recent one to three years of the base period, and have a positive net paid premium for that period of participation.

§ 400.804 Payments.

(a) Aggregated premium and indemnity for all crops insured in all counties under a qualifying producer's social security number or employer identification number will be used to calculate the GPR.

(b) Except as provided herein, in the case of a new or beginning producer, the net paid premium percentage will be reduced by 50 percent of the percentage paid to producers who are not new or beginning. For example: If the percent of net paid premium is 8 percent for producers who are not new or beginning producers, then new and beginning producers will receive a GPR of 4 percent of net paid premium, unless an adjustment is needed due to a larger number of certifying new or beginning producers than is anticipated.

(c) GPR payments under this section will not exceed $75 million. If amounts to be paid exceed $75 million due to a larger than anticipated number of producers that certify they are new or beginning, then FCIC will adjust the percentage refund for new or beginning producers, contained in paragraph (b) of this section, downward.

(d) Subject to paragraph (e) of this section, GPR payments will be calculated as follows:

(1) For producers, other than new or beginning producers, multiply the percent of net paid premium by the individual producer's net paid premium; and

(2) For new and beginning producers, multiply the percent of net paid premium by .50, unless adjusted in accordance with paragraph (c) of this section, and then multiply the result by the individual producer's net paid premium.

(e) A GPR payment will:

(1) Not be made unless it is at least $25; and

(2) Be capped at $25,000 for calculated GPR payments larger than $25,000, regardless of the calculated payment.

(f) All GPR payments will be considered final with no adjustments, modifications, additions or deletions, except as specified in paragraphs (g) and (h) of this section, and will be based on data contained in the RMA crop insurance database as of the end of the first full week in January of the year the GPR payment is authorized, unless FCIC publishes an announcement in accordance with § 400.805 providing a different date. For example: For GPR payments made for the 2011 calendar year, the data used would be as of the end of the first full week in January 2011.

(g) Any qualifying producer involved in arbitration, litigation, or mediation will not receive a payment until the legal proceedings have been resolved.

(h) If a producer receives a GPR payment under this subpart and is determined to be ineligible for the crop year subsequent to the base year or is at any time determined to not meet the requirements of § 400.803, the GPR payment must be repaid to FCIC in accordance with section 24 of the Basic Provisions and any applicable procedures.

§ 400.805 GPR announcements.

FCIC will post information on the RMA Web site, at *http://www.rma.usda.gov* or a successor Web site, to provide the public with information regarding the GPR for a calendar year.

Signed in Washington, DC, on January 3, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–14 Filed 1–4–11; 11:15 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 90–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–1159 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) to supersede an existing AD, applicable to certain Gulfstream Aerospace Corporation Model G–1159 airplanes. The existing AD requires an inspection to detect cracks or corrosion in the wing structure in the area of Fuselage Station (FS) 452 inboard clothespin attachment fitting, and repair if necessary. The proposed AD would have required repetitive inspections to detect corrosion or cracks in the forward and aft wing attach fittings at FS 345 and 452, respectively, and adjacent wing beam and wing plank areas, and repair if necessary; and the application of corrosion protection treatment. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that indicate the aircraft maintenance manual has been revised to include additional inspections that address the unsafe condition detailed in the NPRM and that the full fleet is in compliance with the inspection and applicable repair required by the existing AD. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Carey O'Kelley, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474–5543; fax (404) 474–5606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to Gulfstream Aerospace Corporation Model G–1159 airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on January 2, 1991 (56 FR 33). The proposed rule would have superseded an existing airworthiness directive (AD 90–13–02, Amendment 39–6660 (55 FR 29008, July 17, 1990)), applicable to certain Gulfstream Aerospace Corporation Model G–1159 airplanes. The existing AD currently requires an inspection to detect cracks or corrosion in the wing structure in the area of Fuselage Station (FS) 452 inboard clothespin attachment fitting, and repair if necessary. The NPRM proposed to require additional repetitive inspections to detect corrosion or cracks in the forward and aft wing attach fittings at FS 345 and 452, respectively, and adjacent wing beam and wing plank areas, and repair if necessary; and the application of corrosion protection treatment. The NPRM resulted from a review of the inspection reports submitted in response to the existing AD. The proposed actions were intended to prevent significantly reduced structural integrity of the wing/fuselage attachment joint, and the inability to carry flight or ground loads.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, Gulfstream has revised Chapter 5, inspection program (continued airworthiness), of the aircraft maintenance manual (AMM) to include additional inspections that address the unsafe condition detailed in the NPRM. We have also received data that shows full fleet compliance with the inspection and applicable repair required by AD 90–13–02.

FAA's Conclusions

Upon further consideration, the FAA has determined that the actions required by AD 90–13–02 adequately addressed the identified unsafe condition. Therefore, it is not necessary to mandate the repetitive inspections specified in the Gulfstream AMM. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 90–NM–267–AD, published in the **Federal Register** on January 2, 1991 (56 FR 33), is withdrawn.

Issued in Renton, Washington, on December 27, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–54 Filed 1–5–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 37, 38, 39, and 40

RIN 3038–AD01

Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") hereby proposes regulations to further implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Specifically, the Commission proposes certain substantive requirements on the resolution of conflicts of interest, in order to further implement core principles applicable to derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs"), and swap execution facilities ("SEFs"). Such substantive requirements address reporting, transparency in decision-making, and limitations on use or disclosure of non-public information, among other things. For DCOs and DCMs, the Commission also proposes regulations to implement core principles concerning governance fitness standards and the composition of governing bodies. Finally, for publicly-traded DCMs, the Commission proposes regulations to implement the core principle on diversity of Boards of Directors.

The Commission welcomes comments on all aspects of the proposed regulations.

DATES: Submit comments on or before March 7, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AD01 number, by any of the following methods:

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

Please submit your comments using only one method.

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

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

FOR FURTHER INFORMATION CONTACT: Nancy Liao Schnabel, Special Counsel, Division of Clearing and Intermediary Oversight (DCIO), at 202–418–5344 or *nschnabel@cftc.gov;* Lois Gregory, Assistant Deputy Director for Market Review, the Division of Market Oversight (DMO), at 202–418–5569 or *lgregory@cftc.gov;* Alicia Lewis, Attorney-Advisor, DCIO, at 202–418–5862 or *alewis@cftc.gov;* Jordan O'Regan, Attorney-Advisor, DCIO, at 202–418–5984 or *joregan@cftc.gov;* or Jolanta Sterbenz, Counsel, Office of the General Counsel, at 202–418–6639 or *jsterbenz@cftc.gov;* in each case, also at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("CEA")[4] to establish a comprehensive new regulatory framework for swaps and certain security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (i) Providing for the registration and comprehensive regulation of swap dealers and major swap participants;[5] (ii) imposing mandatory clearing and trade execution requirements on clearable swap contracts; (iii) creating robust recordkeeping and real-time reporting regimes; and (iv) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the oversight of the Commission.

In order to ensure the proper implementation of the comprehensive new regulatory framework, the Dodd-Frank Act requires the Commission to promulgate regulations regarding the mitigation of conflicts of interest in the operation of certain DCOs, DCMs, and SEFs. On October 1, 2010, the Commission identified possible conflicts. Section II below briefly summarizes these conflicts. To address these conflicts, the Commission proposed[6] both (i) structural governance requirements[7] and (ii) limits on ownership of voting equity and exercise of voting power[8] (the "Conflicts of Interest NPRM").

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[1] 17 CFR 145.9.

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

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

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

[5] In this release, the terms "swap dealer" and "major swap participant" shall have the meanings set forth in Section 721(a) of the Dodd-Frank Act, which added Sections 1a(49) and (33) of the CEA. However, Section 721(c) of the Dodd-Frank Act directs the Commission to promulgate rules to further define, among other terms, "swap dealer" and "major swap participant." The Commission is in the process of this rulemaking. *See, e.g., http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_2_Definitions.html.* The Commission anticipates that such rulemaking will be completed by the statutory deadline of July 15, 2011.

[6] 75 FR 63732 (Oct. 18, 2010).

[7] According to the Conflicts of Interest NPRM: (i) Each DCO, DCM, or SEF must have a Board of Directors with at least 35 percent, but no less than two, public directors; (ii) each DCO, DCM, or SEF must have a nominating committee with at least 51 percent public directors; (iii) each DCO, DCM, or SEF must have one or more disciplinary panels, with a public participant as chair; (iv) each DCM or SEF must have (A) a regulatory oversight committee ("ROC"), with all public directors, and (B) a membership or participation committee, with 35 percent public directors; and each DCO must have a risk management committee ("RMC"), with at least (A) 35 percent public directors and (B) 10 percent customer representatives. *See generally* 75 FR 63732 (Oct. 18, 2010).

[8] According to the Conflicts of Interest NPRM, no DCM or SEF member (and related persons) may (i) beneficially own more than 20 percent of any class of voting equity or (ii) directly or indirectly vote an interest exceeding 20 percent of the voting power of any class of equity.

The Conflicts of Interest NPRM primarily aims to implement Sections 726 and 725(d) of the Dodd-Frank Act.[9] However, the Commission drew additional authority to propose the abovementioned requirements from Sections 725(c),[10] 735(b),[11] and 733[12] of the Dodd-Frank Act. Together, such sections contain DCO, DCM, or SEF core principles that require each such entity to (i) establish and enforce rules to minimize conflicts of interest in its decision-making process and (ii) establish a process for resolving such conflicts.[13] This proposed rulemaking (the "Governance NPRM") aims to more fully implement such core principles. Therefore, the Governance NPRM proposes the following requirements, which complement those in the Conflicts of Interest NPRM:

- Each DCO must report to the Commission when its Board of Directors rejects a recommendation from or supersedes an action of the RMC;[14]
- Each DCM or SEF must report to the Commission when its Board of Directors rejects a recommendation from or supersedes an action of the ROC or the Membership or Participation Committee;[15]
- Each DCO, DCM, or SEF must:
  - Implement a regulatory program to identify, on an ongoing basis, existing and potential conflicts of interest, as well as a method for making fair and non-biased decisions in the event of such a conflict;
  - Prescribe limits on the use or disclosure of non-public information by owners, members of the Board of Directors, members of any committee, officers or other employees; and
  - Make certain information on governance arrangements available to the public and relevant authorities, including summaries of significant decisions.

In addition to containing the Conflicts of Interest Core Principles, Sections 725(c), 735(b), and 733 of the Dodd-Frank Act add or amend DCO or DCM core principles on (i) governance fitness standards and (ii) composition of the Board of Directors or other governing bodies. Section 735(b) of the Dodd-Frank Act also adds a DCM core principle on diversity of certain Boards of Directors. To implement such core principles, the Governance NPRM proposes the following requirements:

- Each DCO or DCM must specify and enforce fitness standards for its members, directors, members of any Disciplinary Panel or Disciplinary Committee, persons with direct access, and certain affiliates;
- Each publicly-traded DCM must evaluate the breadth and cultural diversity of its Board of Directors;
- Each DCM must design and institute a process for considering the range of opinions that market participants[16] hold with respect to (i) the functioning of an existing market and (ii) new rules or rule amendments; and
- Each DCO must have 10 percent customer representation on its Board of Directors, in lieu of having such representation on the RMC (or the RMC Subcommittee). Alternatively, each DCO must have 10 percent customer representation on the RMC (or the RMC Subcommittee), in lieu of having such representation on the DCO Board of Directors.[17]

A DCO may choose one of the following alternatives. Under the first alternative, no individual member may beneficially own more than 20 percent of any class of voting equity or directly or indirectly vote an interest exceeding 20 percent of the voting power of any class of equity. In addition, the enumerated entities, whether or not they are DCO members, may not collectively own on a beneficial basis more than 40 percent of any class of voting equity, or directly or indirectly vote an interest exceeding 40 percent of the voting power of any class of equity.

Under the second alternative, no DCO member or enumerated entity, regardless of whether it is a DCO member, may own more than five (5) percent of any class of voting equity or directly or indirectly vote an interest exceeding five (5) percent of the voting power of any class of equity. Notwithstanding the foregoing, the Conflicts of Interest NPRM provides a procedure for the DCO to apply for, and the Commission to grant, a waiver of the abovementioned limits. *See generally* 75 FR 63732 (Oct. 18, 2010).

"Enumerated entities" are those entities listed in Section 726(a) of the Dodd-Frank Act and include: (i) Bank holding companies with over $50,000,000,000 in total consolidated assets; (ii) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System; (iii) an affiliate of (i) or (ii); (iv) a swap dealer; (v) a major swap participant; or (vi) an associated person of (iv) or (v).

[9] First, Section 726(a) of the Dodd-Frank Act specifically empowers the Commission to adopt "numerical limits * * * on control" or "voting rights" that enumerated entities may hold with respect to such DCOs, DCMs, and SEFs. Second, Section 726(b) of the Dodd-Frank Act directs the Commission to determine the manner in which its rules may be deemed necessary or appropriate to improve the governance of certain DCOs, DCMs, or SEFs or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with the interaction between swap dealers and major swap participants, on the one hand, and such DCOs, DCMs, and SEFs. Finally, Section 726(c) of the Dodd-Frank Act directs the Commission to consider the manner in which its rules address conflicts of interest in the abovementioned interaction arising from equity ownership, voting structure, or other governance arrangements of the relevant DCOs, DCMs, and SEFs.

Section 725(d) of the Dodd-Frank Act states: "[t]he Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment."

[10] Section 725(c) of the Dodd-Frank Act amends Section 5b(c) of the CEA to include new DCO Core Principle O (*Governance Fitness Standards*), P (*Conflicts of Interest*), and Q (*Composition of Governing Boards*). Together, such core principles empower the Commission to develop performance standards for determining whether a DCO has: (i) Governance arrangements that are transparent to fulfill public interest requirements and to permit consideration of the views of owners and participants; (ii) appropriate fitness standards for directors, members, and others; (iii) rules to minimize and resolve conflicts of interest in DCO decision-making; and (iv) governing boards or committees that include market participants.

[11] Section 735(b) of the Dodd-Frank Act retains the existing DCM core principle on conflicts of interest and governance fitness standards, but (i) amends the existing DCM core principle on composition of governing boards of contract markets to state: "[t]he governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants," and (ii) adds a new DCM core principle on diversity of the Board of Directors. Together, such core principles empower the Commission to develop performance standards for determining whether a DCM has: (i) Appropriate fitness standards for directors, members, and others; (ii) rules to minimize conflicts of interest in DCM decision-making; (iii) appropriate governance arrangements to permit the Board of Directors to consider the views of market participants; and (iv) rules, if the DCM is a publicly-traded company, regarding the cultural diversity of the Board of Directors.

[12] Section 733 of the Dodd-Frank Act includes SEF Core Principle 12 (*Conflicts of Interest*) in new Section 5h of the CEA. Such core principle empowers the Commission to establish performance standards for determining whether a SEF has rules to minimize and resolve conflicts of interest in SEF decision-making.

[13] The conflicts of interest core principles are DCO Core Principle P, DCM Core Principle 16, and SEF Core Principle 12. Such core principles shall hereinafter be referred to as "Conflicts of Interest Core Principles."

[14] In addition, a DCO would be required to report to the Commission when its RMC rejects a recommendation from or supersedes an action of a subcommittee of the RMC.

[15] The proposed regulations would also require the ROC of a DCM or SEF to prepare an annual report to the Board of Directors assessing various components of the regulatory program of such DCM or SEF.

[16] In general, the Commission interprets the term "market participants" to be more expansive than the term "member" (as defined in Section 1a(34) of the CEA). Therefore, with respect to DCMs, DCOs, and SEFs, the Commission construes the term "market participants" to encompass customers of members (to the extent that such customers do not fall within Section 1a(34) of the CEA).

[17] As Section IV(c)(ii) below describes further, the Commission is reconsidering that portion of the

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Sections 725(c), 735(b), and 733 explicitly authorize the Commission to promulgate regulations implementing DCO, DCM, and SEF core principles under Section 8a(5) of the CEA. Section 8a(5) of the CEA states that "[t]he Commission is authorized * * * to make or promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the CEA]." The requirements that the Governance NPRM proposes apply to all DCOs and DCMs, regardless of whether they clear or list swap contracts or only commodity futures or options.[18]

The Governance NPRM reflects consultation with staff of the following agencies: (i) The Securities and Exchange Commission (the "SEC");[19] (ii) the Board of Governors of the Federal Reserve; (iii) the Office of the Comptroller of the Currency; (iv) the Federal Deposit Insurance Corporation; and (v) the Treasury Department. The Governance NPRM has been further informed by (i) the joint roundtable that Commission and SEC staff conducted on August 20, 2010 (the "Roundtable")[20] and (ii) public comments posted to the Web site of the Commission.[21] Finally, mindful of the importance of international harmonization,[22] the Governance NPRM incorporates certain elements of: (i) The *Proposal for a Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties, and Trade Depositories* (the "European Commission Proposal");[23] and (ii) the *Recommendations for Central Counterparties,* drafted by the Committee on Payment and Settlement Systems of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions, dated November 2004 (the "CCP Recommendations").[24]

The Commission requests comment on all aspects of the Governance NPRM.

II. Conflicts of Interest

As mentioned above, Title VII of the Dodd-Frank Act amended the CEA to establish a comprehensive new framework for swaps and certain security-based swaps. This framework imposes mandatory clearing and trade execution requirements with respect to clearable swap contracts. Some market participants, investor advocates, and academics have expressed a concern that the enumerated entities have economic incentives to minimize the number of swaps subject to mandatory clearing and trading. They contend that control of a DCO by the enumerated entities, whether through ownership or otherwise, constitutes the primary means for keeping swap contracts out of the mandatory clearing requirement, and therefore also out of the trading requirement. A further contention is that sustained competition between DCMs or SEFs may exacerbate certain structural conflicts of interest.[25]

As the Conflicts of Interest NPRM further describes, the potential conflicts of interest that the Commission has identified are: Conflicts of interest that a DCO may confront when determining (i) whether a product is capable of being cleared, (ii) the minimum criteria that an entity must meet in order to become and remain a clearing member, and (iii) whether a particular entity satisfies such criteria; and conflicts of interest that a DCM or SEF may confront in balancing advancement of commercial interests and fulfillment of self-regulatory responsibilities.

In addition, the Commission has identified misuse or disclosure of non-public information as a conflict of interest that a DCO, DCM, or SEF may confront. Certain individuals (*e.g.,* owners, members of the Board of Directors, officers, or other employees) will be privy to non-public information. Such non-public information could be used or disclosed improperly (*e.g.,* to the detriment of competitors), whether advertently or inadvertently.

III. Mitigation of Conflicts of Interest

To more fully implement the Conflicts of Interest Core Principles, the Commission proposes certain requirements related to (i) reporting, (ii) identification and mitigation of conflicts of interest, (iii) transparency of governance arrangements, and (iv) limitations on use or disclosure of non-public information.

A. Reporting Requirements

1. DCOs, DCMs, and SEFs

As mentioned above, the Conflicts of Interest NPRM imposes specific compositional requirements on the Boards of Directors and certain committees of DCOs, DCMs, and SEFs. In order to facilitate the responsibility of the Commission to oversee compliance with such requirements, the Governance NPRM proposes to mandate that each DCO, DCM, or SEF submit to the Commission within 30 days after each election of its Board of Directors:

- A list of all members of the Board of Directors, each committee with a composition requirement (including any Executive Committee[26]), and each other

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Conflicts of Interest NPRM that requires 10 percent customer representation on the RMC. The Commission notes that it has authority under both Section 726 of the Dodd-Frank Act, as well as under DCO Core Principles P (*Conflicts of Interest*) and Q (*Composition of Governing Boards*) to adopt either a Board or RMC composition requirement.

[18] As the Conflicts of Interest NPRM states:

In applying such requirements and limits, the Commission does not propose to distinguish between DCMs and SEFs listing swap contracts. As mentioned above, such DCMs and SEFs may experience sustained competition with respect to the same swap contract, and therefore would face the same pressures on self-regulation. Additionally, the Commission does not propose to distinguish between (i) DCMs listing swap contracts and (ii) DCMs listing only commodity futures and options. As mentioned above, clearable swap contracts may share sufficiently similar characteristics with certain commodity futures and options as to compete with respect to execution. Therefore, a DCM listing only commodity futures and options may face competition from a SEF with fewer self-regulatory requirements, in the same manner as a DCM listing swap contracts. Given that the same conflicts of interest may concern both types of DCM, it would appear that the same (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power should apply.

In addition, the Commission does not propose to distinguish between (i) DCOs clearing swap contracts and (ii) DCOs clearing only commodity futures and options. Certain standardized swap contracts have sufficiently similar risk profiles to commodity futures and options that the Commission has, on occasion, permitted such products to be commingled and margined within the segregated customer account under Section 4d of the CEA. If the Commission applied differential (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power, the Commission risks creating an incentive for regulatory arbitrage between the two types of DCO.

75 FR at 63737. The Commission has requested comment in the Conflicts of Interest NPRM regarding this approach. The Commission reiterates its request for comment in the context of the Governance NPRM.

[19] Section 765 of the Dodd-Frank Act requires the SEC to promulgate rules to mitigate conflicts of interest in the operation of (i) a clearing agency that clears security-based swaps, (ii) a security-based swap execution facility, or (iii) a national securities exchange that posts or makes available for trading security-based swaps. Core Principles for security-based swap execution facilities are set forth in Section 763 of the Dodd-Frank Act.

[20] The transcript from the roundtable (the "Roundtable Tr.") is available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/derivative9sub082010.pdf.*

[21] Such comments are available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_9_DCOGovernance.html.*

[22] Currently, the Commission regulates certain entities based outside of the United States (*e.g.,* LCH.Clearnet Limited and ICE Clear Europe Limited, each of which is based in the United Kingdom).

[23] COM(2010) 484/5.

[24] The CCP Recommendations are available at: *http://www.bis.org/publ/cpss61.pdf.*

[25] This term is defined in 72 FR 6936 (Feb. 14, 2007), which includes acceptable practices that the Commission previously adopted for the DCM core principle on conflicts of interest.

[26] The Conflicts of Interest NPRM defines "Executive Committee" as a committee of the Board of Directors that may exercise the authority delegated to it by the Board of Directors with

committee that has the authority to amend or constrain the action of the Board of Directors,

- A description of the relationship, if any, between such directors and the registered entity or the members of the registered entity (and, in each case, any affiliates thereof),
- The basis for any determination that a director qualifies as a Public Director, and [27]
- A description of how the composition of the Board of Directors and each of the abovementioned committees allows the registered entity to comply with applicable core principles, regulations, as well as to the rules of the registered entity.

2. DCOs

As the Conflict of Interest NPRM states:

> swap clearing members at DCOs that currently clear large volumes of swap contracts are exclusively enumerated entities. Some have argued that the enumerated entities have an incentive to influence DCO risk assessments regarding (i) whether a swap contract is capable of being cleared, (ii) the appropriate membership criteria for a swap clearing member, and (iii) whether a particular entity meets such criteria. Therefore, the Commission must carefully consider the composition of the Risk Management Committee, in order to achieve (i) the increased clearing of swap contracts that the Dodd-Frank Act contemplates without compromising (ii) DCO safety and soundness.[28]

The Conflicts of Interest NPRM proposes to require each DCO to have an RMC, with at least (i) 35 percent public directors and (ii) 10 percent customer representatives.[29] If a DCO would like to have greater clearing member participation in risk management, then it may cause its RMC to delegate to a subcommittee (the "RMC Subcommittee") decisions implicating whether (i) a product is capable of being cleared and (ii) particular entities or categories of entities are capable of performing such clearing. After such delegation the RMC would be free of any composition requirements.

In the abovementioned structure, the RMC Subcommittee reports to the RMC, whereas the RMC reports to the DCO Board of Directors. Therefore, a DCO governing body that is not subject to the same compositional requirements as the RMC or the RMC Subcommittee may reject a recommendation or supersede an action thereof.[30] To enable the Commission to determine whether such a rejection or supersession originates from a conflict of interest, the Governance NPRM proposes to require a DCO to submit a written report to the Commission, whenever such a rejection or supersession occurs.[31] Such report would detail, among other things, the rationale for such rejection or supersession. This requirement parallels the requirements for central counterparties ("CCPs") in the European Commission Proposal.[32] The Commission anticipates that such a reporting requirement may serve to deter conflicts from arising in the first place.

3. DCMs or SEFs

The Conflicts of Interest NPRM emphasizes the importance of the ROC and Membership or Participation Committees in ensuring that the DCM or SEF does not prioritize commercial interests over self-regulatory responsibilities, including restricting access or imposing burdens on access in a discriminatory manner.[33] As mentioned above, the Conflicts of Interest NPRM proposes to require each DCM or SEF to have (i) a ROC with all public directors and (ii) a Membership or Participation Committee with 35 percent public directors. However, the Conflicts of Interest NPRM contemplates that such ROC or Membership or Participation Committee would report to the DCM or SEF Board of Directors. As such DCM or SEF Board of Directors may not be subject to the same composition requirements (or may not have the same members) as the ROC or Membership or Participation Committee, the Governance NPRM proposes to require a DCM or SEF to submit a written report to the Commission whenever such Board of Directors rejects a recommendation of the ROC or the Membership or Participation Committee or supersedes an action. Such report would detail among other things, the rationale for such action. The Commission believes that such a reporting requirement would alert it to potential conflicts of interests, as well as deter such conflicts from arising in the first place.

In addition to the above, the Governance NPRM proposes to require the ROC to prepare an annual report to the Board of Directors assessing various components of the DCM or SEF regulatory program. Such a requirement generally parallels current acceptable practices under DCM Core Principle 15.[34]

4. Questions [35]

The Commission requests comment on all aspects of the reporting requirements. The Commission further requests comment on the questions set forth below.

- Pursuant to Article 31(2) of the European Commission Proposal, if a CCP cannot manage, through structural or substantive governance arrangements, conflicts of interest that may disadvantage a specific member or customer, then that CCP must disclose to that member (or customer, if known) the general nature or sources of such conflicts. The CCP must make such disclosure before accepting new transactions from the affected member, presumably so that such member (or customer thereof) may choose to discontinue clearing with the CCP. Should the Commission consider imposing a similar requirement on DCOs? Why or why not?
- If the Commission decides to impose a similar requirement on DCOs, should the Commission extend such a requirement to cover DCMs and SEFs? Why or why not?

B. Regulatory Program

The Governance NPRM proposes to require that, as part of its regulatory program, each DCO, DCM, or SEF must establish, maintain, and enforce written procedures to:

- Identify, on an ongoing basis, existing and potential conflicts of interest; and

respect to the management of the company or organization. *See* proposed § 1.3(ccc). 75 FR at 63747.

[27] With respect to DCOs, the Commission also requires the basis for any determination that a director qualifies as a customer representative.

[28] 75 FR at 63740.

[29] *See* Section IV(c)(ii) below on Commission reconsideration of requiring customer representation on the RMC, rather than on the DCO Board of Directors.

[30] This observation would be true regardless of whether the Commission ultimately requires customer representation on the RMC or the DCO Board of Directors. However, the Commission requests comment on whether the reporting requirement described herein should apply to a DCO if the Commission requires the latter and not the former.

[31] If, after examination, the Commission determines that such rejection or supersession originates from a conflict of interest, the Commission may find that the DCO regulatory program (as referenced in Section III(b) herein) is non-compliant with DCO Core Principle P. Upon making such a finding, the Commission may resort to certain administrative remedies (*e.g.*, pursuant to Section 5c(d) of the CEA).

[32] *See* Article 26(5) of the European Commission Proposal.

[33] 75 FR 63741.

[34] Such regulatory program is described further in section III(b) herein. The Dodd-Frank Act has redesignated DCM Core Principle 15 as DCM Core Principle 16, but has left the actual language of the core principle substantively unchanged. *See* section 3(ii)(E) under Acceptable Practices for Core Principle 15 in Appendix B to Part 38 of the Commission's regulations.

[35] *See* note 30 *supra*.

• Make fair and non-biased decisions in the event of a conflict of interest. Such procedures would include rules regarding the recusal, when appropriate, of parties involved in the making of decisions. The Chief Compliance Officer (for DCOs and SEFs), or the Chief Regulatory Officer (for DCMs), shall, in consultation with the Board of Directors of the entity or a senior officer of the entity, resolve any conflicts of interest.

The Commission anticipates that the potential conflicts of interest that each DCO, DCM, or SEF confronts may change as the swaps market evolves under regulation. Consequently, the Commission believes that it is appropriate to require a DCO, DCM, or SEF to have a regulatory program to monitor existing and potential conflicts of interest on an ongoing basis. The Commission intends to permit a DCO, DCM, or SEF to contract with a third-party regulatory service provider to fulfill such requirement, subject to Commission guidance generally applicable to such contractual relationships.[36]

To protect the integrity of trade execution and clearing, the Commission believes that it is appropriate to require each DCO, DCM, or SEF to have procedures, including recusal procedures, to make fair and non-biased decisions in the event of a conflict of interest. Article 26(4) of the European Commission Proposal includes a similar recusal requirement for CCP risk committees. Specifically, if the chairman of a CCP risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member would not be allowed to vote on that matter.

1. Questions

The Commission requests comment on all aspects of the regulatory program. The Commission further requests comment on the questions set forth below:

• As mentioned above, the Commission intends to permit a DCO, DCM, or SEF to contract with a third-party regulatory service provider (*e.g.*, the National Futures Association) to implement the abovementioned regulatory program. Would a third-party regulatory service provider itself ever experience a conflict of interest from the performance of its obligations under such a contract? If so, under what circumstances?

• Should the Commission propose any other substantive requirements with respect to the decision-making process of a DCO, DCM, or SEF?

C. Transparency Requirements

At the Roundtable, certain market participants emphasized that DCO governance arrangements must be transparent to permit the Commission, as well as the public, to (i) learn of decisions that have systemic importance (*e.g.*, whether a product is capable of being cleared), and (ii) identify the governing bodies (*e.g.*, the RMC) responsible for making such decisions.[37] Previously, when the Commission proposed acceptable practices for current DCM Core Principle 15 (*Conflicts of Interest*), the Commission recognized the value of transparency in "maintaining market integrity and public trust." [38] Such a rationale would appear to also apply to DCOs and SEFs.[39]

In light of the above, the Governance NPRM proposes to establish minimum standards for the transparency of the governance arrangements of each DCO, DCM, or SEF to relevant authorities (including the Commission) as well as the public.[40] These minimum standards [41] require each DCO, DCM, or SEF to:

• Make available certain information to the public and relevant authorities; [42]

• Ensure that the information made available is current, accurate, clear and readily accessible; and

• Disclose summaries of certain significant decisions.

DCM, SEF, and DCO significant decisions involve those areas in which conflicts of interest identified in Section II above may be most manifest. With respect to a DCM or a SEF, significant decisions would relate to access, membership, and disciplinary procedures. With respect to a DCO, significant decisions would relate to open access, membership, and the finding of products acceptable (or not acceptable) for clearing. The Commission proposes to require that the DCO specifically disclose whether (i) its Board of Directors has rejected a recommendation or superseded an action of the RMC, or (ii) the RMC has rejected a recommendation or superseded an action of the RMC Subcommittee. The Commission does not intend the foregoing to require a DCM, SEF, or DCO to disclose any "non-public information" (as proposed § 1.3(ggg) defines such term), including, without limitation, minutes from meetings of its Board of Directors or committees or information that it may have received on a confidential basis from an applicant for membership.

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[36] *See* "Trading Facilities, Intermediaries, and Clearing Organizations; New Regulatory Framework; Final Rule," 66 FR 42256, 42266 (August 10, 2001). Although the relevant discussion focuses on DCMs, a similar logic would apply to DCOs. Further, pursuant to the Dodd-Frank Act, the Commission is contemplating proposing regulations regarding such contractual relationships.

[37] *See, e.g.*, Comments from Jason Kastner, Vice Chairman, Swaps and Derivatives Markets Association ("I think that the issue is making sure that the risk committees of these DCOs are transparent, that you know who the membership is, that the decisions that are taken about whether to permit new clearing members and whether to permit new products to be listed are transparent and readily appraisable, and so that everyone knows, you know, what's going on. * * * So this is an open hearing, right? There's a public record. There's cameras. There's recordings. The same type of transparency should apply to DCO governance so that everyone is clear about how decisions are taken and how they're made and who's making them."), Roundtable Tr. at 74–75; and Comments from Randy Kroszner, Professor of Economics, Booth School of Business, University of Chicago ("I think this gets back to the transparency point, but I do think it's extremely important to have people with the knowledge, the wherewithal, and with their money on the line having input into these risk-management decisions, and I think the best way to ensure that is to ensure a very, very transparent process so that outsiders can evaluate and provide the commentary and the independent directors will have enough wherewithal, enough knowledge to know what is going on."), Roundtable Tr. 78–79.

[38] 71 FR 38741 (July 7, 2006) (which proposed the acceptable practices for current DCM core principle 15) ("* * * the current market environment mandates enhanced and transparent governance as an essential business practice for maintaining market integrity and public trust.").

[39] According to Section 4.13.3 of the CCP Recommendations, "[g]overnance arrangements should be clearly specified and publicly available."

[40] The Commission intends to promulgate the transparency requirements for DCMs and SEFs pursuant to its authority under DCM Core Principle P, SEF Core Principle 12 (in each case, *Conflicts of Interest*), and Section 8a(5) of the CEA. The Commission intends to promulgate the transparency requirements for DCOs pursuant to its authority under DCO Core Principle O (*Governance Fitness Standards*), and Section 8a(5) of the CEA. This core principle requires that a DCO establish governance arrangements that are transparent to, among other things, fulfill public interest requirements. This core principle is interrelated to DCO Core Principle P (*Conflicts of Interest*), since transparency requirements enhance the ability of the Commission to detect conflicts of interest, and may serve to deter such conflicts. The Commission believes that it has the authority to promulgate transparency requirements under either DCO Core Principle O or P.

[41] As Section III discusses in greater detail, the Commission proposes to require DCOs and DCMs to meet additional standards regarding the manner in which the Board of Directors considers the opinions of market participants, among others.

[42] Such information includes (i) the charter (or mission statement) of the registered entity; (ii) the charter (or mission statement) of the Board of Directors and certain committees; (iii) the Board of Directors nominations process for the registered entity, as well as the process for assigning members of the Board of Directors or other persons to certain committees; (iv) names of all members of (a) the Board of Directors and (b) certain committees; (v) the identities of all Public Directors (and with respect to a DCO, all customer representatives); (vi) the lines of responsibility and accountability for each operational unit of the registered entity; and (vii) summaries of significant decisions implicating the public interest.

1. Questions

The Commission requests comment on all aspects of the transparency requirements. The Commission further requests comment on the questions set forth below.

- Are the abovementioned proposals necessary or appropriate to mitigate DCO, DCM, or SEF conflicts of interest or to ensure that DCO governance arrangements are transparent to, among other things, fulfill public interest requirements? If not, why not? What would be a better alternative?
- Should the Commission require that a DCO, DCM, or SEF make available to the public and relevant authorities information other than that identified above?
- Has the Commission accurately identified DCO, DCM, or SEF significant decisions? Should the Commission explicitly deem any other DCO, DCM, or SEF decisions as significant? Conversely, should the Commission deem any of the DCO, DCM, or SEF decisions that it has identified to be not significant? Why?
- Should the Commission permit a DCO, DCM, or SEF to keep confidential any information identified above? If so, why?

D. Limitation on Use or Disclosure of Non-Public Information

1. Requirements

The Governance NPRM proposes to require each DCO, DCM, or SEF to establish and maintain written policies and procedures on safeguarding non-public information. These policies and procedures must, at a minimum, preclude a DCO, DCM, or SEF owner, director, officer, or employee from using or disclosing any non-public information gained through their interest or position, absent prior written consent from the DCO, DCM, or SEF, as applicable.[43] The Commission intends for such requirements to prohibit those in a position of power, either by holding a certain position in the organization or through an ownership interest, from leveraging such power to benefit, commercially or otherwise, from non-public information.[44] The Commission believes that such leveraging would constitute a clear conflict of interest. The Commission notes that such requirements comport with certain aspects of the European Commission Proposal.[45]

The Governance NPRM proposes to define "non-public information" as any information that the DCO, DCM, or SEF owns or any information that such entity otherwise deems confidential, such as intellectual property belonging to (A) such registered entity or (B) a third party, which property such registered entity receives on a confidential basis. The Commission will not preclude a DCO, DCM, or SEF from adopting a more expansive definition of "non-public information."

2. Questions

The Commission requests comment on all aspects of the limitation on use of non-public information. The Commission further requests comment on the questions set forth below.

- Are the abovementioned proposals necessary or appropriate to mitigate DCO, DCM, and SEF conflicts of interests? If not, why not? What would be a better alternative?
- Has the Commission proposed an appropriate definition for "non-public information"? If not, why not? What would be a better alternative?
- Should the Commission consider any other concerns regarding the use of "non-public information"?

IV. Regulations Implementing Governance Core Principles

In addition to regulations more fully implementing the Conflicts of Interest Core Principles, the Commission also proposes regulations implementing DCO and DCM core principles on governance fitness and the composition of governing boards. Further, the Commission proposes regulations to implement the DCM core principle on diversity of certain Boards of Directors.

A. Governance Fitness Standards

DCO Core Principle O,[46] as added by Section 725(c) of the Dodd-Frank Act, provides that each DCO shall (i) establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants and (ii) establish and enforce appropriate fitness standards for (A) directors, (B) members of any disciplinary committee, (C) members of the DCO, (D) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (E) any party affiliated with any entity mentioned above. DCM Core Principle 15, as retained by Section 735(b) of the Dodd-Frank Act, provides that a DCM shall establish and enforce appropriate fitness standards for (i) directors, (ii) members of any disciplinary committee, (iii) members of the DCM, (iv) any other person with direct access to the facility, and (v) any person affiliated with any entity mentioned above.

1. Fitness Requirements

To implement DCM Core Principle 15 and partially implement DCO Core Principle O, the Governance NPRM proposes to require each DCM and DCO to specify and enforce fitness standards for (i) directors, (ii) members of any Disciplinary Panel,[47] and (iii) members of the Disciplinary Committee.[48] These standards shall include, at a minimum, (i) those bases for refusal to register a person under Section 8a(2) of the CEA,[49] and (2) the absence of a significant history of serious disciplinary offenses, such as those that would be disqualifying under § 1.63 of the Commission's regulations.[50]

Also, the Governance NPRM proposes to require each DCM and DCO to specify and enforce fitness standards for (i) its members and affiliates[51] thereof, (ii) persons with direct access to the DCM or, in the case of a DCO, to its settlement and clearing activities, (iii) natural persons who, directly or indirectly, own greater than ten percent of any one class

[43] The Commission recognizes that the disclosure of non-public information may be necessary in certain instances, even without the written consent of the DCO, DCM, or SEF. Such instances include if disclosure is compelled by valid legal process (provided that the individual or entity notifies the registered SDR) or required by a regulatory authority.

[44] For example, a DCO, DCM, or SEF member may use or disclose non-public information (*e.g.*, the possibility of disciplinary action) to the detriment of its competitor.

[45] *See* Article 26(4) of the European Commission Proposal (stating that "[w]ithout prejudice to the right of competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality.").

[46] 7 U.S.C. 5b(c)(2)(O).

[47] The Conflicts of Interest NPRM defines "Disciplinary Panel" as a panel that shall be responsible for conducting hearings, rendering decisions, and imposing sanctions with respect to disciplinary matters. *See* proposed § 40.9(c)(3)(i). 75 FR at 63752.

[48] Section 1.63 of the Commission's regulations defines "Disciplinary Committee" as a person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof. *See* 17 CFR 1.63.

[49] 7 U.S.C. 12(a)(2). Bases for refusal to register a person under Section 8a(2) of the CEA include, among other things, suspension or revocation of registration, certain court orders prohibiting action in the capacity of a registrant under the CEA, certain felony convictions, or findings of violation of the CEA or certain other Federal statutes.

[50] 17 CFR 1.63. Such offenses include violations of certain self-regulatory organization rules and violations of the CEA or the Commission's regulations thereunder.

[51] The Governance NPRM proposes to define "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a registered entity.

of equity interest in a DCM or DCO,[52] and (v) parties affiliated with (A) directors, (B) members of any Disciplinary Panel, and (C) members of the Disciplinary Committee.[53] At a minimum, such standards shall include those bases for refusal to register a person under Section 8a(2) of the CEA.[54]

Further, the Governance NPRM proposes to require each DCM and DCO to collect and verify information that supports compliance with the standards articulated above and provide that information to the Commission annually.

The abovementioned proposals codify the acceptable practices under current DCM Core Principle 14 (*Governance Fitness Standards*) and extend such practices to DCOs.[55] The Commission believes that such proposals are appropriate to ensure the integrity of individuals and entities specified above. Such integrity, in turn, allows DCMs and DCOs to operate in the best interests of the public.[56]

In addition to the above, the Governance NPRM proposes to mandate that members and certain other persons must agree to become subject to the jurisdiction of the DCM or the DCO, as a condition of access. Such a proposal ensures that a DCM or DCO, each of which has self-regulatory responsibilities, would be able to appropriately discipline a member or such other person for violation of DCM or DCO rules. The Commission believes that a DCM or DCO must have the ability to exert such discipline in order to ensure the fitness of members or such other persons.

2. Questions

The Commission requests comment on all aspects of the governance fitness standards. Specifically, the Commission requests comment on the questions set forth below.

- Are the abovementioned proposals necessary or appropriate to implement DCM Core Principle 15 and DCO Core Principle O? If not, why not? What would be a better alternative?
- Should the Commission propose any minimum fitness standards other than those specified above?
- Is the Commission's proposed definition of affiliate appropriate? If not, why?

B. Transparency Requirements

As mentioned above, DCO Core Principle O[57] provides that each DCO shall establish governance arrangements that are transparent to fulfill public interest requirements.[58] Section III(C) of the Governance NPRM discusses proposals to implement such portion of the core principle. However, DCO Core Principle O also provides that each DCO shall establish governance arrangements that are transparent to permit the consideration of the views of owners and participants. Such language appears unique to DCOs. Hence, the Governance NPRM sets forth the following additional proposals for DCOs:

- Each DCO shall make available to the public, as well as relevant authorities (including the Commission), a description of the manner in which its governance arrangements permit the consideration of the views of owners (whether voting or non-voting) and its participants, including, without limitation, clearing members and customers;
- Such description shall include, at a minimum:
  - The general method by which the DCO learns of the views of owners (other than through the exercise of voting power) and participants (other than through representation on the DCO Board of Directors or any DCO committee); and
  - The manner in which the DCO considers such views.

1. Questions

The Commission requests comment on all aspects of the additional proposals. Specifically, the Commission requests comment on the questions set forth below.

- Are such additional proposals necessary or appropriate to implement DCO Core Principle O? If not, why not? What would be a better alternative?
- Should the Commission propose to require that each DCO make available to the public, as well as relevant authorities, information other than that identified above?

C. Composition of the Board of Directors

1. DCMs

DCM Core Principle 17,[59] as amended by Section 735(b) of the Dodd-Frank Act,[60] provides that the governance arrangements of a DCM shall be designed to permit consideration of the views of market participants. To implement this provision, the Governance NPRM proposes to require each DCM to design and institute a process for considering the range of opinions that market participants hold with respect to (i) the functioning of an existing market (including governance arrangements) and (ii) new rules or rule amendments. The Commission intends to permit each DCM to have the flexibility to determine the process that is most appropriate for its market participants. The Commission notes that one process by which a DCM may fulfill DCM Core Principle 17 is to have market participants on its Board of Directors (or other governing bodies). Regardless of the process that a DCM chooses, the Governance NPRM requires the DCM to make a description of such process available to the public and to relevant authorities (including the Commission) as part of its compliance with the transparency requirements described in Section III(C) above.[61]

a. *Questions.*

The Commission requests comment on this proposal. Specifically, the Commission requests comment on the questions set forth below.

- Is the abovementioned proposal appropriate to implement DCM Core Principle 17? What would be a better alternative? What are the costs and benefits of the abovementioned proposals? What are the costs and benefits of any alternative?
- Does the Commission need to consider proposing any additional requirements in order to implement DCM Core Principle 17? What would be the costs and benefits of any such requirement?

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[52] This provision is a clarification of acceptable practices under current DCM Core Principle 14.

[53] Currently, the Governance NPRM does not propose to impose any requirement on each DCM and DCO with respect to fitness standards for affiliates of persons with direct access. Therefore, under Section 5(d)(1)(B) of the CEA, as added by Section 735 of the Dodd-Frank Act, each DCM has reasonable discretion in comporting with DCM Core Principle 15 with respect to such affiliates. Also, under Section 5b(c)(2)(A)(ii) of the CEA, as added by Section 725 of the Dodd-Frank Act, each DCO retains similar discretion.

[54] *See* note 49 *supra*.

[55] DCM Core Principle 14 is redesignated as DCM Core Principle 15 under the Dodd-Frank Act.

[56] DCMs facilitate the execution of, and DCOs provide clearing for, "* * * transactions * * * affected with a national public interest." *See* Section 3(a) of the CEA, 7 U.S.C. 5.

[57] 7 U.S.C. 5b(c)(2)(O).

[58] To comport with the European Commission Proposal, the Commission has additionally interpreted DCO Core Principle O to require governance arrangements that are well-defined and that include a clear organizational structure with consistent lines of responsibility and effective internal controls.

[59] 7 U.S.C. 7(d)(17).

[60] The Dodd-Frank Act redesignated DCM Core Principle 16 (*Composition of Boards of Mutually Owned Contract Markets*) as DCM Core Principle 17 (*Composition of Governing Boards of Contract Markets*), and amended the language of the core principle. Former DCM Core Principle 16 stated: "In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants." DCM Core Principle 17, as amended by the Dodd-Frank Act states that "[t]he governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants."

2. DCOs

DCO Core Principle Q, as added by Section 725(c) of the Dodd-Frank Act, provides that each DCO shall ensure that the composition of the governing board or committee of the DCO includes market participants. In partial reliance on this core principle, the Conflicts of Interest NPRM proposed requiring that the RMC (or the RMC Subcommittee) be composed of at least 10 percent customer representatives. However, based on comments that the Commission received on the Conflicts of Interest NPRM,[62] certain market participants would prefer that the DCO Board of Directors, rather than the RMC, include customer representation.[63] Therefore, the Commission is reconsidering whether requiring customer representation on the RMC or the DCO Board of Directors would better implement both Section 726 of the Dodd-Frank Act and DCO Core Principle Q. Preliminarily, the Commission is not inclined to require customer representation on both the RMC and the DCO Board of Directors, as the former reports to the latter. As members of the DCO Board of Directors, customer representatives would have the opportunity to (i) review recommendations and actions of the RMC, (ii) request the rationale behind such recommendations and actions, and (iii) vote to reject such recommendations and to supersede such actions.

Based on the above, the Commission is proposing to require that a DCO Board of Directors include at least 10 percent customer representatives. However, in case the Commission decides to keep such requirement at the RMC level, the Commission is alternatively re-proposing that the RMC (or the RMC Subcommittee) be composed of at least 10 percent customer representatives. As mentioned above, the Commission is preliminarily anticipating that it would adopt only one requirement on customer representation. The Commission is not anticipating making a final decision regarding customer representation until it finishes reviewing comments on the Governance NPRM.

a. *Questions.*

The Commission requests comment on all aspects of the abovementioned proposal. Specifically, the Commission requests comment on the questions set forth below.

- Should the Commission require customer representation on the DCO Board of Directors instead of the RMC (or RMC Subcommittee)? Why or why not? What are the benefits and costs of such requirement?
- Alternatively, should the Commission require customer representation on the RMC (or the RMC Subcommittee) instead of the DCO Board of Directors? Why or why not? What are the benefits and costs of such requirement?
- Should the Commission consider requiring customer representation on both the DCO Board of Directors and the RMC? Why or why not?
- Alternatively, should the Commission consider requiring customer representation on another committee, but neither the DCO Board of Directors nor the RMC? Why or why not? Which committee would be most appropriate? For example, the Nominating Committee?
- What percentage or number of customer representatives should the Commission require on the DCO Board of Directors? Should such percentage be higher or lower than 10 percent? What should such number be? What are the benefits and costs of each percentage or number?
- Alternatively, what percentage or number of customer representatives should the Commission require on the RMC? Should such percentage be higher or lower than 10 percent? What should such number be? What are the benefits and costs of each percentage or number?
- To the extent that the Commission requires customer representatives on either the DCO Board of Directors or the RMC, should the Commission consider imposing any additional requirement to ensure that these representatives appropriately weigh the interests of all customers, rather than just advocate on behalf of the entity to which such representative belongs?

D. Diversity of DCM Board of Directors

DCM Core Principle 22, as added by Section 735(b) of the Dodd-Frank Act, provides that a DCM, if a publicly-traded company, shall endeavor to recruit individuals to serve on its Board of Directors and its other decision-making bodies (as determined by the Commission) from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

To implement DCM Core Principle 22, the Governance NPRM proposes to permit each publicly-traded DCM the flexibility to determine (i) the standards by which a Board of Directors could be deemed broad and culturally diverse, and (ii) the manner in which the DCM Board of Directors meets that standard. The Governance NPRM proposes that each such DCM make available its diversity standards to the public and relevant authorities (including the Commission) as part of its compliance with the transparency requirements described in Section III(C) above. Further, the Governance NPRM proposes that each such DCM provide the Commission with an annual certification of the manner in which its Board of Directors meets its diversity standards. If such a DCM concludes that its Board of Directors does not yet meet such standards, then the Governance NPRM proposes that the DCM describe the manner in which its Nominating Committee is structuring recruiting efforts to meet such standards. The Commission is not currently proposing diversity requirements for any other DCM decision-making bodies. The Commission interprets DCM Core Principle 22 to apply only to DCMs that are publicly-traded. This does not include DCMs that are not publicly-traded but have one or more affiliates that are.

[62] The comment period for the Conflicts of Interest NPRM closed on November 17, 2010. Comments are available at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=861.*

[63] *See, e.g.*, Comment from the Investment Company Institute, dated November 17, 2010 (stating that "[t]he Commissions' proposals include provisions that would allow for industry representation on board advisory committees. The CFTC proposal, for example, specifically includes a requirement that 10 percent of the Risk Management Committee of a swap entity be composed of customers of clearing members who also routinely execute swap contracts and who have experience in using pricing models for such contracts. We strongly support investor representation on board advisory committees. These committees are designed to facilitate meaningful discussion on important issues before the board. Nevertheless, such advisory committee representation should not be a substitute for investor representation on the board itself. This is particularly true in the developing swap markets where, at this time, investors have access to only a handful of swap entities for clearing and trading."). *C.f.* Comment from BlackRock, dated November 15, 2010 (stating that " [t]he essence of BlackRock's comments is that buy-side participants, like customers of clearing members, need meaningful representation on the committees that make the critical determinations on the core functions of the organization that impact all of its participants. Such representation is more important than fair representation on the Board of Directors because the governance committees, such as the Risk Management Committee, will have significant influence over the day-to-day affairs of DCOs. The Proposing Release would charge the Risk Management Committee with determining products eligible for clearing, setting standards and requirements for initial and continuing clearing membership eligibility, and advising the Board of Directors on the DCO's risk model and default procedures. *See* Proposed Rule 39.13(g)(1), 75 FR at 63,750. In other words, decisions of the Risk Management Committee will have profound and immediate impacts on all DCO constituencies, including customers.").

1. Questions

The Commission requests comment on all aspects of the diversity requirement. Specifically, should the Commission extend such requirement to other DCM decision-making bodies? Why or why not? If the Commission proposes to extend such requirement, which decision-making bodies should it consider?

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[64] requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[65] The proposed rules detailed in the Governance NPRM would only affect DCOs, DCMs, and SEFs. The Commission has previously determined that DCOs[66] and DCMs[67] are not "small entities" for purposes of the RFA. In contrast, SEFs are a new category of registrant that the Dodd-Frank Act created. Accordingly, the Commission has not addressed the question of whether SEFs are, in fact, "small entities" for purposes of the RFA.

The Dodd-Frank Act defines a SEF to mean "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that (A) facilitates the execution of swaps between persons and (B) is not a designated contract market."[68] The Commission hereby determines that SEFs not be considered "small entities" for essentially the same reasons that DCMs and DCOs have previously been determined not to be small entities. These reasons include the fact that the Commission designates a contract market or registers a derivatives clearing organization only when it meets specific criteria including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Likewise, the Commission will register an entity as a SEF only after it has met specific criteria including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program.[69] Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether SEFs covered by these rules should be considered small entities for purposes of the RFA.

B. Paperwork Reduction Act

The Governance NPRM contains information collection requirements. The Paperwork Reduction Act of 1995 ("PRA")[70] imposes certain requirements on Federal agencies (including the Commission) in conducting or sponsoring any "collection of information" (as the PRA defines such term). Pursuant to the PRA, the Commission has submitted to the Director of the Office of Management and Budget ("OMB"), an explanation, as well as details, of the information collection and recordkeeping requirements which would be necessary to implement the Governance NPRM.

1. Information Provided by Reporting Entities/Persons

If the Governance NPRM is promulgated in final form, they would require DCOs, DCMs, and new SEF registrants to collect and submit, pursuant to parts 37 to 40 of the Commission's regulations, certain information to the Commission, which such regulations have never previously required. For each such proposed requirement, set forth below are estimates of: (i) The number of respondents; (ii) the number of annual responses by each respondent; (iii) the average hours per response; and (iv) the aggregate annual reporting burden (in hours as well as dollars). New OMB control numbers will be assigned to these proposed information collection requirements.

New Collection 3038–NEW

Sections 37.1201(b)(5) and 38.851(b)(5) of the Commission's regulations require each SEF and DCM, respectively, to provide to the Commission on an annual basis a report assessing the regulatory program of the SEF or DCM, including (i) the description of such program, (ii) expenses, (iii) staffing and structure, (iv) certain disciplinary matters, and (v) with respect to a SEF only, the performance of the chief compliance officer (as referenced in Section 5(f)(15) of the Act).

OMB Control Number 3038–NEW.

Estimated number of respondents: 51.

Annual responses by each respondent: 1.

Estimated average hours per response: 20.

Aggregate annual reporting burden in hours: 1,020.

Aggregate annual reporting burden in dollars: $121,125.00.

New Collection 3038–NEW

Sections 37.1201(d) and 38.851(d) of the Commission's regulations require a SEF and DCM, respectively, to submit a report to the Commission detailing five items of information in the event that the SEF or DCM Board of Directors rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Membership or Participation Committee (or entity performing the functions of such committee). Similarly, § 39.25(b) of the Commission's regulations requires a DCO to submit a report to the Commission detailing five items of information in the event that (i) the DCO Board of Directors rejects a recommendation or supersedes an action of the RMC or (ii) the RMC rejects a recommendation or supersedes an action of the RMC Subcommittee.

OMB Control Number 3038–NEW

Estimated number of respondents: 70.

Annual responses by each respondent: 1.

Estimated average hours per response: 15.

Aggregate annual reporting burden in hours: 1,050.

Aggregate annual reporting burden in dollars: $124,688.

New Collection 3038–NEW

Sections 38.801(d) and 39.24(b)(4) of the Commission's regulations require each DCM and DCO, respectively, to provide to the Commission information on an annual basis that supports compliance with certain governance fitness standards.

OMB Control Number 3038–NEW

Estimated number of respondents: 35.

Annual responses by each respondent: 1.

Estimated average hours per response: 8.

Aggregate annual reporting burden in hours: 280.

Aggregate annual reporting burden in dollars: $33,250.00.

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[64] 5 U.S.C. 601 *et seq.*

[65] *Id.*

[66] 66 FR 45604, 45609 (August 29, 2001).

[67] 47 FR 18618, 18619 (April 30, 1982).

[68] *See* Section 721 of the Dodd-Frank Act. The Commission is contemplating proposing regulations that would further specify those entities that must register as a SEF. The Commission does not believe that such proposals would alter its determination that a SEF is not a "small entity" for purposes of the RFA.

[69] *See* Core Principle 2 applicable to SEFs under Section 733 of the Dodd-Frank Act.

[70] 44 U.S.C. 3501 *et seq.*

New Collection 3038–NEW

Section 38.901(c) of the Commission's regulations requires each DCM to make available to the public and the Commission a description of its process for considering the range of opinions that market participants hold with respect to (i) the functioning of an existing market (including governance arrangements) and (ii) new rules or rule amendments. Section 39.24(a) of the Commission's regulations requires each DCO to make available to the public and to the relevant authorities, including the Commission, a description of the manner in which its governance arrangements permit the consideration of the views of its owners, whether voting or non-voting, and its participants, including, without limitation, clearing members and customers.

OMB Control Number 3038–NEW

Estimated number of respondents: 35.
Annual responses by each respondent: 1.
Estimated average hours per response: 15.
Aggregate annual reporting burden in hours: 525.
Aggregate annual reporting burden in dollars: $62,344.00.

New Collection 3038–NEW

Section 38.1151(d) of the Commission's regulations requires each DCM that is publicly listed on a domestic exchange to (i) make available to the public and the Commission the standards by which its Board of Directors shall be deemed broadly and culturally diverse, and (ii) certify to the Commission on an annual basis whether and how its Board of Directors has met certain diversity standards.

OMB Control Number 3038–NEW

Estimated number of respondents: 16.
Annual responses by each respondent: 1.
Estimated average hours per response: 15.
Aggregate annual reporting burden in hours: 240.
Aggregate annual reporting burden in dollars: $28,500.00.

New Collection 3038–NEW

Section 40.9(b) of the Commission's regulations requires each DCO, DCM, or SEF to submit to the Commission, within 30 days after the election of the Board of Directors, (i) a list of all members of the Board of Directors, each committee with a composition requirement (including any Executive Committee), and each other committee with the authority to amend or constrain the action of the Board of Directors, (ii) a description of the relationship, if any, between such directors and the registered entity or the members of the registered entity (and, in each case, any affiliates thereof), (iii) the basis for any determination that a director qualifies as a Public Director (and with respect to DCOs only, as a customer representative), and (iv) a description of how the composition of the Board of Directors and each of the abovementioned committees allows the DCO, DCM, or SEF to comply with applicable core principles, regulations, as well as to its rules.

OMB Control Number 3038–NEW

Estimated number of respondents: 70.
Annual responses by each respondent: 1.
Estimated average hours per response: 2.
Aggregate annual reporting burden in hours: 140.
Aggregate annual reporting burden in dollars: $16,625.00.

New Collection 3038–NEW

Section 40.9(d) of the Commission's regulations requires each DCO, DCM or SEF to make certain information regarding its governance arrangements available to the public and the Commission on a current basis.[71]

OMB Control Number 3038–NEW

Estimated number of respondents: 70.
Annual responses by each respondent: 4.
Estimated average hours per response: 10.
Aggregate annual reporting burden in hours: 2,800.
Aggregate annual reporting burden in dollars: $332,500.

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on such proposed requirements in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the estimated burden of the proposed information collection requirements, including the degree to which the methodology and the assumptions that the Commission employed were valid;
- Enhancing the quality, utility, and clarity of the information proposed to be collected; and
- Minimizing the burden of the proposed information collection requirements on DCOs, DCMs, and SEFs, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.*, permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160 or from *http://RegInfo.gov*. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to the OMB Office of Information and Regulatory Affairs at:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (e-mail).

2. Information Collection Comments

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Please refer to the **ADDRESSES** section of the Governance NPRM for instructions on submitting comments to the Commission.

OMB is required to make a decision concerning the proposed information collection requirements between thirty (30) and sixty (60) days after publication of the Governance NPRM in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB (as well as the Commission) receives it within thirty (30) days of publication of the Governance NPRM.

C. Cost-Benefit Analysis

Section 15(a) of the CEA[72] requires that the Commission, before promulgating a regulation or issuing an order, consider the costs and benefits of its action. By its terms, section 15(a) of the CEA does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) of the CEA simply requires

[71] *See* note 42 *supra*.

[72] 7 U.S.C. 19(a).

the Commission to "consider the costs and benefits" of its action. Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency and competition; (3) financial integrity of the futures markets and price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could in its discretion, give greater weight to any one of the five considerations and could determine that, notwithstanding its costs, a particular regulation 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.

1. The Conflicts of Interest Core Principles: Proposed Regulations

a. *Reporting.*

As mentioned above, §§ 37.1201(b)(5) and 38.851(b)(5) of the Commission's proposed regulations require each SEF and DCM, respectively, to provide to the Commission an annual assessment report.

In addition, as mentioned above, §§ 37.1201(d) and 38.851(d) of the Commission's proposed regulations require a DCO, DCM, or SEF, as appropriate, to submit a report to the Commission whenever certain committees are overruled and § 40.9(b) of the Commission's proposed regulations requires each DCO, DCM, or SEF to submit to the Commission post-Board election information.

b. *Transparency of Governance Arrangements.*

As mentioned above, § 40.9(d) of the Commission's proposed regulations requires each DCO, DCM or SEF to make certain information regarding its governance arrangements available to the public and the Commission on a current basis.

c. *Identification and Mitigation of Conflicts of Interest.*

Section 40.9(e) of the Commission's proposed regulations require each DCO, DCM, or SEF to establish, maintain, and enforce written procedures to identify existing and potential conflicts of interest, and to make decisions in the event of a conflict of interest. The Commission recognizes that such requirements impose costs. Such costs may be ameliorated to the extent that certain DCOs or DCMs may modify existing practices to accommodate proposed § 40.9(e).[73]

d. *Limitations on Use or Disclosure of Non-Public Information.*

As more fully described above, § 40.9(f) of the Commission's proposed regulations requires each DCO, DCM, or SEF to establish and maintain written policies and procedures on safeguarding non-public information. The Commission recognizes that such requirements impose costs. Such costs may be ameliorated to the extent that certain DCOs or DCMs may modify existing practices to accommodate proposed § 40.9(f).[74]

2. The Costs and Benefits of Regulations Implementing the Conflicts of Interest Core Principles

As Section II herein mentions, a DCO may face conflicts of interest resulting from control by enumerated entities. Such conflicts may have detrimental effects on the public because they may impede the mandatory clearing of swaps.[75] Also, such conflicts may evidence less sound risk management practices, as such conflicts may cause a DCO to make decisions regarding, *e.g.*, membership, based on the commercial interests of certain clearing members, rather than on objective risk criteria. Further, such conflicts may also have detrimental effects on market participants, as well as on efficiency and competition, because such conflicts may result in non-risk-based constraints on the number of futures commission merchants available to clear swaps, which may increase the price that certain market participants must bear in order to obtain clearing. Finally, such conflicts may have detrimental effects on price discovery because, by impeding the mandatory clearing of swaps, they may also impede the trading of swaps on a SEF or DCM.

Section II also states that sustained competition between DCMs or SEFs may exacerbate certain structural conflicts of interest. Such structural conflicts may lead a DCM or SEF to prioritize commercial interests over self-regulatory responsibilities, including restricting access or imposing burdens on access in a discriminatory manner. Such structural conflicts may have a detrimental effect on price discovery, as prices are best discovered in a market with broad participation. Broad participation generally results in higher liquidity. Because of its effect on price discovery, such structural conflicts may also have a detrimental effect on market participants, and ultimately, the public. Certain market participants may face higher fees to access a DCM or SEF. Others may not be able to access a DCM or SEF at all. To the extent that such market participants are executing transactions to hedge price risk (whether their own or those of end-users), increased costs associated with a hedge (or the inability to execute a hedge) may be passed on to consumers. Finally, such structural conflicts may have a detrimental effect on efficiency and competition, as certain market participants may be precluded from competing to execute at a lower price for end-users.

As mentioned above, the Governance NPRM proposes substantive requirements that, together with the proposals in the Conflicts of Interest NPRM (*i.e.*, structural governance requirements and limitations on ownership of voting equity and the exercise of voting rights), mitigate the conflicts of interest described in Section II, and therefore, the detrimental effects resulting from such conflicts. The Commission believes that the benefits of such mitigation exceed the costs for DCOs, DCMs, and SEFs to implement the Governance NPRM. The Commission welcomes comment on its determination.

3. Regulations Implementing DCM and DCO Core Principles

a. *Governance Fitness.*

As mentioned above, §§ 38.801(d) and 39.24(b)(4) of the Commission's proposed regulations require each DCM and DCO, respectively, to (i) specify and enforce fitness standards for directors, members, and certain other persons, and (ii) provide to the Commission information on an annual basis that supports compliance with such standards. For DCMs, the proposed regulations are simply codifications of current acceptable practices. Therefore, the proposed regulations should impose minimal additional costs. For DCOs, governance fitness standards are necessary to ensure sound risk management practices, and therefore the protection of market participants and the public. The proposed regulations should impose minimal costs on DCOs.

Certain DCOs are divisions of DCMs, which means that they may already apply current acceptable practices to

[73] See, e.g., Rule 234 of the Chicago Mercantile Exchange ("CME") (*Avoiding Conflicts of Interest in "Significant Actions"*), available at: *http://www.cmegroup.com/rulebook/CME/I/2/34.html.*

[74] See, e.g., CME Confidentiality Policy for Market Regulation and Audit Departments, available at: *http://www.cmegroup.com/market-regulation/overview/files/confidentialitypolicy.pdf.*

[75] The Conflicts of Interest NPRM states: "The framers of the Dodd-Frank Act observe that the clearing of swap contracts constitutes a key means for managing systemic risk, because clearing removes the type of interconnectedness between financial institutions that contributed to the financial crisis resulting from the failure and bankruptcy of firms such as Bear Stearns, Lehman Brothers, and AIG." 75 FR at 63736.

their directors, members, and other persons. All DCOs are currently subject to DCO Core Principle B,[76] which requires each to have "adequate * * * managerial resources to discharge the responsibilities of a DCO." Thus, the Commission preliminary believes that the benefits of DCM and DCO governance fitness standards exceed the costs of such standards. The Commission welcomes comment on its determination.

b. *Composition of Governing Boards.*

As mentioned above, § 38.901(a) of the Commission's proposed regulations requires DCM governance arrangements to be designed to permit consideration of the views of market participants. Preliminarily, the Commission believes that such benefit exceeds any costs associated with § 38.901(c), which may be idiosyncratic to each DCM. However, the Commission notes that it has specifically requested comment on the costs and benefits of § 38.901(c), as well as any alternative thereto.

Core Principle Q requires each DCO to ensure that its governing board or committee includes market participants. Section 39.26 of the Commission's proposed regulations requires each DCO Board of Directors to include 10 percent representatives of customers. Preliminarily, the Commission believes that the benefit of such customer representation exceeds any cost associated with § 39.26.[77] However, the Commission notes that it has specifically requested comment on the costs and benefits of § 39.26, as well as any alternative thereto.

Alternatively, § 39.13(g)(3)(i) of the Commission's proposed regulations requires each RMC (or RMC Subcommittee) to include 10 percent representatives of customers. As mentioned above, the Conflicts of Interest NPRM had previously proposed such requirement. Therefore, the costs and benefits of § 39.13(g)(3)(i) have been addressed in the Conflicts of Interest NPRM.[78]

c. *Regulation Implementing the DCM Core Principle on Diversity of Certain Boards of Directors.*

As mentioned above, DCM Core Principle 22, as added by Section 735(b) of the Dodd-Frank Act, provides that a DCM, if a publicly-traded company, shall endeavor to recruit individuals to serve on its Board of Directors and its other decision-making bodies (as determined by the Commission) from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

Section 38.1151(d) of the Commission's proposed regulations affords flexibility to each such DCM[79] to determine the standards by which a Board of Directors may be deemed broadly and culturally diverse. Further, such section requires the DCM to (i) make available to the public and the Commission such standards, and (ii) certify to the Commission on an annual basis whether and how its Board of Directors has met certain standards. The benefit of cultural diversity on Boards of Directors in enhancing the efficiency of organizations has been recognized.[80] Preliminarily, the Commission believes that the benefit of § 38.1151(d) exceeds its costs. The Commission welcomes comment on its preliminary determination.

4. Conclusion

Accordingly, after considering the five factors specified in Section 15(a) of the CEA, the Commission has determined to propose the regulations set forth below. The Commission invites public comment on its evaluation of the costs and benefits of all aspects of the Governance NPRM.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Parts 37, 38 and 40

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 39

Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in this release, the Commission proposes to amend 17 CFR parts 1, 37, 38, 39, and 40 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 as amended by Pub. L. 222–203, 124 Stat. 1376.

2. In § 1.3, as proposed to be amended at 75 FR 63732, October 18, 2010, 75 FR 65586, October 26, 2010, 75 FR 77576, December 13, 2010, and 75 FR 80211, December 21, 2010, redesignate paragraphs (zz) to (eee) as paragraphs (bbb) to (ggg), redesignate paragraphs (fff) to (ggg) as (iii) to (jjj), add and reserve paragraph (zz), and add new paragraphs (aaa) and (hhh) to read as follows:

* * * * *

(zz) [Reserved].

(aaa) *Affiliate.* The term "affiliate" means a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

* * * * *

(hhh) *Non-Public Information.*

(1) This term means any information that a registered derivatives clearing organization, a designated contract market, or a registered swap execution facility owns or any information that such entity otherwise deems confidential, such as intellectual property belonging to:

(i) Such registered entity; or

(ii) A third party, which property such registered entity receives on a confidential basis.

(2) Nothing in this paragraph shall preclude a registered entity from adopting a definition of "non-public information" that is more expansive than the definition in this paragraph.

* * * * *

PART 37—SWAP EXECUTION FACILITIES

3. The authority citation for part 37 continues to read as follows:

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[76] 7 U.S.C. 7a–1(c)(B).

[77] For example, in addition to implementing DCO Core Principle Q, certain comments on the Conflicts of Interest NPRM state that customer representation on the DCO Board of Directors would be a better method of ameliorating conflicts of interest under Section 726 of the Dodd-Frank Act. *See* note 63 *supra*. *See generally,* 75 FR at 63746 (discussing the costs and benefits of the Conflicts of Interest NPRM).

[78] *See generally,* 75 FR at 63746.

[79] Currently, no such DCM exists.

[80] For example, SEC Commissioner Luis Aguilar made the following remarks at an SEC Open Meeting held on July 1, 2009:

Because of the importance of boards of directors, investors increasingly care about how directors are appointed, and what their background is. This is especially true as American businesses increasingly compete in both a global environment, and in a domestic marketplace that is, itself, increasingly diverse. In this ever more challenging business environment, the ability to draw on a wide range of viewpoints, backgrounds, skills, and experience is critical to a company's success.

It should be no surprise that studies indicate that diversity in the boardroom can result in real value for companies—and for shareholders. It also should be no surprise that many investors—from individual investors to sophisticated institutions—have asked the Commission to provide for disclosures about the diversity of corporate boards and a company's policies related to board diversity.

Also, the SEC issued a rule on *Proxy Disclosure Enhancements* which, among other things, requires public companies to disclose if they have a formal policy to consider diversity with respect to board nominees. *See* 74 FR 68334 (Dec. 16, 2009).

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a as amended by Titles VII and VIII of Pub. L. 111–203, 124 Stat. 1376.

4. Section 37.19, as proposed at 75 FR 63747, October 18, 2010, is redesignated as § 37.1201 and amended by adding new paragraph (b)(5), redesignating paragraph (d) as paragraph (e), adding new paragraph (d), and revising newly designated paragraph (e)(1) introductory text, to read as follows:

§ 37.19 Conflicts of Interest.

* * * * *

(b) * * *

(5) *Annual Report.* The Regulatory Oversight Committee shall prepare an annual report assessing, for the Board of Directors and the Commission, the regulatory program of the registered swap execution facility. Such report shall:

(i) Describe the self-regulatory program;

(ii) Set forth the expenses of the regulatory program;

(iii) Describe the staffing and structure of the same;

(iv) Catalogue investigations and disciplinary actions taken during the year; and

(v) Review the performance of disciplinary committees and panels, as well as the performance of the Chief Compliance Officer (as referenced in Section 5(f)(15) of the Act).

* * * * *

(d) *Reporting to the Commission.* In the event that the Board of Directors of a registered swap execution facility rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Membership or Participation Committee (or entity performing the functions of such committee), the registered swap execution facility shall submit a written report to the Commission detailing:

(1) The recommendation or action of the Regulatory Oversight Committee or the Membership or Participation Committee (or entity performing the functions of such committee);

(2) The rationale for such recommendation or action;

(3) The rationale of the Board of Directors for rejecting such recommendation or superseding such action; and

(4) The course of action that the Board of Directors decided to take contrary to such recommendation or action.

(e) * * *

(1) *Definitions.* For purposes of this § 37.1201(e):

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

5. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 4c, 6, 6a, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21 as amended by Pub. L. 111–203, 124 Stat. 1376.

6. Add § 38.801 to subpart P, as proposed at 75 FR 80612, December 22, 2010, to read as follows:

§ 38.801 Governance Fitness Standards.

(a) *General.* The designated contract market shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

(b) *Fitness Standards for Directors and Members of the Disciplinary Panel and Disciplinary Committee.* Each designated contract market must specify and enforce fitness standards for directors, members of any Disciplinary Panel (as defined in § 1.3(bbb) of this chapter), and members of the Disciplinary Committee (as defined in § 1.63 of this chapter). At a minimum, such standards shall include:

(1) Those bases for refusal to register a person under Section 8a(2) of the Act; and

(2) The absence of a significant history of serious disciplinary offenses, such as those that would be disqualifying under § 1.63 of this chapter.

(c) *Fitness Standards for Members, Persons with Direct Access, and Certain Affiliates.* Each designated contract market must specify and enforce fitness standards for its members and affiliates thereof; persons with direct access to the facility; natural persons who, directly or indirectly, own greater than ten percent of any one class of equity interest in a designated contract market; and parties affiliated with the persons enumerated in paragraph (b) of this section. At a minimum, such standards shall include those bases for refusal to register a person under Section 8a(2) of the Act.

(d) *Verification.* Each designated contract market must collect and verify information that supports compliance with the standards in paragraphs (b) and (c) of this section and provide that information to the Commission on an annual basis. Such information may take the form of a certification based on verifiable information, an affidavit from the general counsel of the designated contract market, registration information, or other substantiating information.

(e) *Jurisdiction.* As a condition of access, members and non-member market participants must agree to become subject to the jurisdiction of the designated contract market.

7. In § 38.851, as proposed at 75 FR 80612, December 22, 2010, add new paragraph (b)(5) redesignate paragraph (d) as paragraph (e), add new paragraph (d), and revise newly designated paragraph (e)(1) introductory text, to read as follows:

§ 38.851 Conflicts of Interest.

* * * * *

(b) * * *

(5) *Annual Report.* The Regulatory Oversight Committee shall prepare an annual report assessing, for the Board of Directors and the Commission, the regulatory program of the designated contract market. Such report shall:

(i) Describe the self-regulatory program;

(ii) Set forth the expenses of the regulatory program;

(iii) Describe the staffing and structure of the same;

(iv) Catalogue investigations and disciplinary actions taken during the year; and

(v) Review the performance of disciplinary committees and panels.

* * * * *

(d) *Reporting to the Commission.* In the event that the Board of Directors of a designated contract market rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Membership or Participation Committee (or entity performing the functions of such committee), the designated contract market shall submit a written report to the Commission detailing:

(1) The recommendation or action of the Regulatory Oversight Committee or the Membership or Participation Committee (or entity performing the functions of such committee);

(2) The rationale for such recommendation or action;

(3) The rationale of the Board of Directors for rejecting such recommendation or superseding such action; and

(4) The course of action that the Board of Directors decided to take contrary to such recommendation or action.

(e) * * *

(1) *Definitions.* For purposes of this § 38.851(e):

* * * * *

8. Add § 38.901 to subpart R, as proposed at 75 FR 80612, December 22, 2010, to read as follows:

§ 38.901 Composition of governing boards of contract markets.

(a) *General.* The governance arrangements of each designated contract market shall be designed to permit consideration of the views of market participants.

(b) *Notice.* Each designated contract market shall design and institute a process for considering the range of opinions that market participants hold with respect to:

(1) The functioning of an existing market (including governance arrangements) and

(2) New rules or rule amendments.

(c) *Transparency.* As part of its compliance with § 40.9(d) of this chapter, each designated contract market shall make available to the public and to the relevant authorities, including the Commission, a description of such process.

(1) Such description shall include, at a minimum:

(i) The manner in which the designated contract market obtains opinions from market participants;

(ii) The manner in which the designated contract market considers such opinions; and

(iii) A summary of the lines of responsibility and accountability for considering such opinions, from the relevant operational unit to the Board of Directors (and any committee thereof).

(2) Nothing in paragraph (c) of this section shall be construed to constrain the Commission from requiring the designated contract market to describe any other element of its process for obtaining a fair understanding of the opinions of market participants.

9. Add § 38.1151 to subpart W, as proposed at 75 FR 80612, December 22, 2010, to read as follows:

§ 38.1151 Diversity of Board of Directors.

(a) *General.* A designated contract market, if publicly-listed on a domestic exchange, shall endeavor to recruit individuals to serve on its Board of Directors and its other decision-making bodies (as determined by the Commission) from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(b) *Standards.* Each such designated contract market shall formulate, describe, and enforce the standards by which its Board of Directors shall be deemed broadly and culturally diverse.

(c) *Transparency.* As part of its compliance with § 40.9(d) of this chapter, each such designated contract market shall make available to the public and to the relevant authorities, including the Commission, such standards.

(d) *Annual Certification.* (1) On an annual basis, each such designated contract market shall certify to the Secretary of Commission whether and how its Board of Directors has met such standards. If the designated contract market determines that its Board of Directors has failed to meet such standards, then the designated contract market must describe the manner in which its Nominating Committee is endeavoring to structure recruitment to meet such standards.

(2) Such certification shall be in the form of a letter or an affidavit signed by the general counsel of the designated contract market.

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

10. Revise the authority citation for part 39 to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6d, 7a–1, 7a–2, and 7b as amended by Pub. L. 111–123, 124 Stat. 1376.

11. Amend § 39.13, as proposed at 75 FR 63750, October 18, 2010, by revising paragraph (g)(3)(i) to read as follows:

§ 39.13 Risk management.

* * * * *

(g) * * *

(3) * * *

(i) The Risk Management Committee shall be composed of at least thirty-five percent Public Directors of a derivatives clearing organization and at least ten percent representatives of customers. In this context, a "customer" means any customer of a clearing member, including, without limitation:

(A) Any "customer" or "commodity customer" within the meaning of § 1.3(k) of this chapter;

(B) Any "foreign futures or foreign options customer" within the meaning of § 30.1(c) of this chapter; and

(C) Any customer entering into a cleared swap (as defined in Section 1a(7) of the Act).

* * * * *

12. Add § 39.24 to read as follows:

§ 39.24 Governance Fitness Standards.

(a) *Governance Arrangements.*

(1) *General.*

(i) Each derivatives clearing organization shall establish governance arrangements that are transparent:

(A) To fulfill public interest requirements; and

(B) To permit the consideration of the views of owners and participants.

(ii) Each derivatives clearing organization shall establish governance arrangements that are well-defined and include a clear organizational structure with consistent lines of responsibility and effective internal controls.

(2) *Transparency.* As part of its compliance with § 40.9(d) of this chapter, each derivatives clearing organization shall make available to the public and to the relevant authorities, including the Commission, a description of the manner in which its governance arrangements permit the consideration of the views of its owners, whether voting or non-voting, and its participants, including, without limitation, clearing members and customers. Such description shall include, at a minimum:

(i) The general method by which the derivatives clearing organization learns of (A) the views of owners, other than through their exercise of voting power, and (B) the views of participants, other than through representation on the Board of Directors or any committee of the derivatives clearing organization; and

(ii) The manner in which the derivatives clearing organization considers such views.

(3) *Construction.* Nothing in paragraph (a)(2) of this section shall be construed to constrain the Commission from requiring the derivatives clearing organization to describe any other element of the manner in which its governance arrangements permit the consideration of the views of its owners and participants.

(b) *Fitness Standards.* (1) *General.* Each derivatives clearing organization shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the derivatives clearing organization, any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization, and any party affiliated with any individual or entity described in this paragraph.

(2) *Fitness Standards for Directors and Members of the Disciplinary Panel and Disciplinary Committee.* Each derivatives clearing organization must specify and enforce fitness standards for directors, members of any Disciplinary Panel (as defined in § 1.3(bbb) of this chapter), and members of the Disciplinary Committee (as defined in § 1.63 of this chapter). At a minimum, such standards shall include (i) those bases for refusal to register a person under Section 8a(2) of the Act, and (ii) the absence of a significant history of serious disciplinary offenses, such as those that would be disqualifying under § 1.63 of this chapter.

(3) *Fitness Standards for Clearing Members, Persons with Direct Access, and Certain Affiliates.* Each derivatives clearing organization must specify and enforce fitness standards for its clearing

members and affiliates thereof; persons with direct access to its settlement and clearing activities; natural persons who, directly or indirectly, own greater than ten percent of any one class of equity interest in the derivatives clearing organization; and parties affiliated with the persons enumerated in paragraph (b)(2) of this section. At a minimum, such standards shall include those bases for refusal to register a person under Section 8a(2) of the Act.

(4) *Verification.* Each derivatives clearing organization must collect and verify information that supports compliance with the standards in paragraphs (b)(2) and (3) of this section, and provide that information to the Commission on an annual basis. Such information may take the form of a certification based on verifiable information, an affidavit from the general counsel of the derivatives clearing organization, registration information, or other substantiating information.

(5) *Jurisdiction.* As a condition of access, clearing members and other persons with direct access to the settlement and clearing activities of a derivatives clearing organization must agree to become subject to the jurisdiction of the derivatives clearing organization.

13. In § 39.25, as proposed at 75 FR 63750, October 18, 2010, redesignate paragraph (b) as paragraph (c), add new paragraph (b), and revise newly designated paragraph (c)(1) introductory text to read as follows:

§ 39.25 Conflicts of interest.

* * * * *

(b) *Reporting to the Commission.* In the event that:

(1) The Board of Directors of a derivatives clearing organization rejects a recommendation or supersedes an action of the Risk Management Committee, or

(2) The Risk Management Committee rejects a recommendation or supersedes an action of its subcommittee (as described in § 39.13(g)(5) of this part), the derivatives clearing organization shall submit a written report to the Commission detailing:

(i) The recommendation or action of the Risk Management Committee (or subcommittee thereof);

(ii) The rationale for such recommendation or action;

(iii) The rationale of the Board of Directors (or the Risk Management Committee, if applicable) for rejecting such recommendation or superseding such action; and

(iv) The course of action that the Board of Directors (or the Risk Management Committee, if applicable) decided to take contrary to such recommendation or action.

(c) * * *

(1) *Definitions.* For purposes of this § 39.25(c):

* * * * *

14. Add § 39.26 to read as follows:

§ 39.26 Composition of Governing Boards.

(a) *General.* (1) Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

(2) Nothing in this section shall supersede any other section of this part or any requirement applicable to a derivatives clearing organization under § 40.9 of this chapter.

(b) *Composition Requirement.* The Board of Directors of a derivatives clearing organization shall be composed of at least ten percent representatives of customers. In this context, a "customer" means any customer of a clearing member, including, without limitation:

(1) Any "customer" or "commodity customer" within the meaning of § 1.3(k) of this chapter;

(2) Any "foreign futures or foreign options customer" within the meaning of § 30.1(c) of this chapter; or

(3) Any customer entering into a cleared swap (as defined in Section 1a(7) of the Act).

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

15. Revise the authority citation for part 40 to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8, and 12a, as amended by Pub. L. 111–203, 124 Stat. 1376.

16. Revise the heading and add new paragraphs (b)(1)(iii), (d), (e), and (f) to § 40.9 as proposed at 75 FR 63751, October 18, 2010, to read as follows:

§ 40.9 Governance and conflicts of interest.

* * * * *

(b) * * *

(1) * * *

(iii) Each registered entity referenced in paragraph (b)(1)(i) of the section must submit to the Commission, within thirty days after each election of its Board of Directors:

(A) A list of all members of the Board of Directors, each committee with a composition requirement (including any Executive Committee), and each other committee that has the authority to amend or constrain actions of the Board of Directors;

(B) A description of the relationship, if any, between such directors and the registered entity or the members of the registered entity (and, in each case, any affiliates thereof, as § 1.3(aaa) of defines such term); and

(C) The basis for any determination that a director qualifies as a Public Director, and, for derivatives clearing organizations only, the basis for any determination that a director qualifies as a representative of customers; and

(D) A description of how the composition of the Board of Directors and each of the committees allows the registered entity to comply with applicable core principles, regulations, as well as the rules of the registered entity.

* * * * *

(d) *Transparency of Governance Arrangements.* (1) Each registered derivatives clearing organization, designated contract market, or registered swap execution facility shall, at a minimum, make the following information available to the public and relevant authorities, including the Commission:

(i) The charter (or mission statement) of the registered entity;

(ii) The charter (or mission statement) of the registered entity's Board of Directors, each committee with a composition requirement (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of the Board of Directors;

(iii) The Board of Directors nomination process for the registered entity, as well as the process for assigning members of the Board of Directors or other persons to any committee referenced in paragraph (d)(1)(ii) of this section;

(iv) For the Board of Directors and each committee referenced in paragraph (d)(1)(ii) of this section, the names of all members;

(v) The identities of: all Public Directors; and with respect to a registered derivatives clearing organization, all representatives of customers;

(vi) The lines of responsibility and accountability for each operational unit of the registered entity;

(vii) Summaries of significant decisions implicating the public interest. Such significant decisions shall include:

(A) With respect to a designated contract market or a registered swap execution facility, all decisions relating to access, membership, and disciplinary procedures; and

(B) With respect to a derivatives clearing organization, all decisions relating to open access (as described in

Section 2(h)(1)(B) of the Act), membership (as described in Section 5(b)(c)(2)(C) of the Act), and the finding of products acceptable or not acceptable for clearing. In describing such decisions, the derivatives clearing organization shall specifically disclose whether:

(*1*) Its Board of Directors has rejected a recommendation or superseded an action of the Risk Management Committee; or

(*2*) The Risk Management Committee has rejected a recommendation or superseded an action of its subcommittee (as described in § 39.13(g)(5) of this part).

(C) Nothing in the foregoing shall be construed as requiring a designated contract market, a registered swap execution facility, or a derivatives clearing organization to disclose any "non-public information" (as § 1.3(ggg) of this chapter defines such term), including, without limitation, minutes from meetings of its Board of Directors or committees and information that it may have received on a confidential basis from an applicant for membership.

(2) The registered entity must ensure that the information specified in paragraphs (d)(1)(i) to (vii) of this section is current, accurate, clear, and readily accessible, for example, on its Web site. The registered entity shall set forth such information in a language commonly used in the commodity futures and swap markets and at least one of the domestic language(s) of the jurisdiction in which the registered entity is located.

(e) *Regulatory Program.* (1) As part of its regulatory program, each registered derivatives clearing organization, designated contract market, or registered swap execution facility must establish, maintain, and enforce written procedures to:

(i) Identify, on an ongoing basis, existing and potential conflicts of interest; and

(ii) Make fair and non-biased decisions in the event of a conflict of interest. Such procedures shall include rules regarding the recusal, in applicable circumstances, of parties involved in the making of decisions. The Chief Compliance Officer of a registered derivatives clearing organization or registered swap execution facility shall, in consultation with the Board of Directors of the entity, an equivalent body, or a senior officer of the entity, resolve any such conflicts of interest.

(f) *Limitations on Use or Disclosure of Non-Public Information.* (1) Each registered entity must establish and maintain written policies and procedures on safeguarding non-public information gained through either an ownership interest or through the performance of official duties (including duties associated with self-regulatory or regulatory purposes) by members of its Board of Directors, members of any committee, or officers and other employees.

(2) Such policies and procedures shall comport, at a minimum, with the following principles:

(i) No individual or entity described in paragraph (f)(1) of this section shall use or disclose any non-public information, absent prior written consent from the relevant registered entity. A registered entity shall establish guidelines that specify the information that must be included in the written consent.

(ii) No individual or entity described in paragraph (f)(1) of this section shall, either during or after service with the relevant registered entity:

(A) Use, directly or indirectly, information that the registered entity deems to be non-public information; or

(B) Disclose non-public information to others, except:

(*1*) To others within the relevant registered entity or to outside advisors thereof, provided that such advisors are subject to confidentiality obligations, and that such disclosure is necessary for the performance of official duties by the individual or entity;

(*2*) If required by regulatory authority; or

(*3*) If compelled to so by valid legal process, provided that the individual or entity notifies the relevant registered entity.

Issued in Washington, DC, on December 9, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioners voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule on further governance and conflicts of interest requirements for derivatives clearing organizations (DCOs), designated contract markets (DCMs) and swap execution facilities (SEFs). The proposed rule complements the conflicts of interest provisions that the Commission proposed on October 1st by keeping regulators up to date about the composition of boards, board committees and ownership, promoting transparency in decision-making and ensuring limitations on use or disclosure of non-public information. The proposed rule also provides guidance to industry and the public on appropriate minimum governance fitness standards for DCOs and DCMs, as well as the manner in which market participants must be heard or included in DCO or DCM governance arrangements. The proposed rule would enhance the integrity of clearing and trading and would increase public trust in the facilities on which such important activities occur.

[FR Doc. 2010–31898 Filed 1–5–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 1107

[Docket No. FDA–2010–N–0646]

RIN 0910–AG39

Tobacco Products, Exemptions From Substantial Equivalence Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this proposed rule to establish procedures for requesting an exemption from the substantial equivalence requirements of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). The proposed rule would describe the process and statutory criteria for requesting an exemption and explain how FDA would review requests for exemptions. Once finalized, this regulation will satisfy the requirement in the Tobacco Control Act that FDA issue regulations implementing the exemption provision.

DATES: Submit either electronic or written comments on the proposed rule by March 22, 2011. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by February 7, 2011, (*see* the "Paperwork Reduction Act of 1995" section of this document).

ADDRESSES: You may submit comments, identified by [Docket No. FDA–2010–N–0646 and/or RIN number 0910–AG39], by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (*see* the "Paperwork Reduction Act of 1995" section of this document).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Comments" 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* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *annette.marthaler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Tobacco Control Act, enacted on June 22, 2009, amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and provides FDA with the authority to regulate tobacco products (Pub. L. 111–31, 123 Stat. 1776). Among other things, the Tobacco Control Act requires that, before a new tobacco product may be introduced or delivered for introduction into interstate commerce, one of the following must occur: (1) A premarket application under section 910(b) of the FD&C Act (21 U.S.C. 387j(b)) must be submitted to FDA, and FDA must issue an order finding that the new product may be introduced or delivered for introduction into interstate commerce under 910(c) of the FD&C Act; or (2) a report under section 905(j) of the FD&C Act (21 U.S.C. 387e(j)) demonstrating the new tobacco product's substantial equivalence to an appropriate predicate product (as defined in the FD&C Act) must be submitted and FDA must issue an order finding the new product to be substantially equivalent to the predicate product and in compliance with the requirements of the Tobacco Control Act (section 910(a)(2) of the FD&C Act). Section 905(j)(3) of the FD&C Act, as amended, states that FDA may exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, from the requirement of demonstrating substantial equivalence if the Agency determines that: (1) Such modification would be a minor modification of a tobacco product that can be sold under the FD&C Act, (2) a report demonstrating substantial equivalence is not necessary to ensure that permitting the product to be marketed would be appropriate for the protection of the public health, and (3) an exemption is otherwise appropriate. Section 905(j)(3)(B) of the FD&C Act requires FDA to issue regulations implementing this provision by July 1, 2011.

"Additive" is defined at section 900(1) of the FD&C Act, as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical" (21 U.S.C. 387(1)).

The proposed rule, if finalized, would establish a pathway for manufacturers, including importers, to request exemptions from the substantial equivalence requirements of the Tobacco Control Act. It would not establish categories of minor modifications, or identify specific modifications, that meet the statutory criteria for exemptions. As FDA acquires more information about the additives in tobacco products from which to establish such categorical exemptions, it may issue additional regulations or guidance. FDA requests comment on how best to establish categories for these exemptions.

A manufacturer who obtains an exemption under the procedures of this proposed rule is also required to report to FDA under 905(j)(1)(A)(ii) of the FD&C Act (this requirement is not addressed in this proposed rule). Section 905(j)(1)(A)(ii) of the FD&C Act requires the manufacturer to report at least 90 days prior to introducing or delivering for introduction into interstate commerce the tobacco product that is the subject of the exemption, the basis for the manufacturer's determination that "the tobacco product is modified within the meaning of [section 905(j)(3)], the modifications are to a product that is commercially marketed and in compliance with the requirements of this Act, and all of the modifications are covered by exemptions granted by FDA pursuant to [section 905(j)(3)]" (section 905(j)(1)(A)(ii) of the FD&C Act). In addition, this submission must describe "action taken by [the applicant] to comply with the requirements under section 907 that are applicable to the tobacco product" (section 905(j)(1)(B) of the FD&C Act).

The proposed rule includes a procedural mechanism for rescinding an exemption where necessary to protect the public health. Before rescinding an exemption, FDA proposes to provide the manufacturer notice of the proposed rescission and an opportunity for an informal hearing under part 16 (21 CFR part 16), unless the continuance of the exemption presents a serious risk to public health. If the continuance of the exemption presents a serious risk to public health, FDA would rescind the exemption prior to giving notice and an opportunity for a hearing, and provide notice and opportunity for an informal hearing under part 16 as quickly as possible following the rescission.

II. Overview of the Proposed Rule

As required by section 905(j)(3)(B) of the FD&C Act, this rule would implement section 905(j)(3) of the FD&C Act. Specifically, the rule would provide that FDA may exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if FDA determines that the modification would be a minor modification of a tobacco product that can be sold under the FD&C Act; a 905(j) report demonstrating

substantial equivalence to a predicate tobacco product is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and an exemption is otherwise appropriate. These criteria are specified in the statute.

The proposed rule also explains that an exemption request may be made only by the manufacturer of a legally, commercially marketed tobacco product for a minor modification to that manufacturer's product. FDA is proposing this requirement because it believes that only the manufacturer of the product being modified will have, and be able to provide to FDA, sufficient and complete information about the product and the proposed modification. This includes information about a tobacco product that is trade secret or confidential commercial information and available only to the manufacturer of the product. Such information is necessary to allow FDA to determine whether the tobacco product and modification satisfy the criteria for exemption.

The proposed rule would also require that the exemption request (and supporting information) be submitted in an electronic format that FDA can process, review, and archive. FDA intends to provide and update information on its website on how manufactures may provide the electronic submission to FDA (*e.g.*, information on electronic media and methods of transmission). The proposed rule would also require that the exemption request be legible (FDA must be able to read the document) and in English. These requirements would ensure that FDA could review the exemption request expeditiously and appropriately. Electronic submission of information is consistent with the Government Paperwork Elimination Act (Pub. L. 105–277) requirement that Federal agencies allow individuals or entities to submit information or transact business with the agency electronically. Because of the broad availability of the Internet, FDA does not anticipate any need to submit an exemption request and supporting information in a non-electronic format. However, a company that is not able to submit an exemption request in an electronic format may submit a written request to the Center for Tobacco Products explaining in detail why the company cannot submit the request in an electronic format and requesting an alternative format.

The proposed rule would require that an exemption request be submitted with supporting documentation and contain the manufacturer's address and contact information; a detailed explanation of the purpose for the modification; a detailed description of the modification, including whether the modification involves adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive; a detailed explanation of why the modification is considered a minor modification of a tobacco product that can be sold under the FD&C Act; a detailed explanation of why a report intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for the protection of public health; a certification by a responsible official of the company, such as the chief executive officer, summarizing the supporting evidence and providing the rationale for the official's determination that the modification will not increase the product's toxicity, addictiveness, or appeal to or use by minors; and other information justifying an exemption.

The rule would require the submission of this information, along with supporting documentation, to enable FDA to determine whether an exemption from having to demonstrate substantial equivalence to an appropriate predicate product would be appropriate for the protection of the public health, as required by the statute (section 905(j)(3) of the FD&C Act). FDA requests comment on what supporting information would be necessary for us to make these determinations. The proposed rule would also require a certification in the form of a signed statement by a responsible official of the company, summarizing the supporting evidence and providing the rationale for the official's determination that the modification will not increase the product's toxicity, addictiveness, or appeal to or use by minors. Because of the importance of this information to an exemption determination, FDA is proposing to require that a responsible official of the company, such as the chief executive officer, certify that the modification will not have these effects.

The proposed regulation explains that FDA would review the information submitted in support of the request and determine whether to grant or deny the request for an exemption based on whether the criteria in the statute are satisfied. The proposed rule also provides that, if FDA determines that the information submitted by the manufacturer is insufficient to enable it to determine whether an exemption is appropriate, FDA may request additional information from the manufacturer. The rule would also provide that if the manufacturer fails to respond within the timeframe requested, FDA will consider the exemption request withdrawn. An exemption determination will be publicly available consistent with the requirements of part 20 (21 CFR part 20); trade secret and confidential commercial information are exempted from disclosure requirements consistent with § 20.61.

As discussed earlier in this document, the proposed rule includes a provision expressly permitting FDA to rescind an exemption if the Agency determines that rescission is necessary to protect the public health. FDA believes it is important that it be able to rescind exemptions in circumstances where the exemption is not appropriate for the public health, such as when FDA's decision to grant an exemption was based on false or incomplete information. FDA is proposing to provide notice and an opportunity for an informal hearing under part 16 to the manufacturer who requested the exemption prior to rescinding an exemption. If, however, the continuance of the exemption presents a serious risk to public health, the proposed rule provides that FDA could rescind the exemption before providing notice and an opportunity for a hearing. In that case, FDA would provide the manufacturer notice and an opportunity for a hearing as soon as possible after the rescission.

Consistent with the requirements of the FD&C Act, FDA intends to provide technical and other nonfinancial assistance to small tobacco product manufacturers in complying with the premarket requirements of sections 905 and 910 of the FD&C Act, along with other requirements (section 901(f) of the FD&C Act). FDA requests comment on what technical assistance or guidance would be helpful to small manufacturers in complying with these requirements. Small tobacco product manufacturers may contact FDA at *smallbiz.tobacco@fda.hhs.gov* for assistance.

III. Effective Date

FDA proposes that any final rule that issues based on this proposal become effective 30 days after the final rule publishes in the **Federal Register**.

IV. Legal Authority

Section 905(j)(3)(B) of the FD&C Act requires that FDA issue regulations to implement the provision on exemptions from the substantial equivalence requirements of the Tobacco Control Act. Section 905(j)(3)(A) of the FD&C Act provides that FDA may exempt from

the requirements relating to the demonstration of substantial equivalence tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if FDA determines the modification would be a minor modification of a tobacco product that can be sold under the FD&C Act; a report is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and an exemption is otherwise appropriate. FDA is issuing this proposed rule as required by section 905(j)(3)(B) of the FD&C Act. Additionally, section 701(a) of the FD&C Act (21 U.S.C. 371) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

V. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Tobacco Control Act requires that tobacco product manufacturers obtain either a marketing authorization order under section 910(c) or an order under section 910(a)(2) finding the new tobacco product to be substantially equivalent to an appropriate predicate tobacco product before introducing a new product into interstate commerce. Although this requirement is costly, the option of requesting an exemption as set forth in this proposed rule provides a mechanism for potentially reducing costs. If manufacturers of new tobacco products do not expect this option to reduce costs associated with their new product submissions, they will choose not to use it. The Agency therefore proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Baseline

FDA compares the effects of this rule to a baseline we will refer to as the post-statute baseline. Under the Tobacco Control Act, in the absence of this or other rulemaking under section 905(j)(3), tobacco product manufacturers must submit to FDA either a premarket application or a report under section 905(j) demonstrating substantial equivalence to an appropriate predicate product, and FDA must issue the appropriate corresponding order before a new tobacco product may be introduced or delivered for introduction into interstate commerce. Although substantial equivalence requirements are not yet in effect, the statutory grace period ends on March 22, 2011. The statutory deadline for issuing regulations under section 905(j)(3) is July 1, 2011, after the end of the grace period. Therefore, under the post-statute baseline we assume that requirements to report under 905(j) will be in effect. Compared with the cost associated with the post-statute baseline, this rule may result in cost savings if some tobacco manufacturers request, and are granted, substantial equivalence exemptions. If for any reason this proposed rule is finalized before the substantial equivalence requirements go into effect, it would simply have no effect until such time that they do.

C. Number of Affected Entities

This proposed rule may potentially apply to any tobacco product manufacturer or importer whose products are regulated under the Tobacco Control Act. Statistics of U.S. Businesses data indicate that there are 20 cigarette manufacturers and 46 other tobacco product manufacturers (U.S. Census, 2009). Because other tobacco product manufacturers would include cigar and pipe tobacco manufacturers, not all 46 firms represent manufacturers that are currently regulated under the Tobacco Control Act.[1] An unknown number of importers would be affected.[2] Not all new tobacco products are expected to meet the statutory requirements for an exemption. Furthermore, FDA is not establishing categories of minor modifications, or identifying specific modifications, that meet the statutory criteria for exemptions. It is therefore likely that only a subset of the potentially affected manufacturers and importers would choose to request an exemption.

D. Number of Exemption Requests

The number of new products introduced in a given year is the theoretical maximum number that could be introduced under a substantial equivalence exemption. However, some new products may not be substantially equivalent to an appropriate predicate tobacco product and will require premarket authorization under section 910(c), in which case they would not be eligible for a substantial equivalence exemption. The remaining products would require 905(j) reports, including demonstration of substantial equivalence. Under this proposed rule, an unknown number of those new 905(j) products would be eligible for possible introduction into interstate commerce under a substantial equivalence exemption.

FDA uses scanner data covering late 2007 to late 2009 from AC Nielsen to estimate the number of new tobacco products introduced in a year. A Universal Product Code (UPC) is deemed to be introduced in 2008 if total dollar sales over the final weeks of 2007 were zero, but total dollar sales over 2008 were greater than zero. Because unique UPCs are assigned to different types of packaging for otherwise identical products, most new UPCs do not represent new products, but rather different ways of packaging existing products. To address this issue, FDA

[1] A possible offsetting factor is that these data only include firms with payroll, and there could be some small tobacco product manufacturers without payroll.

[2] Manufacturers, wholesalers, and retailers could all theoretically import tobacco products. Census data do not distinguish firms that import from firms that do not.

sorts the data by brand description, and by product description within each brand description. The product description varies by UPC and contains information about both product characteristics and packaging. Therefore, the product description of every new UPC can be compared with the product descriptions preceding and following it to determine whether the new UPC represents a new package for an existing product or a new product altogether.

Using the scanner data, FDA finds that of 628 new UPCs for cigarettes in 2008, 151 represent new products not present in the 2007 data. Of 215 new UPCs for chewing tobacco, 43 represent new products. Of 36 new UPCs for smoking tobacco (excluding pipe tobacco), 20 represent new products.[3] Of 36 new UPCs for cigarette paper, 19 represent new products. This leads to an estimated 233 new products in 2008. We assume the same average number of new products will continue to be introduced every year going forward. However, it is also possible that requirements imposed by the Tobacco Control Act will lead manufacturers to introduce new products at a lower rate in the future.

As outlined previously, some of the estimated 233 new products introduced annually may require premarket authorization under section 910(c), and exemptions would be requested for an unknown number of the remaining products. Although in theory the maximum number of requests equals the number of new products, based on the requirements for an exemption and experience with other regulated products, FDA estimates that in the first years after the procedure is in place, only 50 exemption requests will be submitted per year. This may increase over time as learning takes place. FDA anticipates requesting additional information to support 40 of those requests.

E. Benefits and Costs

The main effect of this proposed rule would be a potential reduction in the costs of introducing new tobacco products compared with the post-statute baseline. Under the baseline scenario, all new products that do not undergo premarket review under section 910(c) must submit a report under section 905(j) that includes the basis for manufacturer's determination that the new tobacco product is substantially equivalent to an appropriate predicate tobacco product. If an exemption request is submitted and granted, a manufacturer would be able to submit a different and potentially shorter 905(j) report in which, under 905(j)(1)(A)(ii), a discussion of the exemption is used in place of the demonstration of substantial equivalence. On a per-product basis, any potential cost savings for the 905(j) report, net of the cost of requesting the exemption, would be the savings attributable to this rule.

FDA estimates that it would take 360 hours to prepare an exemption request. Based on the requirements set forth in the codified language, FDA anticipates that preparation of most sections would require technical scientific and engineering expertise. Legal input and review would also play a role. Therefore, in valuing the time cost, FDA uses the weighted average of tobacco manufacturing industry-specific hourly wages for life, physical, and social science occupations ($30.91), architecture and engineering occupations ($40.93), and legal occupations ($71.83) (Ref. U.S. BLS, 2010). FDA assigns these occupational categories weights of 40 percent, 40 percent, and 20 percent. The resulting composite wage is $43.10. FDA then doubles this amount to $86.20 to account for benefits and overhead. Multiplying by 360 hours yields a cost per exemption request of $31,033. FDA anticipates that when it asks a manufacturer to provide additional information in support of an exemption request, it will take an average of 50 hours to prepare the additional information. Using the same hourly cost of labor, providing additional information is estimated to result in an additional cost of $4,310. These are elective costs. Firms will not choose to submit a request unless any potential cost savings in a 905(j) report justifies the cost.

Using FDA's estimate that we expect to receive 50 requests per year, the total cost of all exemption requests submitted would be $1,551,700. There would be an additional cost of $172,400 if, as anticipated, we ask for additional information supporting 40 of the 50 requests. FDA requests comment on these cost estimates.

Because substantial equivalence report requirements are not yet being enforced, and there is no guidance beyond the contents of the Tobacco Control Act, FDA does not attempt to estimate the cost of preparing a 905(j) report that includes the demonstration of substantial equivalence or the cost of preparing a 905(j) report citing an exemption. Some manufacturers may find that, for a particular product, preparing a 905(j) report that includes the basis for the manufacturer's determination that its new tobacco product is substantially equivalent to an appropriate predicate tobacco product would be costlier than submitting an exemption request and citing the exemption in a 905(j) report. Such a manufacturer may consider submitting an exemption request. If a manufacturer finds that the exemption process would not reduce costs for legally introducing a new tobacco product, it would maintain the post-statute status quo and submit a 905(j) that includes the basis for the manufacturer's determination that its new tobacco product is substantially equivalent to an appropriate predicate tobacco product. FDA requests comment on these conclusions.

In order to grant an exemption, FDA must find, among other things, that a report demonstrating substantial equivalence would not be necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health. Furthermore, an exemption could be rescinded if found to be inappropriate, and the process for rescission would depend on whether there is a serious risk to public health. Therefore, FDA does not anticipate that setting up a mechanism for obtaining substantial equivalence exemptions would result in costs to public health. FDA requests comment on this approach.

Under this proposed rule, there may be uncertainty on the part of manufacturers as to what kinds of product modifications may be granted an exemption and how much supporting evidence will be required as the basis for an exemption. If some manufacturers are more conservative in requesting exemptions than FDA would be in granting them, they may not fully avail themselves of any potential cost savings. Alternatively, if some manufacturers are too optimistic about what types of modifications will be exempt, they will incur higher costs because they will have to demonstrate substantial equivalence in their 905(j) reports in addition to having submitted unsuccessful exemption requests.

FDA acknowledges the theoretical possibility that overall submission costs could increase as the result of this uncertainty. This would happen if so many unsuccessful exemption requests were submitted that the excess costs

[3] The smoking tobacco category refers to tobacco products, other than cigarettes, cigars and accessories, which are intended to be smoked. Smoking tobacco products are further identified in the data as cigarette tobacco (roll-your-own), smoking tobacco, or pipe tobacco. Since pipe tobacco is not currently subject to the Tobacco Control Act, products clearly identified as such are excluded from the analysis.

associated with them exceeded any cost savings from exemptions that were granted. This situation is unlikely to occur, especially as time goes on and manufacturers gain information on submission costs and the requirements that must be met for exemptions. Manufacturers might continue to submit unsuccessful exemption requests, but it would increasingly be a well-informed choice based on an accurate estimation of the probability of being granted an exemption and the excess cost of preparing an unsuccessful request compared with the cost savings attributable to an exemption. Moreover, it is possible that some of the information compiled for an exemption request would be reused as part of a demonstration of substantial equivalence, thus reducing the effort expended in preparing both types of submissions.

F. Conclusion

In summary, the substantial equivalence exemption requirements laid out in this proposed rule offer an additional channel for legally introducing new tobacco products that result from minor modifications of tobacco products that can be sold under the Tobacco Control Act. Introducing a new product through this channel may potentially reduce costs. If manufacturers find that obtaining an exemption would not reduce costs, or if they do not want to risk having to demonstrate substantial equivalence in their 905(j) reports in addition to having submitted unsuccessful exemption requests, they may choose to maintain the post-statute status quo and not pursue substantial equivalence exemptions.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing each collection of information. FDA requests comment on the burden and practical utility of the information being requested. Comment is also requested on whether the information being requested is duplicative of other collections.

Title: Exemptions From Substantial Equivalence Requirements for Tobacco Products.

Description: In this proposed rule, a pathway would be established by FDA for manufacturers to request exemptions from the substantial equivalence requirements of the Tobacco Control Act. As it acquires more information about the additives in tobacco products from which to establish categories of exemptions, FDA may issue additional regulations or guidance on this subject.

This rule would implement section 905(j)(3) of the FD&C Act, allowing FDA to exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if FDA determines that the modification would be a minor modification of a tobacco product that can be sold under the FD&C Act. The rule also explains that an exemption request may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that manufacturer's product and the request (and supporting information) must be submitted in an electronic format that FDA can process, review, and archive. In addition, the request and all supporting information must be legible and in (or translated into) the English language.

Under the proposal, an exemption request must be submitted with supporting documentation and contain the manufacturer's address and contact information, information about the modification; and an explanation of why a report intended to demonstrate substantial equivalence is not necessary. The request must also contain a certification by a responsible official summarizing the supporting evidence and providing the rationale for the official's determination that the modification will not increase the product's toxicity, addictiveness, or appeal to/use by minors; and include other information justifying an exemption. This information would enable FDA to determine whether the exemption request would be appropriate for the protection of the public health.

This proposed rule also includes a procedural mechanism for rescinding an exemption where necessary to protect the public health. In general, FDA would rescind an exemption only after providing the manufacturer notice of the proposed rescission and an opportunity for an informal hearing under part 16. However, FDA may rescind an exemption prior to notice and opportunity for a hearing under part 16 if the continuance of the exemption presents a serious risk to public health. In that case, FDA would provide the manufacturer an opportunity for a hearing as soon as possible after the rescission.

FDA would review the information submitted in support of the request and determine whether to grant or deny the request based on whether the criteria specified in the statute are satisfied. If FDA determines that the information submitted is insufficient to enable it to determine whether an exemption is appropriate, FDA may request additional information from the manufacturer. If the manufacturer fails to respond within the timeframe requested, FDA would consider the exemption request withdrawn.

Description of Respondent: Manufacturers of tobacco products who are requesting an exemption from the substantial equivalence requirements of the FD&C Act, as amended by the Tobacco Control Act.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
1107.1(b)	50	1	50	360	18,000
1107.1(c)	40	1	40	50	2,000
Total					20,000

Table 1 describes the annual reporting burden as a result of the provisions set forth in this proposed rule. Based on information related to premarket provisions for other FDA-regulated products and anticipated interest from industry in this provision, FDA estimates that it would receive 50 exemption requests annually and that it

would take a manufacturer 360 hours to prepare an exemption request. FDA estimates that it would need to request additional data for 40 of these requests, and that it will take 50 hours to prepare this data. FDA anticipates using the rescission authority to respond to one issue of concern related to an exemption determination each year (the burden hours for 21 CFR 1107.1(d) are included under part 16 hearing regulations, and are not included in the burden estimates in table 1 of this document).

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection (*see* **ADDRESSES**) to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Census Bureau, 2007 Economic Census, "Sector 31: EC0731I1: Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007." Release Date: October 30, 2009, Access Date: August 30, 2010, (*http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0731I1&-NAICS2007=312210/312221/312229&-ib_type=NAICS2007&-geo_id=&-_industry=312221&-_lang=en&-fds_name=EC0700A1*)

2. U.S. Bureau of Labor Statistics, "Occupational Employment Statistics: May 2009 National Industry-Specific Occupational Employment and Wage Estimates NAICS 312200—Tobacco Manufacturing," May 14, 2010, *http://data.bls.gov/cgi-bin/print.pl/oes/current/naics4_312200.htm*.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 1107

Tobacco products, Substantial equivalence, Exemptions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 16 and 1107 be amended to read as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

§ 16.1 [Amended]

2. In § 16.1 (b)(2) add in numerical sequence "§ 1107.1(d), relating to rescission of an exemption from the requirement of demonstrating substantial equivalence for a tobacco product."

3. Add part 1107 to subchapter K to read as follows:

PART 1107—ESTABLISHMENT REGISTRATION, PRODUCT LISTING, AND SUBSTANTIAL EQUIVALENCE REPORTS

Subpart A—Exemptions

Sec.
1107.1 Exemptions.

Authority: 21 U.S.C. 387e(j) and 387j.

Subpart A—Exemptions

§ 1107.1 Exemptions.

(a) *General requirements.* Under section 905(j)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387e(j)(3)), FDA may exempt from the requirements relating to the demonstration that a tobacco product is substantially equivalent within the meaning of section 910 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387j), tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if FDA determines that:

(1) Such modification would be a minor modification of a tobacco product that can be sold under the Federal Food, Drug, and Cosmetic Act (legally marketed tobacco product);

(2) A report under section 905(j)(1) intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

(3) An exemption is otherwise appropriate.

(b) *Request for an exemption under section 905(j)(3) of the Federal Food, Drug, and Cosmetic Act.* A request for an exemption from the requirement of demonstrating substantial equivalence may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that tobacco product. To request an exemption, the manufacturer must submit the request and all information supporting the request in an electronic format that FDA can process, review, and archive. If the manufacturer is unable to submit an exemption request in an electronic format, the manufacturer may submit a written request to the Center for Tobacco Products explaining in detail why the company cannot submit the request in an electronic format and requesting an alternative format. Such request must include an explanation of why an alternative format is necessary. In addition, the request and all supporting information must be legible and in the English language. An exemption request must contain:

(1) The manufacturer's address and contact information;

(2) A detailed explanation of the purpose for the modification;

(3) A detailed description of the modification, including a statement as to whether the modification involves adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive;

(4) A detailed explanation of why the modification is a minor modification of a tobacco product that can be sold under the Federal Food, Drug, and Cosmetic Act;

(5) A detailed explanation of why a report under section 905(j)(1) of the Federal Food, Drug, and Cosmetic Act intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health;

(6) A certification (i.e., a signed statement by a responsible official of the company) summarizing the supporting evidence and providing the rationale for the official's determination that the modification does not increase the tobacco product's appeal to/use by minors, toxicity, or addictiveness/abuse liability; and

(7) Other information justifying an exemption.

(c) *Exemption determination.* FDA will review the information submitted and determine whether to grant or deny an exemption request based on whether the criteria in section 905(j)(3) of the Federal Food, Drug, and Cosmetic Act are met. FDA may request additional information if necessary to make a determination. FDA will consider the exemption request withdrawn if the information is not provided within the requested timeframe.

(d) *Rescission of an exemption.* FDA may rescind an exemption if it finds that the exemption is not appropriate for the protection of public health. In general, FDA will rescind an exemption only after notice and opportunity for a hearing under 21 CFR part 16 of this chapter is provided. However, FDA may rescind an exemption prior to notice and opportunity for a hearing under 21 CFR part 16 of this chapter if the continuance of the exemption presents a serious risk to public health. In that case, FDA will provide the manufacturer an opportunity for a hearing as soon as possible after the rescission.

Dated: January 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–34 Filed 1–5–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

RIN 0596–AC84

Community Forest and Open Space Conservation Program

AGENCY: Forest Service, USDA.

ACTION: Proposed rule, request for comments.

SUMMARY: Public comments are solicited for this proposed rule which implements the Community Forest and Open Space Conservation Program (CFP) authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008. The CFP legislation is an amendment to the Cooperative Forestry Assistance Act of 1978. The CFP is a competitive grant program whereby local governments, Tribal Governments, and qualified non-profit organizations are eligible to apply for grants to establish community forests. The program's two purposes are to assist communities in acquiring forestland that would provide public recreation, environmental and economic benefits, and forest-based educational programs, and to protect forestland that has been identified as a national, regional, or local priority for protection. Existing provisions in Forest Service regulations pertaining to the Stewardship Incentive Program will be removed as deauthorized by the Farm Security and Rural Investment Act of 2002, and this proposed rule will be substituted in lieu thereof.

DATES: Comments must be received in writing by March 7, 2011 Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by March 7, 2011.

ADDRESSES: Written comments concerning this notice should be addressed to Community Forest Program, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, 1400 Independence Avenue, SW., Code 1123, Washington, DC 20250. Comments may also be sent via email to *communityforest@fs.fed.us*, or via facsimile to (202) 205–1271. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at U.S. Forest Service, 1400 Independence Avenue, SW., Code 1123, Washington, DC 20250. Those wishing to inspect comments are encouraged to call ahead to (202) 205–1389 to facilitate entry to the building.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0596–New, the docket number, date, and page number of this issue of the **Federal Register**. Comments should be sent to the address listed in the above paragraph.

FOR FURTHER INFORMATION CONTACT: Maya Solomon, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, (202) 205–1376. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Rule

Congress authorized the Community Forest and Open Space Conservation Program (hereafter "CFP") to address the needs of communities to protect and maintain their forest resources. In the CFP authorization, Congress found that people derive health benefits from having access to forests for recreation and exercise. Congress also found that forests protect public water supplies and may provide financial benefits from forest products. The CFP is a competitive grant program whereby local governments, Tribal Governments, and qualified non-profit organizations are eligible to apply for grants to establish community forests through fee-simple land acquisitions. "Fee-simple" means full ownership and acquisition of real property, versus a partial interest such as conservation easement. By creating community forests through land acquisition, communities and Tribes can sustainably manage forests for these and many other benefits, including wildlife habitat, stewardship demonstration sites for forest landowners, and environmental education.

While the CFP title includes the term "open space," the authorizing language does not discuss the term. The only land cover Congress references is "forests." As a result, in this proposed rule, the term "open space" is also not used, and is assumed that the only type of "open space" on which Congress wanted CFP to focus is "forests."

The Forest Service believes that these proposed regulations for CFP will facilitate administration of the program and provide uniform criteria for program participation. The program will

focus its funding to forests that provide community benefits as defined in this proposed rule that are identified as a national, regional, or local priority for protection. See Ranking Criteria and Proposal selection in § 230.5 of this proposed rule. The Agency welcomes comments on national, regional, and local conservation priorities for selection of proposals.

Tribal consultation was initiated on October 20, 2010, and is currently ongoing. No tribal input has been received during the initial 60-day period. Consultation will continue during the 60-day public comment period.

Complementary to Other Cooperative Forestry Assistance Act Programs

The Cooperative Forestry Assistance Act of 1978 (CFAA) enables the Forest Service to work with States, private landowners, and communities to address the full range of forest resources from urban street trees to large rural timber lands. The design and delivery of most Cooperative Forestry programs is influenced by the priorities of State resource agencies regarding urban, suburban or rural forests.

The CFP recognizes that successful protection of community forests depends on engaged citizens. Their participation is equal in importance to the type of forests being protected. The CFP complements and builds upon other CFAA programs that focus on stewardship and education by providing the opportunity for some communities to go a step further and directly acquire and manage forests. Because the CFP provides grant assistance directly to Tribal Governments, local governments or qualified nonprofit organizations, it is able to assist those entities that have demonstrated a sustained commitment to community forestry. Through public engagement, these communities are able to articulate specific community needs that this program can meet, and demonstrate that they have the capacity to manage a public asset such as a community forest.

Benefits provided by forests acquired under the CFP will need to be quantified, and may address a variety of outcomes such as protecting a municipal water supply, providing public access for outdoor recreation, or providing economic benefits from sustainable forest management, including harvesting forest products and using woody biomass for renewable energy production. Beyond local measures of success, the contribution of community forests to larger protected areas of forest and open space helps support resource-based economies, and adds needed resiliency to natural systems as they respond to climate change. Therefore, in addition to public engagement to articulate local needs and capacity, successful community forests in the CFP will be part of a larger landscape level context that will protect many kinds of open spaces and working lands that provide a variety of ecosystem services. In this way, the program delivers local benefits that can also have a larger impact, since these community forests will likely be part of a larger conservation initiative.

Grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile of CFP project tracts and cost share tracts. The geospatial information will reside at the National Information Center for State and Private Forestry. The areas protected through this program will be able to be seen in map and other formats on the Forest Service website. These GIS shapefiles will allow the Forest Service to spatially track CFP program accomplishments and allow the agency to calculate program outcomes and public benefits provided by the lands protected through CFP. The Agency welcomes comments on outcome measures for benefits provided by forests acquired under the CFP.

Discussion of Specific Issues; Project Review and Selection Process

Under CFP, applications will be submitted to the State Forester or equivalent Tribal Government official who will, in turn, conduct a general review of all applications for eligibility and compatibility with landscape conservation efforts. The proposed rule does not allow submission of an application for a project to both CFP and the Forest Legacy Program simultaneously. The State Forester or equivalent Tribal Government official may provide technical assistance to applicants in the preparation of applications and implementation of grants.

The Forest Service proposes to conduct a nationally competitive review and ranking process to select projects for funding. The application process is outlined in § 230.3 of this proposed rule. Individual applications will be ranked according to criteria outlined in § 230.5 of this proposed rule. The Forest Service anticipates providing additional specificity on the review process, review criteria, and timelines in an annual request for proposals (RFP). The Forest Service requests public comment regarding the application process outlined in § 230.3 and the ranking criteria outlined in § 230.5 of this proposed rule

The Forest Service wants to minimize the amount of time between issuing the RFP and funding the selected projects. To achieve this goal, the Forest Service anticipates issuing an RFP each year, and selecting projects during the first quarter of the following fiscal year (October-December) subject to the availability of funds. The proposed rule requires the State Forester or equivalent Tribal Government official to forward all applications with recommendations to the Forest Service. While the Forest Service anticipates this intermediate step will add approximately 30 days to the review process, the Agency believes that input from State Foresters and Tribal Governments will be valuable in helping the Forest Service make final funding decisions.

Project Compliance With the National Environmental Policy Act

Project grants are subject to National Environmental Policy Act (NEPA) and must comply with agency NEPA implementing procedures as described in 40 CFR 1500–1508 as well as the Council on Environmental Quality's NEPA procedures at 40 CFR 1500–1508. CFP grants are to be used for transferring title and ownership of private lands to third parties and will not fund any ground-disturbing activities. The Forest Service has concluded that CFP grants fall under the categorical exclusion provided in the Forest Service's NEPA procedures for "acquisition of land or interest in land" 36 CFR 220.6(d)(6); 73 FR 43084 (July 24, 2008). As a result, CFP project grants are excluded from documentation in an environmental assessment or impact statement. The applicability of the categorical exclusion will be confirmed through scoping and a review for extraordinary circumstances.

Eligible Entities

The statute establishing CFP states that only local governments, Tribal Governments, and qualified nonprofit organizations are eligible to receive a grant through CFP. The statute also provided definitions for those three eligible organizations. Local governments are defined as municipal, county, and other local governments with jurisdiction over local land use decisions. Tribal Governments are defined as those that are federally recognized Tribes as prescribed by section 4 of the Indian Self-Determination and Education Assistance Act (U.S.C. 450b). Finally, qualified nonprofit organizations are defined as charities under the Internal Revenue Code (26 U.S.C. 501(c)(3)) and which also have a conservation purpose

(26 U.S.C. 170(h)(4)(A)). A conservation purpose is defined as the preservation of land for outdoor recreation or education, protection of natural habitat or ecosystems, preservation of open space, and preservation of historic lands or structures. Consistent with regulations of the Internal Revenue Service (26 CFR 1.170A–14(c)(1)) qualified non-profit organizations must also have a commitment to protect in perpetuity, the purposes for which the tract was acquired under the CFP and demonstrate that they have the resources to enforce the protection of the property as a community forest. In general, a land conservancy or land trust is the type of organization that would be considered a qualified nonprofit organization under the authorizing statute of the CFP.

Ensuring Permanence of Community Forest Projects

In order to minimize the chances that the property is ever sold, or converted to non-forest uses, the following four actions will be required of the grant recipient:

(1) Grant recipients will be required to record a Notice of Grant Requirements with the deed in the lands records of the local county or municipality.

(2) Grant recipients will define objectives for the use and management of the community forest in the required Community Forest Plan. Because the size, condition, and possible uses of community forests under this program could be quite varied, the Community Forest Plan will identify forest uses for the property. In order to guide compliance with the requirements of the CFP, "non-forest uses" is defined in § 230.2 of this proposed rule.

(3) Every ten years, grant recipients will submit to the Forest Service a self-certifying statement that the property has not been sold or converted to non-forest uses.

(4) Grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to non-forest uses (§ 230.2).

In the statute establishing the CFP, Congress required that the grant recipient cannot sell the land or convert it to non-forest uses (Sec. 8003.e). In the event that these conditions are violated, the law requires that the grant recipient pay the Federal Government an amount equal to the greater of the current sale price or current appraised value of the land. An additional penalty is that the grant recipient that sells or converts a parcel acquired under the CFP will not be allowed to receive additional grants under the program. Ramifications for conversion to non-forest use or sale is discussed in § 230.9 "Ownership Use and Requirements" of this proposed rule.

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 ("Uniform Act") (42 U.S.C. 4601, *et. seq.*) provides guidance and procedures for the acquisition of real property by the Federal government, including relocation benefits to displaced persons. Department of Transportation regulations implementing the Uniform Act (49 CFR 24) have been adopted by the Department of Agriculture (7 CFR 21). However, CFP is deemed exempt from the Uniform Act because it meets the exemption criteria stated at 49 CFR 24.101(b)(1).

Federal Appraisal Standards

Section 7A(c)(4) of the Cooperative Forestry Assistance Act (16 U.S.C. 2103d(c)(4)), requires that land acquired under CFP be appraised in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions* (Federal Appraisal Standards) in order to determine the non-Federal share of the cost of a parcel of privately-owned forest land. The Federal Appraisal Standards are contained in a readily available public document, which is well known to professional appraisers (*see: http://www.usdoj.gov/enrd/Legal_Documents.html*). A grant recipient will be responsible for assuring that the appraisal of the CFP tract is done in conformance with the Federal Appraisal Standards. The Federal Appraisal Standards will be used to determine reimbursement for the non-Federal cost share. However, separate tracts donated for the purpose of providing the non-Federal cost share may be appraised using the Uniform Standards of Professional Appraisal Practice (USPAP) or the IRS regulations for a donation in land. The Forest Service will be available to assist applicants with the appraisal and associated appraisal review, and will conduct spot checks to assure compliance with Federal Appraisal Standards.

Regulatory Certifications

Regulatory Planning and Review

This proposed rule has been reviewed under USDA procedures and Executive Order 12866. The Office of Management and Budget (OMB) has determined that this proposed rule is significant for purposes of Executive Order 12866. A Cost Benefit Analysis has been completed and has determined that the benefits for each established forests will vary, depending on characteristics of the forest land, the community, and the management objectives developed with public input in the establishment of the required community forest plan. Where these forests are located will also be dependent on the communities that support them, therefore, they could occur in communities from the very rural to decidedly urban. Since there will be diversity among forests and their benefits, this analysis uses qualitative as well as quantitative methods to describe the potential benefits and costs of CFP.

The primary cost of CFP is the acquisition of the land itself. The transfer of lands from private property may reduce the tax base, or result in forgone economic benefits fostered by development. This analysis assumes that development and associated activity is established elsewhere without resulting in forestland conservation and the opportunity cost of lower economic activity is off-set by the benefits provided by the community forest, such that the main costs become the cost of the acquisition and the tax revenue foregone by the local government unit. These costs are compared with the benefits of protecting forest land, which are largely intangibles, such as environmental goods and services from the land and non-market valued amenities, such as open spaces and scenic views, but also includes the economic value of retaining and active working forest in the local economy. Qualitative and quantitative evidence supports the assertion that community forests provide many benefits to communities, especially in areas threatened by conversion of private forest land.

This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor adversely affect State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

This proposed rule does not regulate the private use of land or the conduct of business. It is a grant program to local governments, Tribal Government and qualified nonprofit organizations for purposes of acquiring land for resource

conservation and open space preservation. By providing funding to eligible entities for land acquisition, the Federal Government will promote the non-monetary benefits of sustainable forest management. These benefits include: improved water quality, wildlife and fish habitat, forest based educational programs including vocational education programs in forestry, replicable models of effective forest stewardship for private landowners, open space preservation, carbon sequestration, and enhanced recreational opportunities including hunting and fishing.

The acquisition of land by eligible entities may affect the local real property tax base, depending on applicable state law and the tax status of the acquiring entity. The possible impact on the real property tax base is not possible to ascertain, but is assumed that any land going from taxable to non-taxable status would cause a commensurate shifting of the tax burden to other taxable properties or, alternatively, a reduction in local tax revenues.

As a new program, CFP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. The program is voluntary for each participating eligible entity.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive order 13272 regarding property considerations of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996. The proposed rule for voluntary participation in the CFP does not impose significant direct costs on small entities. This proposed rule imposes no additional requirements on the affected public. Entities most likely affected by this proposed rule are the local governments, qualified nonprofit organizations, and Tribal governments eligible to receive a grant through CFP. The minimum requirements on small entities imposed by this proposed rule are necessary to protect the public interest, not administratively burdensome or costly to meet, and are within the capabilities of small entities to perform. The proposed rule would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. It does not compel the expenditure of $100 million or more by any State, local or Indian Tribal government, or anyone in the private sector. Under these circumstances, the Forest Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local or Indian Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of that Act is not required.

Federalism

The Forest Service has considered this rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Forest Service has determined that the rule conforms with the federalism principles set out in these Executive Orders. The rule would not impose any compliance costs on the States other than those imposed by statute, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the Agency will consider if any additional consultations will be needed with the State and local governments prior to adopting a final rule.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the Forest Service is requesting an approval of a new information collection.

Title: Proposed substitution of 36 CFR part 230, Subpart A with Community Forest and Open Space Conservation Program.

OMB Number: 0596–New.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection.

Abstract: The purpose of CFP is to achieve community benefits through grants to local governments, Tribal Governments, and qualified nonprofit organizations to establish community forests by acquiring and protecting private forestlands. This proposed rule includes information requirements necessary to implement CFP and comply with grants regulations and OMB Circulars. The information requirements will be used to help the Forest Service in the following areas:

(1) To determine that the applicant is eligible to receive funds under the program,

(2) To determine if the proposal meets the qualifications in the law and regulations,

(3) To evaluate and rank the proposals based on a standard, consistent information, and

(4) To determine if the projects costs are allowable, and sufficient cost share is provided.

Local governmental entities, Tribal Governments, and qualified nonprofit organizations are the only entities eligible for the program, and therefore are the only organizations from which information will be collected.

The information collection required for a request for proposals and grant application, is approved and assigned Office of Management and Budget Control (OMB) No. 0596–New. The information collection required for a proposed bonded notice in this proposed rule has been submitted to OMB as a new collection.

Estimated Number of Respondents: 180.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 180.

Estimated Total Annual Burden on Respondents: 5,800 hours.

Comments: Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consultations and Coordination With Indian Tribal Governments

This proposed rule has tribal implications as defined in Executive Order 13175. Section 7A(a)(1) of the Cooperative Forestry Assistance Act establishes that Federally recognized Indian tribes are eligible entities to participate in the CFP. In accordance with the President's memorandum of

April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); the Executive Order of November 6, 2000, "Consultation and Coordination With Indian Tribal Governments" (EO 13175); and with the directives of the Department of Agriculture (DR1350–001); we have determined that specific effects on Indian tribes are likely to occur through implementation of the CFP and, therefore, the opportunity for government-to-government consultation will be provided. Tribal consultation will be accomplished through local and regional consultation processes in coordination with the Washington Office of the Forest Service.

Tribal consultation was initiated on October 20, 2010, and is currently ongoing. No Tribal input has been received during the initial 60-day period. Consultation will continue during the 60-day public comment period.

No Takings Implementations

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property. This proposed rule implements a program to assist eligible entities to acquire land from willing landowners. Any land use restrictions are voluntarily undertaken by program participants.

Environmental Impact

The Forest Service has determined that this proposed rule falls under the categorical exclusion provided in Forest Service regulations on National Environmental Policy Act procedures. Such procedures exclude from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions." 36 CFR 220.6(d)(2); 73 FR 43084 (July 24, 2008). This proposed rule outlines the programmatic implementation of CFP, and as such, has no direct effect on Forest Service decisions for land management activities.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive Order.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Forest Service has not identified any State or local laws or regulations that are in conflict with this proposed rule or that would impede full implementation of this proposed rule. Nevertheless, in the event that such a conflict was to be identified, the proposed rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, no retroactive effect would be given to this rule, and the Forest Service would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 230

Grant programs, Grants administration, State and local governments, Tribal governments, Nonprofit organizations, Conservation, Forests and forest products, Land sales.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 230 of Title 36 of the Code of Federal Regulations by revising subpart A to read as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

1. The authority citation for part 230 is revised to read as follows:

Authority: 16 U.S.C. 2103(d) & 2109(e).

2. Revise Subpart A to read as follows.

Subpart A—Community Forest and Open Space Conservation Program

Sec.

Subpart A—Community Forest and Open Space Conservation Program

§ 230.1 Purpose and scope.

(a) The regulations of this subpart govern the rules and procedures for the Community Forest and Open Space Conservation Program (CFP), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under CFP, the Secretary of Agriculture, acting through the Chief of the Forest Service, awards grants to local governments, Tribal Governments, and qualified nonprofit organizations to establish community forests for community benefits by acquiring and protecting private forestlands.

(b) The CFP applies to eligible entities within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the territories and possessions of the United States.

§ 230.2 Definitions.

The terms used in this subpart are defined as follows:

Community benefits. One or more of the following:

(1) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(2) Environmental benefits, including clean water, stormwater management, and wildlife habitat;

(3) Benefits from forest-based educational programs, including vocational education programs in forestry;

(4) Benefits from serving as replicable models of effective forest stewardship for private landowners;

(5) Recreational benefits, such as hiking, hunting and fishing; and

(6) Public access.

Community forest. Forest land owned in fee simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a community forest plan.

Community forest plan. A tract-specific plan that guides the management and use of this community forest, developed with community involvement, and includes the following components:

(1) A description of the property, including acreage and county location, land use, forest type and vegetation cover;

(2) Objectives for the community forest;

(3) Community benefits to be achieved from the establishment of the community forest;

(4) Mechanisms promoting community involvement in the development and implementation of the community forest plan;

(5) Implementation strategies for achieving community forest plan objectives;

(6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements; and,

(7) Long-term use and management of the property.

Eligible entity. A local governmental entity, Tribal Government, or a qualified nonprofit organization that is qualified to acquire and manage land.

Eligible lands. Private forest lands that:

(1) Are threatened by conversion to nonforest uses;

(2) Are not lands held in trust by the United States on behalf of any Tribal Government or allotment lands; and,

(3) If acquired by an eligible entity, can provide defined community benefits under CFP and allow public access.

Equivalent tribal government official. An individual designated and authorized by the Tribal Government.

Federal appraisal standards. The *Uniform Appraisal Standards for Federal Land Acquisitions* developed by the Interagency Land Acquisition Conference.

Forest lands. Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested.

Grant recipient: An eligible entity that receives a grant from the U.S. Forest Service through the CFP.

Landscape conservation initiative. A landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region. Conservation goals identified need to correspond with the community and environmental benefits outlined for the CFP.

Local governmental entity. Any municipal government, county government, or other local government body with jurisdiction over local land use decisions as defined by Federal or State law.

Non-forest uses. Activities that threaten forest cover and are inconsistent with the Community Forest Plan, and include the following:

(1) Subdivision;

(2) Residential development, except for a caretaker building;

(3) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as directional drilling for oil and gas development;

(4) Industrial use, including the manufacturing of products;

(5) Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and

(6) Structures and facilities, except for compatible recreational facilities, concession and educational kiosks, energy development for onsite use and parking areas. Said structures, facilities and parking areas must have minimal impacts to forest and water resources.

Qualified nonprofit organization. Defined by the CFP authorizing statute (Public Law 110–234; 122 Stat. at 1281), an organization that is described in section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in section 170(h)(4)(A) of that Code (26 U.S.C. 170(h)(4)(A)). For the purposes of CFP, a qualified nonprofit organization must meet the following requirements:

(1) Consistent with regulations of the Internal Revenue Service at 26 CFR 1.170A–14(c)(1):

(i) Have a commitment to protect in perpetuity the purposes for which the tract was acquired under the CFP; and

(ii) Demonstrate that it has the resources to enforce the protection of the property as a community forest as a condition of acquiring a tract under the CFP.

(2) Operate primarily or substantially in accordance with one or more of the conservation purposes specified in section 170(h)(4)(A) of I.R.S. code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:

(i) The preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

(iv) The preservation of a historically important land area or a certified historic structure.

Public access. Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited by actions protecting resources or public health and safety.

State forester. The State employee who is responsible for administration and delivery of forestry assistance within a State.

Tribal government. Defined by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

§ 230.3 Application process.

(a) The Forest Service will issue a national request for proposals (RFP) for grants under the CFP. The RFP will include the following information outlined in this proposed rule:

(1) The process for submitting an application;

(2) Application requirements (§ 230.4);

(3) Review process and criteria that will be used by the Forest Service, the State Forester, and equivalent Tribal Government official (§ 230.5); and

(4) Other conditions determined appropriate by the Forest Service.

(b) Pursuant to the RFP, interested eligible entities will submit an application for program participation to:

(1) The State Forester, for applications by local governments and qualified nonprofit organizations, or

(2) The equivalent Tribal Government official, for applications submitted by a Tribal Government.

(c) The State Forester or equivalent Tribal Government official will review all applications and assess:

(1) That the applicant is an eligible entity;

(2) That the land is eligible; and

(3) Whether the project contributes to a landscape conservation initiative.

(d) In accordance with the RFP, the State Forester or equivalent Tribal Government official will forward all applications to the Forest Service, and

(1) Provide an assessment of each application, and

(2) Describe what technical assistance they may render in support of applications and an estimate of needed financial assistance (§ 230.10).

(e) A proposed application cannot be submitted for funding consideration simultaneously for both CFP and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

§ 230.4 Application requirements.

The following section outlines minimum application requirements, but the RFP may include additional requirements.

(a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible land that contains forest land.

(b) Applications must include the following regarding the property proposed for acquisition:

(1) A description of the property, including acreage and county location;

(2) A description of current land uses, including improvements;

(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) Relationship of the property within and its contributions to a landscape conservation initiative; and

(7) A description of any threats of conversion to nonforest uses.

(c) Information regarding the proposed establishment of a community forest, including:

(1) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(2) A description of the community involvement in the planning and long-term management of the community forest;

(3) An identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest; and

(4) A draft Community Forest Plan. The eligible entity is encouraged to work with the State Forester or equivalent Tribal Government official for technical assistance when developing or updating the Community Forest Plan.

(d) Information regarding the proposed land acquisition, including:

(1) A proposed project budget (§ 230.6);

(2) The status of due diligence, including signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(3) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);

(4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(5) The proposed timeline for completing the acquisition and establishing the community forest; and

(6) Long term management costs and funding source(s).

(e) Applications must comply with the Uniform Federal Assistance Regulations (7 CFR 3015).

(f) Applications must also include the forms required to process a Federal grant. Section 230.7 references the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program.

§ 230.5 Ranking criteria and proposal selection.

(a) Using the criteria described below, to the extent practicable, the Forest Service will give priority to:

(1) An application that maximizes the delivery of community benefits, as defined in this proposed rule, through a high degree of public participation; and

(2) An application with a subject property that makes a substantial contribution to a landscape conservation initiative. A landscape conservation initiative, as defined in this proposed rule, is a landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region.

(b) The Forest Service will evaluate applications received by the State Foresters and equivalent Tribal Government officials and award grants based on the following criteria:

(1) Type and extent of community benefits provided. Community benefits are defined in this proposed rule as:

(i) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(ii) Environmental benefits, including clean water, stormwater management, and wildlife habitat;

(iii) Benefits from forest-based educational programs, including vocational education programs in forestry;

(iv) Benefits from serving as replicable models of effective forest stewardship for private landowners;

(v) Recreational benefits, such as hiking, hunting and fishing; and

(vi) Public access.

(2) Extent and nature of community engagement in the establishment and long-term management of the community forest;

(3) Amount of cost share leveraged;

(4) Extent to which the community forest contributes to a landscape conservation initiative;

(5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(6) Likelihood that, unprotected, the property would be converted to non-forest uses;

(7) Costs to the Federal government; and

(8) Additional considerations as may be outlined in the RFP.

§ 230.6 Project costs and cost share requirements.

(a) The CFP Federal contribution cannot exceed 50 percent of the total project costs.

(b) Allowable project and cost share costs will include the purchase price and the following transactional costs associated with the acquisition: Appraisals and appraisal reviews, land surveys, legal and closing costs, development of the community forest plan, and title examination. The following principles and procedures will determine allowable costs for grants:

(1) For local and Tribal governments, refer to OMB Circular A–87 (Cost Principles for State, Local and Indian Tribal Governments).

(2) For nonprofit organizations, refer to OMB Circular A–122 (Cost Principles for Nonprofit Organizations).

(c) Project costs do not include the following:

(1) Long-term operations, maintenance, and management of the land;

(2) Construction of buildings or recreational facilities;

(3) Research;

(4) Existing liens or taxes owed; and

(5) Costs associated with preparation of the application, except for appraisals and the community forest plan.

(d) Cost share contributions can include cash, in-kind services, or donations and must meet the following requirements:

(1) Be supported by grant regulations described above;

(2) Not include other federal funds unless specifically authorized by Federal statute;

(3) Not include non-federal funds used as cost share for other federal programs;

(4) Not include funds used to satisfy mandatory or compensatory mitigation requirements under a Federal regulation, such as Clean Water Act, River and Harbor Act, or Endangered Species Act;

(5) Not include borrowed funds; and

(6) Must be accomplished within the grant period.

(e) Cost share contributions may include the purchase or donation of lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with CFP program objectives.

(f) For the purposes of calculating the cost share contribution, the grant recipient may request the inclusion of project due diligence costs such as title review and appraisals that incurred prior to issuance of the grant. These pre-award costs may occur up to one year prior to the issuance of the grant, but cannot include the purchase of CFP land, including cost share tracts.

§ 230.7 Grant requirements.

(a) The following grant forms and supporting materials must be included in the application:

(1) An Application for Federal Assistance (Standard Form 424);

(2) Budget information (Standard Form SF 424c—Construction Programs);

(3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs); and

(4) Additional forms as may be required.

(b) Once an application is selected, funding will be obligated to the grant recipient through a grant.

(c) The initial grant period will be two years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service for an additional 12 months when necessary to accommodate unforeseen circumstances in the land acquisition process.

(d) The grant paperwork must adhere to grant requirements listed below.

(1) Local and Tribal governments should refer to OMB Circular A–102 (Grants and Cooperative Agreements with State and Local Governments) and 7 CFR 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for directions.

(2) Nonprofit organizations should refer to OMB Circular A–110 (Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations) and 7 CFR 3019 (Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations) for directions.

(e) Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected project fail, the applicant cannot substitute an alternative site.

(f) The grant recipient must comply with the requirements in § 230.8 before funds will be released.

(g) After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile of CFP project tracts and cost share tracts.

(h) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution through CFP process.

(i) All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through CFP.

§ 230.8 Acquisition requirements.

(a) Grant recipients participating in CFP must complete the following, which applies to all tracts, including cost share tracts:

(1) Complete an appraisal.

(i) For lands purchased with CFP funds, the appraisal must comply with Federal Appraisal Standards prior to the release of the grant funds. The grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards.

(ii) For donated cost share tracts, the market value must be determined by an independent appraiser. The value needs to be documented by a responsible official of the party to which the property is donated.

(2) Prior to closing, notify the landowner in writing of the appraised value of the property and that the sale is voluntary. If the grant recipient has a voluntary option for less than appraised value, they do not have to renegotiate the agreement.

(3) Purchase all surface and subsurface mineral rights, whenever possible. However, if severed mineral rights cannot be obtained, then the grant recipient must follow the retention of qualified mineral interest requirements outlined in the Internal Revenue Service regulations (26 CFR 1.170A–14 (g)(4)), which address both surface and subsurface minerals.

(4) Ensure that title to lands acquired conforms with title standards applicable to state land acquisitions where the land is located.

(i) Title to lands acquired using CFP funds must not be subject to outstanding or reserved property rights or future interests the reasonable exercise of which would be contrary to the purposes for which the land was acquired.

(ii) Whenever possible, title insurance must be secured for the full value of the land, with the United States named as an additional insured on the policy.

(iii) Title insurance must not be a substitute for acceptable title.

(5) Record with the deed in the lands record of the local county or municipality, a Notice of Grant Requirement, which includes the following:

(i) States that the property (including cost share tracts) was purchased with CFP funds;

(ii) Provides a legal description;

(iii) Identifies the name and address of the grant recipient who is the authorized title holder;

(iv) States the purpose of the CFP;

(v) References the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;

(vi) States that the grant recipient confirms its obligation to manage the interest in real property pursuant to the grant, the Community Forest Plan, and the purpose of the CFP;

(vii) States that the grant recipient will not convey or encumber the interest in real property, in whole or in part, to another party; and

(viii) States that the grant recipient will manage the interest in real property consistent with the purpose of the CFP.

§ 230.09 Ownership and use requirements.

(a) Complete the final Community Forest Plan within 120 days of the land acquisition, and must be updated periodically, but at least every ten years.

(b) Provide appropriate public access.

(c) In the event that a grant recipient sells or converts to nonforest use, a parcel of land acquired under CFP, the grant recipient must:

(1) Pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and

(2) Not be eligible for additional grants under CFP.

(d) For Tribal Governments, land acquired using a grant provided under CFP must not be sold, converted to non-forest uses, or converted to land held in trust by the United States on behalf of any Tribal Government.

(e) Every ten years, the grant recipients will submit to the Forest Service an updated Community Forest Plan and a self-certifying statement that the property has not been sold or converted to non-forest uses.

(f) Grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to non-forest uses.

§ 230.10 Technical assistance funds.

CFP technical assistance funds will be provided to State Foresters and equivalent Tribal Government officials through an administrative grant to help implement community forest projects funded through CFP, and as a result, funds will only be provided to States or Tribal Government with a CFP project funded within their jurisdiction. Section 7A (f) of the authorizing statute limits the funds made available for program administration and technical assistance to not more than 10% of all funds made available to carry out the program for each fiscal year.

Dated: December 30, 2010.

Jay Jensen,

Deputy Under Secretary, NRE.

[FR Doc. 2010–33344 Filed 1–5–11; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0996, FRL–9248–8]

Approval and Promulgation of Implementation Plans; Connecticut: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a draft revision to the State Implementation Plan (SIP), submitted by Connecticut on December 9, 2010, for parallel processing. The proposed SIP revision makes two changes impacting Connecticut's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the proposed revision provides the State of Connecticut with authority to regulate greenhouse gases (GHGs) under its PSD program. Second, the proposed SIP revision establishes appropriate emission thresholds for determining which stationary sources and modification projects become subject to Connecticut's PSD permitting requirements for their GHG emissions. The first component of the proposed revision is necessary because the State of Connecticut is required to apply its PSD program to GHG-emitting sources, and unless it does so (or unless EPA promulgates a federal implementation plan (FIP) to do so), such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify. The second component is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels provided under the Clean Air Act (CAA or Act), which would overwhelm Connecticut's permitting resources.

DATES: Comments must be received on or before February 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2010–0996, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: dahl.donald@epa.*
3. *Fax:* (617) 918–0657.
4. *Mail:* "Docket Identification Number EPA–R01–OAR–2010–0996", Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100 (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier:* Deliver your comments to: Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Air Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R01–OAR–2010–0996." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an 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.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Air Programs Unit, 5 Post Office Square—Suite 100, Boston, MA.. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; The Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: For information regarding the Connecticut SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Air Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl's telephone number is (617) 918–1657; e-mail address: *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

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I. What action is EPA proposing in today's notice?

On December 9, 2010, the Connecticut Department of Environmental Protection (DEP) submitted a draft revision to EPA for approval into Connecticut's SIP to: (1) Provide the State with the authority

to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Connecticut's PSD permitting requirements for GHG emissions. Final approval of Connecticut's December 9, 2010 SIP revision will make Connecticut's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a GHG FIP. Furthermore, final approval of Connecticut's December 9, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds will not be subject to the permitting requirements that will begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Connecticut SIP.

Because this draft SIP revision is not yet state-effective, Connecticut requested that EPA "parallel process" the SIP revision in a letter dated December 9, 2010. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations, and may propose approval of the SIP revision before it has become fully effective as state law.

Connecticut conducted a public comment period on its proposed regulations from September 1, 2010 to October 18, 2010.[1] On October 14, 2010, EPA submitted comments to Connecticut on the state's proposed regulations. On December 9, 2010, Connecticut submitted a letter to EPA explaining that Connecticut had considered all the submitted comments and made revisions to the proposed regulation, and that a revised "final draft" regulation was now available that responded to all of EPA's comments. Connecticut requested that EPA propose to approve this final draft regulation, rather than the original proposed regulation, as the SIP revision.

As Connecticut explained, however, pursuant to Connecticut's regulatory adoption laws, this final draft regulation must be reviewed by Connecticut's Office of Attorney General and then the Legislative Regulations Review Committee before it can be finalized and made effective under state law. Therefore, as of today, Connecticut has not yet issued final regulations. However, pursuant to the "parallel processing" mechanism, EPA is proposing approval of the SIP revision, based on the proposed state action.

After Connecticut submits the formal state-effective SIP revision request (including a response to all public comments raised during the State's public participation process), EPA will prepare a final rulemaking notice for the SIP revision, provided Connecticut's final promulgated regulation adequately addresses EPA's comments. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

II. What is the background for the action proposed by EPA in today's notice regarding PSD permitting requirements for GHG-emitting sources?

Today's proposed action on the Connecticut SIP relates to three federal rulemaking actions. The first rulemaking is EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514 (June 3, 2010). The second rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," Proposed Rule, (GHG SIP Call). 75 FR 53892 (September 2, 2010). The third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," Proposed Rule, 75 FR 53883 (September 2, 2010) (GHG FIP), which serves as a companion rulemaking to EPA's proposed GHG SIP Call. A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA establishes appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call, EPA is proposing to find that the EPA-approved PSD programs in 13 States (including Connecticut) are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these States, EPA proposes to require the State (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA is proposing an expedited schedule for these States to submit their SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and may not be able to obtain a PSD permit in order to construct or modify. In the third rulemaking, the GHG FIP (which is not yet final), EPA is proposing a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits for GHG-emitting sources. Connecticut is now seeking to revise its SIP to make it adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a GHG FIP. Furthermore, Connecticut is seeking to revise its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements.

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Connecticut SIP revision and EPA's other national rulemakings as well as EPA's analysis of Connecticut's SIP revision.

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

[1] As part of the same state comment process, Connecticut also proposed revisions to its operating permit program under Title V of the Clean Air Act. Connecticut has not requested that EPA approve these revisions under Title V and EPA is not proposing to approve them in today's action.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHGs," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.*, coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.*, coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHGs range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHGs on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability for a proposed new or modified source is whether the source is a "major emitting facility," based on its predicted potential emissions of regulated pollutants, within the meaning of CAA section 169(1) that either constructs or undertakes a modification. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Source

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a *de minimis* contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of

technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[2]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.*, national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements for a PSD program?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions—which, as noted above, applies, by its terms, to "any air pollutant," and which EPA has, through regulation, interpreted more narrowly as any "NSR regulated pollutant"—and read in conjunction with other provisions, such as the BACT provision under CAA section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation, including, as discussed below, GHGs on and after January 2, 2011.[3]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. On the other hand, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Connecticut has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo Reconsideration?

By notice dated December 15, 2009, pursuant to CAA section 202(a), EPA issued, in a single final action, two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "define[d] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emissions of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR 25686 (40 CFR 86.1818–12(a)). Shortly before finalizing the LDVR, by notice dated April 2, 2010, EPA published a notice commonly referred to as the Johnson Memo Reconsideration. On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by

[2] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

[3] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR 31560–62 (June 3, 2010). EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the Act. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On March 29, 2010, EPA signed a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation" ("Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs"). 75 FR 17004. EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources, the Tailoring Rule, 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program [4] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (i.e., April 30, 2016). This is because EPA has concluded that at the present time the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without it, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major

[4] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Connecticut's title V program.

source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[5] On July 20, 2010, Connecticut provided a letter to EPA with the requested notification. See the docket for this proposed rulemaking for a copy of Connecticut's letter.

The thresholds that EPA established are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[6] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[7] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

EPA adopted the Tailoring Rule after careful consideration of numerous public comments. On October 27, 2009 (74 FR 55292), EPA proposed the Tailoring Rule. EPA held two public hearings on the proposed rule, and received over 400,000 written public comments. The public comment period ended on December 28, 2009. The comments provided detailed information that helped EPA understand better the issues and potential impacts of the Tailoring Rule. The preamble of EPA's Tailoring Rule describes in detail the comments received and how some of these comments were incorporated in EPA's final rule. *See* 75 FR 31514 for more detail.

3. What is the GHG SIP Call?

By notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the State or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most States, either the State or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these States to issue PSD permits to such sources. Therefore, EPA proposed to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any State that is unable to submit a corrective SIP revision by its deadline. Connecticut was one of the States for which EPA proposed a SIP Call.

III. What is the relationship between today's proposed action and EPA's proposed GHG SIP Call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[8] As discussed in section IV of this rulemaking, Connecticut does not interpret its current PSD regulations as providing it with the authority to regulate GHG, and as such, Connecticut is included on the list of areas for the proposed SIP call. Connecticut's December 9, 2010, proposed SIP revision (the subject of this rulemaking) addresses this authority.

IV. What is EPA's analysis of Connecticut's proposed SIP revision?

On December 9, 2010, DEP provided a revision to Connecticut's SIP to EPA for parallel processing and eventual approval. This revision to Connecticut's SIP is necessary because without it, (1) the State would not have authority to issue PSD permits to GHG-emitting sources, and as a result, absent further action, those sources may not be able to construct or undertake modifications beginning January 2, 2011; and (2) assuming that the State attains authority to issue PSD permits to GHG-emitting sources, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number

[5] Narrowing EPA's approval will ensure that for federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those States for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

[6] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[7] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

[8] As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

of required permits, imposing undue costs on small sources; which would overwhelm Connecticut's permitting resources and severely impair the function of the program.

The State's December 9, 2010, proposed SIP revision: (1) Provides the State with the authority to regulate GHG under the PSD program of the CAA, and (2) establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program. Specifically, Connecticut's December 9, 2010, proposed SIP revision includes proposed changes to Regulations of Connecticut State Agencies, section 22a–174–1, by adding definitions for "carbon dioxide equivalent emissions" and "greenhouse gases." The proposed SIP revision also addresses the thresholds for GHG permitting applicability and implementation through changes proposed to Connecticut's PSD regulations at section 22a–174–3a.

The State of Connecticut is currently a SIP-approved state for the PSD program. However, Connecticut does not interpret its current rules, which are generally consistent with the federal rules, to be automatically updating to include newly designated regulated air pollutants such as GHG. In a letter provided to EPA on July 20, 2010, Connecticut notified EPA that the State does not currently have the authority to regulate GHG and thus is in the process of revising its regulation (the subject of this proposed action) to provide this authority. To provide this authority, Connecticut is adding definitions of "carbon dioxide equivalent emissions" and "greenhouse gases" to section 22a–174–1, and revising PSD applicability and BACT requirements in section 22a–174–3a, to explicitly regulate GHG under the CAA. EPA has preliminarily determined that this change to Connecticut's regulation is consistent with the CAA and its implementing regulations regarding GHG.

The changes included in Connecticut's PSD program are substantively the same as EPA's Tailoring Rule. The Connecticut rules have been developed to conform to the structure of Connecticut's rule in section 22a–174–3a, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. As part of its review of the Connecticut submittal, EPA performed a line-by-line review of Connecticut's proposed changes to its regulations and concluded the state's proposed regulations are consistent with the Tailoring Rule.

V. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the State of Connecticut's December 9, 2010, proposed SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Connecticut's December 9, 2010, proposed SIP revision: (1) Provides the State with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the State's law as meeting federal requirements and does not impose additional requirements beyond those imposed by the State's law. For that reason, this proposed action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: December 22, 2010.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2011–17 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0662; FRL–9248–2]

Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Subchapter 16 and Subchapter 17

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove portions of revisions and new rules as submitted by the State of Montana on October 16, 2006 and November 1, 2006. Montana adopted these rules on December 2, 2005 and March 23, 2006 and these rules became State-effective on January 1, 2006. These revisions and new rules do not meet the requirements of the Clean Air Act and EPA's Minor New Source Review (NSR) regulations. EPA has concluded that none of the identified elements for the submitted revisions and new rules are

severable from each other. The intended effect of this action is to propose to disapprove these rules as they are inconsistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before February 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–0662, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: leone.kevin@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 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–2007–0662. 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 Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(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) Minor NSR means NSR established under section 110 of the Act and 40 CFR 51.160.

(iv) NSR means new source review, a phrase intended to encompass the stationary source regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.

(v) The initials *SIP* mean or refer to State Implementation Plan.

(vi) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(vii) NAAQS means National Ambient Air Quality Standards.

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. What is being addressed in this document?

On October 16, 2006, the State of Montana submitted revisions to revise the Montana State Implementation Plan (SIP) and rules. This submission contained revisions to Administrative Rules of Montana (ARM) 17.8.743(1), and new rules I–VI, codified as ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, pertaining to the regulation of oil and gas well facilities, and 17.8.759, pertaining to Montana air quality permit applicability. The revisions to ARM 17.8.743(1), 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606 provide, generally, that an owner or operator of an oil and gas well facility for which a Montana air quality permit is required may wait until 60 days after the well completion date before submitting an application for a permit. EPA is proposing to act on the revisions to these seven regulations in this notice. The Montana Board of Environmental Review (Board) adopted these revisions to existing SIP revisions and new rules on December 2, 2005. ARM 17.8.759 is being addressed in a separate action (*see* 75 FR 9834–9843). The submission also contains revisions to ARM 17.8.1402 pertaining to incorporation by reference. This revision was addressed by EPA in a previous action (*see* 75 FR 3993–3996). In addition to these revisions, on October 16, 2006, Montana is also withdrawing ARM 17.8.743(1)(c) regarding the applicability of incinerators in the Montana air pollution program rules. ARM 17.8.743(1)(c) was inadvertently included in the submission dated May 28, 2003. The Board adopted ARM 17.8.743(1)(c) on December 6, 2002.

On November 1, 2006, the State of Montana submitted revisions to revise the Montana SIP and rules. This submission contained revisions to ARM 17.8.504, 17.8.505, 17.8.744, 17.8.1204 and new rules I–IX, codified as ARM 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705,17.8.1710, 17.8.1711, 17.8.1712 and 17.8.1713 pertaining to the regulation of oil and gas well facilities. The revision to ARM 17.8.504 pertains to air quality permit application fees; ARM 17.8.505 pertains to air quality operation fees; ARM 17.8.744(l) provides that a Montana air quality permit is not required for facilities that register with the department in accordance with ARM 17.8.17; and ARM 17.8.1204 addresses air quality operating permit program applicability. The Board adopted these new rules and rule amendments on March 23, 2006. EPA is proposing to act on all these rule submissions in this action.

EPA notes that ARM 17.8.1204 (regarding Air Quality Operating Permit Program Applicability) and ARM 17.8.505 (regarding Air Quality Operation Fees) are part of the Title V and Part 70 regulations which we do not approve into the SIP. Instead, we approve operating permit regulations under our operating permit regulations at 40 CFR part 70. Thus, we intend to consider approval of Montana's proposed Part C revisions pursuant to our part 70 regulations at such time as Montana submits an appropriate request under 40 CFR 70.4(i). The revisions are meaningless absent their regulatory context, and that regulatory context is not part of the EPA-approved SIP and is not incorporated by reference into 40 CFR part 52. Instead, the approval status of Montana's part 70 Program is reflected in 40 CFR part 70, Appendix A. Thus, because we are obligated to act on SIP submissions, we plan to disapprove these revisions as a revision to Montana's SIP. If the State requests to withdraw part C from the SIP revision prior to the time we take final action, we would not be obligated to take final action because part C would no longer be pending before the Agency as a SIP revision. Additionally, if requested by the State, we will separately consider these revisions as a revision to the approved operating permit program for the State.

The November 1, 2006 submission also contains revisions to the following rules: ARM 17.8.101, ARM 17.8.102, ARM 17.8.103, ARM 17.8.302, ARM 17.8.767, ARM 17.8.801, ARM 17.8.802, ARM 17.8.818, ARM 17.8.902 and ARM 17.8.1002 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules. EPA is not acting on these rule submissions. These revisions were addressed by EPA in a previous action (*see* 75 FR 3993–3996).

These proposed amendments to existing new rules and adoption of new rules listed above that are the subject of this notice, hereafter referred to as "the Program," would establish a registration system for certain facilities that presently require a minor NSR air quality permit under the SIP regulations. The Program would establish a general registration system for oil and gas well facilities. The Program would allow the owner or operator of an oil or gas well facility to register with the Montana Department of Environmental Quality (MDEQ) in lieu of submitting a permit application and obtaining a permit to construct or modify the source. Currently, with specific exemptions, the administrative rules adopted under the CAA of Montana and approved by EPA into the SIP, require the owner or operator of sources of air pollution to obtain a permit prior to construction or modification.

III. EPA Review and Proposed Action on SIP Revisions

EPA is proposing to disapprove the revisions and new rules as submitted by Montana on October 16, 2006 and November 1, 2006, as identified above.

Section 110(a)(2)(C) of the Act requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. Parts C and D, which pertain to prevention of significant deterioration (PSD) and nonattainment, respectively, address major NSR programs for stationary sources, and the permitting program for "nonmajor" (or "minor") stationary sources is addressed by section 110(a)(2)(C) of the Act. We generally refer to the latter program as the "minor NSR" program. A minor stationary source is a source whose "potential to emit" is lower than the major source applicability threshold for a particular pollutant defined in the applicable major NSR program.

Therefore, we evaluated the submitted revisions and new rules using the federal regulations under CAA section 110(a)(2)(C), which require each State to include a minor NSR program in its SIP. EPA regulations require that a minor NSR program include:

- A plan that includes "legally enforceable procedures that enable" the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the control strategy, 40 CFR 51.160(a)(1).
- A plan that sets forth legally enforceable procedures that enable the State to determine whether the minor source will result in "interference with a national ambient air quality standard," 40 CFR 51.160(a)(2) and, to prevent the source from doing so, 40 CFR 51.160(b).
- A plan that includes a discussion of "the basis for determining which facilities will be subject to review," 40 CFR 51.160(e).
- A plan that includes a discussion of "the air quality data and the dispersion or other air quality modeling used" to

meet the requirements of EPA regulations 40 CFR 51.160(f).

In addition, we reviewed the State's regulations for compliance with the Act. Generally, SIPs must be enforceable (*see* section 110(a) of the Act) and must not relax existing SIP requirements (*see* section 110(l) and 193 of the Act).

EPA has issued several guidance memoranda that explain the Agency's requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit. See, e.g., June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in New Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. Further guidance was provided on January 25, 1995 in a memorandum entitled, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors. Although the latter memo applies to stationary sources subject to CAA Section 112 and Title V, we are citing this notice for the general practicable enforceability principles.

For example, as presented in the guidance, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum:

(1) Include technically accurate emission limitations;

(2) Specify the time period for the limitation (hourly, daily, monthly, annually);

(3) Specify the method for determining compliance including appropriate monitoring, recordkeeping and reporting (MRR);

(4) Identify the category of sources that are covered by the rule;

(5) Where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and

(6) Recognize the enforcement consequences relevant to the rule.

EPA reviewed the proposed new rules against the six criteria mentioned above. This review, which is also discussed in a memo from Richard R. Long, Director, Region 8 Air and Radiation Program, to the Board on January 30, 2006 (Long memo), includes:

a. Specific applicability. The Rules must clearly identify the category of sources that qualify for the rule's coverage.

b. Reporting or notice to permitting authority. The rule should provide that a source notify the permitting authority of its coverage by the rule.

c. Specific technically accurate emission limits. The rule must clearly specify the emission limits that apply, and include the specific associated compliance monitoring. A rule that allows sources to submit the specific parameters and associated emission limits to be monitored may not be enforceable because the rule itself does not set specific emission limits.

d. Specific compliance monitoring. The rule must specify the methods to determine compliance. Specifically, the rule must state the monitoring requirements, recordkeeping requirements, reporting requirements and test methods as appropriate.

e. Practically enforceable averaging times. The averaging time period must readily allow for determination of compliance.

f. Clearly recognized enforcement. Violations of the emission thresholds imposed by the rule constitute violations of permitting and SIP requirements.

Section 110(a)(2)(A) of the Act and 40 CFR 51.160(a)(1) requires that SIP revision submittals be enforceable. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency" provides EPA's guidance for interpreting this provision in the Act. EPA proposes to find that the proposed new and modified rules do not meet the requirements of section 110(a)(2), which require that SIP revision submittals be enforceable. First, there are no specific up-front methodologies in the submitted Program for the State to use to be able to determine whether a source covered by these rules is in compliance with 40 CFR 51.160. The Program fails to meet the enforceability requirements to assure compliance. This is because there are no specific limits to limit production, hours of operation, fuel consumption, etc. to ensure the facility's potential to emit remains below major source thresholds for any particular pollutant. Second, while ARM 17.8.1705, codified as New Rule V, requires that the owner or operator of a registered facility shall monitor and record annual production information for all emission points and maintain onsite records showing daily hours of operation and daily production rates, 17.8.1705 does not have any specific limits that limit the potential to emit. Thus, EPA finds that the testing, recordkeeping, reporting, and monitoring provisions necessary to establish how compliance will be determined and to ensure that the NAAQS are protected are insufficient.

The rule must clearly specify the emission limits that apply, and include the necessary more specialized monitoring, recordkeeping, and reporting (MRR) requirements required for an oil and gas registration program to ensure accountability and provide a means to determine compliance. The submitted Program is generic concerning MRR. For example, ARM 17.8.1705 requires that the owner or operator of a registered facility shall monitor and record annual production information for all emission points, as required by the MDEQ in the annual emission inventory request. ARM 17.8.1605 (Recordkeeping requirements) only requires that the owner or operator of an oil and gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection. There are no specific limits to limit potential to emit and there are no specific up front methodologies specified in this rule to determine compliance.

The submitted Program is generic concerning the types of monitoring that are required, rather than identifying the application of specific monitoring approaches, providing the technical specifications for each of the specific allowable monitoring systems, and requiring replicable procedures for the approval of any alternative monitoring system (January 25, 1995 memo from Kathie A. Stein, Director Air Enforcement Division entitled "Guidance on Practicable Enforceability"). The Program also lacks the replicable procedures that are necessary to ensure that (1) adequate monitoring is required that would accurately determine emissions under the Program; (2) the Program is based upon sound science and meets generally acceptable scientific procedures for data quality and manipulation; and (3) the information generated by such system meets minimum legal requirements for admissibility in a judicial proceeding to enforce the Program (September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency"). For example: ARM 17.8.1604 and 17.8.1712 require the source to inspect monthly all VOC piping components for leaks and repair such leaks within a specific period of

time. The rule should specify methods more sophisticated than sight, sound and smell to detect leaks; for example, field gas chromatography; photo ionization air monitoring; or portable gas detection instrumentation. Additionally, ARM 17.8.1713(4) requires the owner or operator of a registration oil or gas well facility with a "detectible level of hydrogen sulfide from the well" to submit an "air quality analysis demonstrating compliance" with the ambient standards for SO_2 and hydrogen sulfide. The regulation is ambiguous and provides no information regarding what should go in such a demonstration. The Program should also ensure consistency and accuracy in the calculations that oil and gas well facilities conduct, for example by including the calculations in the rule or referencing specific AP–42 air pollutant emission factors or American Society for Testing Materials (ASTM) methods to determine emissions from the various emission units at the oil and gas well facility.

Because of the reasons stated above, EPA finds the MRR requirements in the Program fail to ensure attainment and maintenance of the NAAQS are protected. The Program lacks language requiring the owner or operator to maintain the proper MRR, which would allow the State to be able to determine if there was an adverse impact on air quality.

Even if the rules were federally enforceable as required by CAA section 110(a)(2)(C), the rule must also be enforceable as a practical matter. EPA's review of these proposed revisions also focused on whether these revisions are enforceable as a practical matter. If limitations imposed by SIP rules are incomplete, vague, or nonexistent, enforcement by the States, citizens and EPA would not be effective. Emission limitations must be of sufficient quality and quantity to ensure accountability. EPA has issued several guidance documents explaining the requirements of practicable enforceability (*e.g.*, June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in New Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. Further guidance was provided on January 25, 1995 in a memorandum entitled, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors).

The standard of review in this instance is a determination whether the submitted Program has sufficient practically enforceable procedures that enable the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the NAAQS and the control strategy as required in 40 CFR 51.160. In the Long memo, EPA expressed concerns that, among other things, the submitted Program lacks the appropriate practically enforceable averaging times in order to determine compliance. EPA policy expresses a preference for short term limits, generally daily, but not to exceed one month (January 25, 1995 memo from Kathie A. Stein, Director Air Enforcement Division entitled "Guidance on Practicable Enforceability"). ARM17.8.1705 only requires the owner or operator of a registered facility to monitor and record annual production information, as required by MDEQ in the annual emission inventory request. The State only requires that production information be gathered on a calendar year basis and submitted to MDEQ by the date required in the emission inventory request. This requirement does not enable the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the NAAQS short term limits or PSD increments. If MDEQ envisions that some oil and gas well facilities that emit less than 100 tons per year of criteria air pollutants may be registration eligible, the rule must also include provisions for short term limits to ensure that the short term NAAQS limits and increments are met.

One of the requirements for practical enforceability is for a minor source to provide notice to the State before construction begins (Stein, Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits). The proposed Program allows sources to operate and emit criteria pollutants up to 60 days before submitting a registration or permit application; therefore, there is no requirement that the State be notified before construction begins. Therefore, neither the public, the State, nor EPA can determine if compliance is met before construction; thus, these limitations are not practically enforceable.

As discussed above, any Minor NSR SIP revision submittal must meet section 110(l) of the CAA. Section 110(l) of the Act indicates that EPA cannot approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 171), or any other applicable requirement of the Act. The Long memo stated that MDEQ should provide an appropriate analysis showing that the proposed new rule will not impact the NAAQS or PSD increments. EPA expressed concerns to MDEQ related to the cumulative effect of numerous registration sources. For example, the Program could allow hundreds of unrelated emission sources to be subject to individual emission limitations, yet the submitted Program lacks the appropriate practically enforceable averaging times in order to determine compliance with short term NAAQS limits and PSD increments. EPA recommended that MDEQ should perform a screening cumulative impact analysis showing, under the worst case scenarios, what effect oil and gas well facilities would have on the ozone, NO_2, SO_2 and PM NAAQS and increments. Montana has not performed such an analysis. Therefore, EPA lacks sufficient available information to determine that the proposed SIP relaxation would not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act.

Montana's submittal did not include modeling assumptions that will ensure compliance with NAAQS. Examples of assumptions which should be discussed include the estimated number of facilities expected to be covered under the Program, as well as, their assumed locations (i.e., identify potentially high density locations). Montana did not demonstrate what the cumulative impacts from numerous oil and gas facilities operating under the Program in certain regions and statewide would have on the NAAQS.

EPA notes that in addition to the registration program allowing for new sources to escape the SIP permit requirements, ARM 17.8.1703 allows an owner or operator of a registration eligible facility for which a valid Montana Air Quality Permit (MAQP) has been issued to register with the department and request a revocation of the previously issued MAQP. This is a relaxation under section 110(l), because it provides an exemption from SIP requirements not previously available to sources. This SIP relaxation creates a risk of interference with attainment and maintenance of the NAAQS and control strategy. EPA lacks sufficient information to determine that this SIP relaxation would not interfere with attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act.

IV. Summary of Proposed Actions

EPA is proposing to disapprove revisions and new rules as identified in this action and as submitted by the State of Montana on October 16, 2006 and November 1, 2006. EPA is proposing disapproval based upon a number of factors, including: (1) The lack of any objective, replicable methodology in order to determine compliance, (2) the lack of sufficient MRR requirements, and (3) the lack of enforceability. Additionally, EPA lacks sufficient information to determine that the requested revision to add the new oil and gas registration program to the Montana Minor NSR SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) as required by CAA Section 110(l), or any other requirement of the Act. Finally, EPA also lacks sufficient information to make a finding that the submitted Program will ensure protection of the NAAQS, PSD increments, and noninterference with the Montana SIP control strategies.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, New Source Review, Minor New Source Review, Permitting, Incorporation by reference.

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

Dated: December 22, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–18 Filed 1–5–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0839; FRL–9248–7]

Finding of Substantial Inadequacy of Implementation Plan; Call for Kansas Section 110 State Implementation Plan for Interstate Transport for the 1997 National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA), EPA is proposing to find that the Kansas State Implementation Plan (SIP) is substantially inadequate to satisfy the CAA requirement to address Kansas' significant contribution to downwind nonattainment or interference with maintenance in another State with respect to the 1997 National Ambient Air Quality Standards (NAAQS) for ozone. The specific State Implementation Plan deficiencies that EPA has identified are described in this proposal and in the proposed Federal Implementation Plan To Reduce Interstate Transport of Fine Particulate Matter and Ozone. If EPA finalizes this proposed finding of substantial inadequacy, Kansas will be required to revise its SIP to correct these deficiencies no later than 12 months following the date of signature of the final finding of substantial inadequacy.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0839, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: kramer.elizabeth@epa.gov.*
3. *Mail:* Ms. Elizabeth Kramer, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Ms. Elizabeth Kramer, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0839. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an 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 should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material 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 Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Kramer, Air Planning and Development Branch, Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; *telephone number:* (913) 551–7186; *fax number* (913) 551–7844; *e-mail address: kramer.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What is the basis for the proposed SIP Call?

EPA previously issued findings that certain States had failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) of the CAA for the 1997 ozone and fine particle ($PM_{2.5}$) standards (70 FR 21147, April 25, 2005). These findings started a 2-year clock for the promulgation of a FIP by EPA unless, prior to that time, each State made a submission to meet the requirements of 110(a)(2)(D)(i) and EPA approved the submission. This 2-year period expired in May 2007. EPA promulgated the Clean Air Interstate Rule (CAIR) on May 12, 2005, (*see* 70 FR 25162). CAIR required States to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the NAAQS for $PM_{2.5}$ and/or ozone in any downwind State. CAIR was intended to provide States covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many States adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(d)(i)(I) obligations.

For States that were in the CAIR region, EPA determined that the 110(a)(2)(D)(i)(I) SIP requirements were addressed by CAIR and the CAIR FIPs. However, the CAIR region did not include the State of Kansas. Therefore, Kansas was required to submit a SIP revision independent of CAIR to address interstate transport under 110(a)(2)(D)(i)(I).

On August 15, 2006, EPA issued guidance for SIP submissions addressing the requirements of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and ozone NAAQS.[1] To satisfy the section 110(a)(2)(D)(i)(I) requirement, on January 9, 2007, the State of Kansas submitted to EPA a declaration that the State does not contribute significantly to projected downwind ozone nonattainment, or interfere with maintenance in the year 2010, and provided a technical demonstration to support their negative declaration. On March 9, 2007, EPA approved the Kansas Department of Health and Environment's (KDHE) submittal to address CAA Section 110(a)(2)(D)(i).[2]

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

EPA approved KDHE's SIP prior to the remand of the CAIR by the DC Circuit. The remand of CAIR had no impact on EPA's approval of the KDHE's SIP submission to satisfy the requirements of CAA Section 110(a)(2)(D)(i)(I).

On July 6, 2010, the Administrator signed a proposed Federal Implementation Plan to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Transport Rule) to replace CAIR in response to the court's ruling.[3] The updated modeling in support of the proposed Transport Rule responding to the remand of CAIR demonstrates that emissions from Kansas do interfere with maintenance of the 1997 8-hour ozone NAAQS in downwind areas.[4] The previously approved Kansas SIP did not adequately address emissions. Therefore, based on the modeling used to support the proposed Transport Rule, which was not available at the time Kansas prepared and EPA approved the SIP submission, EPA proposes to find that the SIP revision approved on March 7, 2007, is substantially inadequate pursuant to 110(a)(2)(D)(i)(I).

II. How can Kansas correct the inadequacy and when must the correction be submitted?

To correct the deficiency, KDHE must submit a revised SIP that contains adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour ozone NAAQS in other downwind States. The SIP revision must contain measures that ensure that sources in Kansas reduce their NO_X emissions sufficiently to

[1] Memorandum from William T. Harnett entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," August 15, 2006.

[2] 72 FR 10608, March 9, 2007.

[3] See 75 FR 45210 (August 2, 2010), "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone".

[4] See Transport Rule proposal at 75 FR 45267–45268.

eliminate the NO_X emissions that contribute significantly to nonattainment, or that interfere with maintenance of the 1997 ozone standard, downwind. By eliminating those NO_X emissions, the control measures will assure that the remaining NO_X emissions will meet the level identified in the proposed Transport Rule as the State's ozone season NO_X emission budget.

Section 110(k)(5) of the CAA provides that after EPA makes a finding that a plan is substantially inadequate, it may establish a reasonable deadline for correcting the deficiencies, but the date cannot be later than 18 months after the State is notified of the finding.

EPA intends to finalize the SIP Call in early summer of 2011. We propose to allow the State 12 months from the date of the notice, which will be the date on which we sign the final action, to submit the SIP revision, unless, during the comment period, the State expressly advises that it would not object to a shorter period—as short as 3 weeks from the date of signature of the final in which case we would establish the shorter period as the deadline. If the Administrator signs the notice on or about May 1, 2011, the earliest possible deadline would be three weeks from the date of signature. The purpose of establishing the shorter period as the deadline—assuming that the State advises us that it does not object to that shorter period—is to allow Kansas to use the FIP under the proposed Transport Rule to satisfy this SIP deficiency in an expedited manner. This would allow Kansas sources the ability to use the same remedy available to sources affected by the Transport Rule, within the same time period which EPA recommends. If the State does not advise us that it does not object to a shorter deadline, then the 12-month deadline would apply.

EPA proposes that this 3-week-to-12-month time period, although expedited, meets the CAA 110(k)(5) requirement as a "reasonable deadline" and we welcome comment on this interpretation. The term "reasonable deadline," as it appears in that provision, is not defined. We interpret it to mean a time period that is sensible or logical, based on all the facts and circumstances. Those facts and circumstances include (i) the State SIP development and submission process, (ii) the ability for sources in Kansas to address emission reductions using the same remedy and timing as other sources in the proposed Transport Rule; and (iii) the preferences of the State. The following elaborates on those three facts and circumstances.

First, although the 12-month period is consistent with the time period required for SIP revisions in at least one previous SIP call that EPA issued, the NO_X SIP Call,[5] we recognize that a period shorter than 12 months is expedited in light of the time involved in most State SIP development and submission processes. In particular, we recognize that Kansas would need to undertake rulemaking actions, which would be time-consuming. Although this is a matter of State process, we are prepared to continue to work with Kansas to develop expedited methods for developing, processing, and submitting a SIP revision.

Second, providing the opportunity for sources in Kansas to address emission reductions using the same remedy and timing as other sources in the proposed Transport Rule is a significant consideration. Prescribing a shorter period for Kansas to address the SIP deficiency would mean that sources in Kansas could take advantage of the same remedy provided to other sources affected by the Transport Rule.

Finally, the preference of Kansas is important because the deadline for submittal of the corrective SIP revision in response to a SIP Call acts as a burden on the State. If Kansas does not object to an earlier deadline under which it must operate—which, in a sense, is contrary to the State's self-interest because an earlier deadline typically increases burdens—then that is an indication of the reasonableness of the deadline.

In the case where the State fails to make a timely and responsive SIP submittal, a finding that the State failed to submit the required SIP revision would trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the finding, if the deficiency has not been corrected, and EPA has not approved a plan revision. The proposed Transport Rule, when finalized, is the FIP that EPA intends to implement for Kansas to fulfill the section 110(a)(2)(D)(i)(I) FIP obligation in the event the State fails to submit an adequate SIP revision. EPA intends for the Transport Rule FIP to be implemented sooner than 2 years from any such final finding.

In addition, if EPA finalizes this SIP Call by determining that the existing SIP is substantially inadequate, and if the State subsequently fails to provide a timely response to the SIP Call, the CAA provides for EPA to issue a finding of State failure under section 179(a). Such a finding normally starts an 18-month mandatory sanctions clock. However, as is made clear in the order of sanctions rule, (40 CFR 52.31), the section 179 mandatory sanctions apply only in nonattainment areas. See, 59 FR 39832 (August 4, 1994). Kansas has no areas designated as nonattainment for the 1997 ozone NAAQS. Therefore, EPA believes that the section 179 mandatory sanctions would not apply in Kansas as a result of any planning failure associated with the SIP Call proposed in this action.

It should also be noted that EPA does not intend to finalize this SIP Call if the Final Transport Rule modeling does not show that emissions from Kansas are contributing significantly to nonattainment or interfering with maintenance of the 1997 8-hour ozone NAAQS in downwind areas.

III. What action is EPA proposing?

EPA proposes the following actions relating to the Kansas interstate transport SIP: (1) Find the SIP is substantially inadequate to address the interstate transport of NO_X and the ozone that it forms in the atmosphere that contribute significantly to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in downwind States; (2) require that Kansas revise the SIP to address the requirements of section 110(a)(2)(D)(i)(I); (3) require the State to submit revisions to the SIP within 12 months of the final finding or an alternative deadline; (4) determine that the section 179 mandatory sanctions would not be implicated by this action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, a finding of substantial inadequacy and subsequent obligation for a State to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and State obligation do not directly impose any new regulatory requirements. In addition, the State obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

[5] *See* 63 FR 57356, (October 27, 1998). "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule."

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the finding of SIP inadequacy would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

Statutory Authority

The statutory authority for this action is provided by sections 110 and 301 of the CAA, as amended (42 U.S.C. 7410 and 7601).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution, Ozone, Kansas, State Implementation Plan.

Dated: December 27, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–15 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1011, 1034, 1102, 1104, and 1115

[Docket No. EP 697]

Amtrak Emergency Routing Orders

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) proposes to establish regulations governing the issuance of emergency routing orders upon application of the National Railroad Passenger Corporation (Amtrak). Pursuant to 49 U.S.C. 24308(b), the Board has statutory authority to require rail carriers to provide facilities immediately when necessary for the movement of Amtrak trains when Amtrak cannot operate its trains via normal routings due to rail line closures or other emergencies.

DATES: Comments are due by February 7, 2011. Reply comments are due by February 22, 2011.

ADDRESSES: Information or questions regarding this proposed rule should reference Docket No. EP 697 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Gabriel S. Meyer at 202–245–0389. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board proposes to establish regulations governing the issuance of emergency routing orders upon application of the National Railroad Passenger Corporation (Amtrak). The rules will be codified at 49 CFR parts 1011, 1034, 1102, 1104, and 1115.

Amtrak is a government-owned corporation that operates intercity passenger trains on an approximately 21,000-mile rail network, serving 46 States and 3 Canadian provinces. During its 2010 fiscal year, Amtrak carried more than 28 million passengers. With the exception of certain rail lines located primarily in the northeastern United States, Amtrak does not own the lines over which its trains operate. Most of the lines Amtrak uses are owned and operated by freight railroads, which are subject to the Board's jurisdiction.

Periodically, an established Amtrak route becomes blocked or closed as the result of a derailment, unscheduled maintenance, severe weather, or other emergency. In these circumstances, if an alternate rail routing exists, Amtrak may seek to detour its trains around the blockage using the alternate route. If no alternate route is available, Amtrak may be forced to suspend train operations.

In most emergency rerouting situations, Amtrak reaches a voluntary agreement governing the terms of its use with the rail carrier that owns the alternate route. Occasionally, however, Amtrak is unable to reach an agreement. In this event, Amtrak may seek relief from the Board as provided by the statute:

* * * * *

Operating During Emergencies.—To facilitate operation by Amtrak during an emergency, the Board, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Board then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

* * * * *

49 U.S.C. 24308(b).

Currently, there are no Board rules establishing procedures for Amtrak to obtain the relief authorized by the statute.[1] The Board therefore proposes revising its rules to remove uncertainty regarding Amtrak emergency routing order applications. The proposed rules are set forth in this decision and are discussed below.

Delegations of Authority

Section 1011.4(a)(10): Under the proposed rules, authority to issue Amtrak emergency routing orders is delegated to the Chairman of the Surface Transportation Board (Chairman). The Board proposes adding this delegation of authority to others already contained

[1] A Board order served on February 23, 1996 (*Appointment of Agent to Require Emergency Routing of Amtrak Passenger Trains*) (no docket number), named an agent of the Board, who was vested with authority to issue orders requiring railroads to make their facilities immediately available to Amtrak during emergencies. This continued a past practice of vesting, in named individuals, authority to issue such emergency orders. The agent named in the 1996 decision has since retired. As a result, the Board is revising its procedures for Amtrak emergency routing order requests. The Board has rarely had to issue Amtrak emergency routing orders. It last issued one in 1997. *STB Passenger Train Operation No. 123,* STB served Aug. 12, 1997 (no docket number).

in 49 CFR 1011.4(a). Additionally, in accordance with the existing rule at 49 CFR 1011.3(a)(3), in the Chairman's absence, authority for issuance of Amtrak emergency routing orders will be vested in the Vice Chairman, and in the event of the absence of both the Chairman and Vice Chairman, authority for issuance of Amtrak emergency routing orders will be vested in the remaining Board Member.

Filing Procedures

The proposed rules establish procedures that Amtrak shall use when submitting emergency routing order applications. The procedures are found at 49 CFR parts 1034 and 1104.

Section 1034.2(a). This proposed rule requires Amtrak to file emergency routing order applications in accordance with the Board's rules of practice at 49 CFR part 1104, except as otherwise provided in part 1034. The rule further requires that due to the time-sensitive nature of such applications, Amtrak shall file them with the Board in person or using the Board's e-filing option (as set forth at 49 CFR 1104.1(e)). Simultaneously, Amtrak shall send facsimile copies of applications to the Office of the Chairman at 202–245–0452 and to the Director of the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) at 202–245–0461.[2]

Section 1034.2(b). This proposed rule describes the required contents of Amtrak emergency routing order applications. Applications shall: (1) Describe the nature of the emergency necessitating the routing order and its expected duration; (2) identify the Amtrak operations or trains that are or will be affected by the emergency; (3) provide an exact description of the facilities required for Amtrak's use, including, if available, mileposts of the detour line(s) it intends to use; (4) describe Amtrak's efforts to reach a consensual agreement with the carrier(s) whose facilities it seeks to use, including the name(s) of the representative(s) contacted; (5) include proposed terms of the detour agreement, including indemnification of the carrier(s) by Amtrak; and (6) specify the date on which Amtrak intends to begin using the facilities.

Section 1034.2(c). This proposed rule requires Amtrak, when filing an emergency routing order application, to make best efforts to simultaneously serve a copy of its application upon any affected rail carrier(s) via facsimile, e-mail, or in person, to confirm receipt of the application, and to certify to the Board that it has done so. Because of the emergency nature of such applications, no other means of service is sufficient to provide timely notice to affected parties. This proposed rule also requires Amtrak to comply with the general service requirements of 49 CFR 1104.12, to the extent they do not conflict with this rule. For purposes of fulfilling the requirement under this rule that Amtrak simultaneously serve affected carriers, Amtrak must serve its application upon the representative(s) of the carrier(s) contacted in its efforts to reach a consensual agreement governing Amtrak emergency routing, and upon the registered agent(s) of the carrier(s).

Section 1034.2(d). This proposed rule establishes that any carrier potentially affected by an Amtrak emergency routing order application must file a reply with the Board within 1 business day following Amtrak's service of its application upon the carrier. However, because the language of the authorizing statute requires that the Board "promptly prescribe" emergency routing agreement terms, it may be impractical in some instances for the Board to await replies from affected carriers before acting on Amtrak's request. The Board will therefore consider replies as time permits and, if necessary, the Board may contact Amtrak or affected carriers to seek their input. (*See* the proposed rule at 49 CFR 1102.2(b)(4) governing ex parte communications.) When filing a reply, an affected carrier shall be governed by the same filing and service rules as those governing Amtrak's filing.

Section 1034.2(e). This proposed rule requires the Chairman, or in the Chairman's absence, the Vice Chairman or remaining Board Member, to issue an initial decision granting or denying Amtrak's application for an emergency routing order no later than 1 business day after Amtrak files it with the Board.

Section 1104.12(b). This rule provides for certain exceptions to the Board's rules governing service of pleadings. As modified, the rule incorporates by reference the special filing and service requirements for Amtrak emergency routing order applications and replies thereto contained in 49 CFR 1034.2(a) and (c). The rule also provides that appeals and replies thereto are subject to the requirements of 49 CFR 1034.2(a) and (c).

Ex Parte Communications

Section 1102.2(b)(4). The Board proposes to add this rule to the list of instances in which ex parte communications are not prohibited. This rule is necessary to allow the Board, or designated Board staff, to obtain information in situations in which it may be impractical to await formal written submissions from Amtrak or affected carriers. This rule also permits ex parte communications with Amtrak, or carrier(s) over whose lines Amtrak seeks emergency routing authority, in connection with an appeal of the Board's initial decision on an Amtrak emergency routing order application.

Appeals

Section 1115.2(h)(1). This proposed rule provides that parties may appeal initial Amtrak emergency routing order decisions. Under the proposed rule, any appeal must be filed within 1 business day following service of the decision.

Section 1115.2(h)(2). Under this proposed rule, a reply to an appeal is optional. Any reply must be filed within 1 business day following the filing of the appeal, and the Board will consider replies only if time permits. If necessary, the Board may contact Amtrak or an affected carrier to seek its input regarding an appeal. (*See* proposed rule at 49 CFR 1102.2(b)(4) governing ex parte communications.)

Section 1115.2(h)(3). This proposed rule requires the entire Board to issue a decision granting or denying an appeal of an initial Amtrak emergency routing order decision within 1 business day following the filing of an appeal.

Section 1115.2(h)(4). This proposed rule provides that the filing of an appeal will not stay the effectiveness of an Amtrak emergency routing order that has already taken effect, or otherwise stay the effectiveness of an initial decision regarding Amtrak's application for an emergency routing order.

Section 1115.2(i). This proposed rule provides that when filing appeals of initial decisions on Amtrak emergency routing applications, or replies to such appeals, parties are governed by the special service rules contained at 49 CFR 1034.2(a) and (c).

The Board further proposes modifying, as necessary, section 1115.2(e) (time to file appeals and replies to appeals) and section 1115.2(f) (appeal staying effectiveness of decision) to reflect the addition of section 1115.2(h). Section 1115.2(e) currently permits parties to appeal

[2] The Board understands that, given Amtrak's service schedule, emergencies necessitating Board intervention under these proposed regulations may arise outside of normal business hours. As indicated by the very short response times in the proposed regulations, the Board is prepared to handle all requests quickly. If necessary, Amtrak may, during non-business hours, alert the Board via e-mail to an imminent filing by Amtrak to be made on the next business day. The Board will establish a designated e-mail address for this purpose at a later date.

decisions of an individual Board Member (including the Chairman) within 20 days following issuance, and permits parties to file replies to appeals within 20 days following the filing of an appeal. Under the proposed rules, section 1115.2(e) will establish that the 20-day appeal and reply deadlines will not apply to appeals of initial decisions on Amtrak emergency routing order applications. Section 1115.2(f) currently provides that a timely filed appeal will stay the effectiveness of a decision pending a determination of the appeal. Under the proposed rules, section 1115.2(f) will provide that the filing of an appeal will not stay the effectiveness of an initial decision on an Amtrak emergency routing order application.

Conclusion

With regard to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, this action directly impacts Amtrak and does not directly impact small entities as defined in the Regulatory Flexibility Act. Accordingly, pursuant to 5 U.S.C. 605(b), the Board certifies that these proposed regulations will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision is being provided to the Chief Counsel for Advocacy, Small Business Administration.

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

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, authority delegations (Government agencies), organization and functions (Government agencies).

49 CFR Part 1034

Railroads.

49 CFR Part 1102

Communications.

49 CFR Part 1104

Administrative practice and procedure.

49 CFR Part 1115

Appellate procedures.

It is ordered:

1. The Board proposes rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments regarding the proposed rules are due by February 7, 2011. Reply comments are due by February 22, 2011.

Decided: December 22, 2010.

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

Andrea Pope-Matheson,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1011, 1034, 1102, 1104, and 1115 of title 49, chapter X, of the Code of Federal Regulations, as follows:

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; and 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, 15722, and 24308(b).

2. Amend § 1011.4 by adding paragraph (a)(10) to read as follows:

§ 1011.4 Delegations to Individual Board Members.

(a) * * *

(10) Issuance of decisions on Amtrak applications for emergency routing orders, filed pursuant to 49 U.S.C. 24308(b) (Operating during emergencies).

* * * * *

PART 1034—ROUTING OF TRAFFIC

3. The authority citation for part 1034 is revised to read as follows:

Authority: 49 U.S.C. 721, 11123, and 24308(b).

4. Add § 1034.2 to read as follows:

§ 1034.2 Amtrak emergency routing orders.

(a) *Filing.* All Amtrak applications for emergency routing orders shall be made in accordance with the Board's rules of practice at 49 CFR Part 1104, except to the extent otherwise provided in this paragraph (a) and paragraph (c) of this section.

(1) Amtrak shall file any application for an emergency routing order with the Board in person or using the Board's e-filing option (as described at 49 CFR 1104.1(e)).

(2) Simultaneously with its filing of an emergency routing order application, Amtrak shall send facsimile copies of its application to the Office of the Chairman at 202–245–0452 and to the Director of the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) at 202–245–0461.

(b) *Contents of application.* Amtrak applications for emergency routing orders shall contain the following information:

(1) A description of the nature of the emergency necessitating the routing order and its expected duration.

(2) A description of Amtrak trains or operations that are or will be affected by the emergency.

(3) An exact description of the facilities required for Amtrak's use, including mileposts of the detour line(s), if available.

(4) An explanation of Amtrak's efforts to reach a consensual agreement with the carrier(s) whose facilities Amtrak seeks to use, including the name(s) of the representative(s) contacted.

(5) Proposed terms of the detour agreement, including indemnification of the carrier(s) by Amtrak.

(6) The date on which Amtrak intends to begin using the facilities.

(c) *Service.* When filing an emergency routing order application with the Board, Amtrak shall certify to the Board that it simultaneously served, or made best efforts to serve, its application upon the affected rail carrier(s) via facsimile, e-mail, or in person, and that its application was received by the affected rail carrier(s). In serving affected rail carrier(s), Amtrak shall serve its application upon the representative(s) of the carrier(s) contacted in its efforts to reach a consensual agreement governing Amtrak emergency routing, and shall serve the registered agent(s) of the carrier(s). Amtrak shall also comply with the general service requirements of 49 CFR 1104.12 to the extent they do not conflict with this paragraph (c).

(d) *Replies.* Any carrier potentially affected by an Amtrak application for an emergency routing order shall file a reply with the Board within 1 business day of the time Amtrak serves a copy of its application upon the carrier. The Board will consider replies as time permits. When filing a reply, a carrier shall comply with the filing and service requirements contained in paragraphs (a) and (c) of this section, and 49 CFR 1104.12 to the extent they do not conflict with paragraphs (a) and (c) of this section.

(e) *Decisions.* An initial decision granting or denying Amtrak's application for an emergency routing order shall be issued no later than 1 business day after Amtrak files its application for an emergency routing order with the Board.

PART 1102—COMMUNICATIONS

5. The authority citation for part 1102 is revised to read as follows:

Authority: 49 U.S.C. 721 and 24308(b).

6. Amend § 1102.2 by adding paragraph (b)(4) to read as follows:

§ 1102.2 Ex parte communications prohibited; penalties provided.

* * * * *

(b) * * *

(4) Any communication made by the Board, any Board Member, or designated staff member, to obtain information from Amtrak or from a carrier(s) over whose lines Amtrak seeks emergency routing authority, regarding an emergency routing order application or an appeal thereof, pursuant to the Board's authority under 49 U.S.C. 24308(b).

* * * * *

PART 1104—FILING WITH THE BOARD-COPIES-VERIFICATION-SERVICE-PLEADINGS, GENERALLY

7. The authority citation for part 1104 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721 and 24308(b).

8. Amend § 1104.12 by revising paragraph (b) to read as follows:

§ 1104.12 Service of pleadings and papers.

* * * * *

(b) *Exceptions.* (1) Copies of letters to the Board relating to oral argument under part 1116, and subpoenas under § 1113.2, need not be served on other parties of the proceeding. Service of comments in rulemaking proceedings is not required, unless specifically directed by the Board.

(2) When filing an emergency routing order application, or reply to such application, with the Board, Amtrak and affected carriers shall comply with the special filing and service requirements contained in 49 CFR 1034.2(a) and (c). These requirements also apply to the filing of an appeal to an initial Amtrak emergency routing order decision or to a reply to such an appeal. Amtrak and affected carriers shall comply with the general service requirements of paragraph (a) of this section, to the extent they do not conflict with 49 CFR 1034.2(a) and (c).

* * * * *

PART 1115—APPELLATE PROCEDURES

9. The authority citation for part 1115 is revised to read as follows:

Authority: 5 U.S.C. 559, and 49 U.S.C. 721 and 24308(b).

10. Amend § 1115.2 by revising paragraphs (e) and (f), and adding paragraphs (h) and (i) to read as follows:

§ 1115.2 Initial decisions.

* * * * *

(e) Except as provided in paragraph (h)(1) of this section, appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Board may authorize. Except as provided in paragraph (h)(2) of this section, replies must be filed within 20 days of the date the appeal is filed.

(f) Except as provided in paragraph (h)(4) of this section, the timely filing of an appeal to an initial decision will stay the effectiveness of the action pending determination of the appeal.

* * * * *

(h) Appeals to initial decisions on Amtrak applications for emergency routing orders.

(1) Any carrier potentially affected by an initial Amtrak emergency routing order decision may appeal such a decision. Any appeal must be filed within 1 business day following service of the initial decision.

(2) A reply to an appeal of an initial Amtrak emergency routing order decision is optional. Any reply must be filed within 1 business day following the filing of the appeal. The Board will consider replies only if time permits.

(3) The entire Board shall issue a decision granting or denying an appeal to an initial Amtrak emergency routing order decision within 1 business day following the filing of an appeal.

(4) Filing of an appeal will not stay the effectiveness of an Amtrak emergency routing order that has already taken effect, or otherwise stay the effectiveness of an initial decision on Amtrak's application for an emergency routing order.

(i) When filing appeals to initial decisions on Amtrak emergency routing order applications, and replies to such appeals, parties are governed by the special service rules contained at 49 CFR 1034.2(a) and (c).

[FR Doc. 2010–33284 Filed 1–5–11; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 76, No. 4
Thursday, January 6, 2011

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

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Arizona Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Arizona Resource Advisory Committee will meet in Tucson, Arizona. The purpose of the meeting is for the committee members to review and recommend the projects to be funded with the Secure Rural Schools and Community Self-Determination Act funding.

DATES: The meeting will be held February 22, 2011, beginning at 9:30 a.m. to approximately 5 p.m.

ADDRESSES: The meeting will be held at the Pima County Parks and Recreation Department, 3500 West River Road, Tucson, AZ 85741. Send written comments to Jennifer Ruyle, RAC Coordinator, Southern Arizona Resource Advisory Committee, c/o Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701 or electronically to *jruyle@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jennifer Ruyle, Coronado National Forest, (520) 388–8351.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and opportunity for public input will be provided. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Public Law 110–343 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: December 27, 2010.

Reta Laford,

Deputy Forest Supervisor, Coronado National Forest.

[FR Doc. 2010–33348 Filed 1–5–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet January 21, 2011 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout Discussion, (3) Public Comment, (4) Financial Report, (5) Sub-committees, (6) Matters before the group, (7) Discussion—approval of projects, (8) Next agenda and meeting date.

DATES: The meeting will be held on January 21, 2011, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428, (707) 983–6658; e-mail *windmill@willitsonline.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by January 15, 2011. Public commenters will have the opportunity to address the Committee at the meeting.

Dated: December 14, 2010.

Lee Johnson,

Designated Federal Official.

[FR Doc. 2011–2 Filed 1–5–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Monthly Wholesale Trade Survey

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 7, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Miller, U.S. Census Bureau, Room 8K081, Washington, DC 20233–6500, (301) 763–2758.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Monthly Wholesale Trade Survey (MWTS) provides the only continuous measure of monthly sales, end-of-month inventories, and inventories/sales ratios in the United States by selected kinds of business for merchant wholesalers, excluding manufacturers' sales branches and offices. The Bureau of Economic Analysis uses this information to improve the inventory valuation adjustments applied to estimates of the Gross Domestic Product. The Bureau of Labor Statistics uses the data as input to their Producer Price Indexes and in developing productivity measurements.

Estimates produced from the MWTS are based on a probability sample and are published on the North American Industry Classification System (NAICS) basis. The sample design consists of small, medium, and large cases requested to report sales and inventories each month. The sample, consisting of about 4,500 wholesale businesses, is drawn from the Business Register, which contains all Employer Identification Numbers (EINs) and listed establishment locations. The sample is updated quarterly to reflect employer business "births" and "deaths"; adding new employer businesses identified in

the Business and Professional Classification Survey and deleting firms and EINs when it is determined they are no longer active.

The MWTS will continue to generate its monthly report form through a print-on demand system. This system allows us to tailor the survey instrument to a specific industry. For example, it will print an additional instruction for a particular NAICS code. This system also reduces the time and cost of preparing mailout packages that contain unique variable data, while improving the look and quality of the products produced.

II. Method of Collection

We collect this information by Internet, fax, mail, and telephone follow-up.

III. Data

OMB Control Number: 0607–0190.

Form Number: SM4206–A and SM4206–E.

Type of Review: Regular submission.

Affected Public: U.S. merchant wholesale firms, excluding manufacturers' sales branches and offices.

Estimated Number of Respondents: 4,500.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 6,300 hours.

Estimated Total Annual Cost: The cost to the respondent for fiscal year 2010 is estimated to be $182,763.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 3, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1730]

Grant of Authority for Subzone Status; Dow Corning Corporation (Silicones); Carrollton, Elizabethtown and Shepherdsville, KY

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 Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Louisville & Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, has made application to the Board for authority to establish a special-purpose subzone at the silicones manufacturing and warehousing facilities of Dow Corning Corporation, located in Carrollton, Elizabethtown and Shepherdsville, Kentucky (FTZ Docket 20–2009, filed 5–1–2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 21621–21622, 5–8–2009; 74 FR 32112, 7–7–2009; 74 FR 46975, 9–14–2009; 74 FR 51128, 10–5–2009; 75 FR 31762–31763, 6–4–2010; 75 FR 44760, 7–29–2010; 75 FR 52927–52928, 8–30–2010), a public hearing was held on September 1, 2009 and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing of silicones at the facilities of Dow Corning Corporation, located in Carrollton, Elizabethtown and Shepherdsville, Kentucky (Subzone 29K), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order.

Signed at Washington, DC, this 20th day of December 2010.

Ronald K. Lorentzen,

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

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–66 Filed 1–5–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1729]

Reorganization/Expansion of Foreign-Trade Zone 14 Under Alternative Site Framework; Little Rock, AR

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

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170–1173, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Arkansas Economic Development Commission, grantee of Foreign-Trade Zone 14, submitted an application to the Board (FTZ Docket 34–2010, filed 5/11/2010) for authority to reorganize under the ASF with a service area that includes Clark, Conway, Dallas, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lonoke, Montgomery, Nevada, Pike, Pulaski, Pope, Saline, Yell and White Counties, Arkansas, within and adjacent to the Little Rock Customs and Border

Protection port of entry, FTZ 14's existing Sites 1–3 would be categorized as magnet sites, Site 1 would be expanded to include additional acreage and the grantee proposes an initial usage-driven site (Site 4);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 27982–27983, 5/19/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 14 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 3 if not activated by December 31, 2015, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 4 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by December 31, 2013.

Signed at Washington, DC this 20th day of December, 2010.

Ronald K. Lorentzen,

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

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–61 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–934]

1–Hydroxyethylidene-1, 1–Diphosphonic Acid From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision and Correction to Notice of Decision of the Court of International Trade Not in Harmony

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

DATES: *Effective Date:* January 6, 2011.

SUMMARY: On September 13, 2010, the United States Court of International Trade ("CIT") sustained the remand determination made by the Department of Commerce (the "Department") pursuant to the CIT's remand of the final determination in the antidumping duty investigation on 1-hydroxyethylidene-1, 1-diphosphonic acid ("HEDP") from the People's Republic of China ("PRC") and ordered the case dismissed.[1] This case arises out of the Department's final determination in the antidumping investigation on HEDP from the PRC.[2] As there is now a final and conclusive court decision in this action with respect to Changzhou Wujin Fine Chemical Factory Co., Ltd. ("Wujin Fine"), the Department is amending its *Final Determination* and *Antidumping Duty Order.*

FOR FURTHER INFORMATION CONTACT: Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0679.

SUPPLEMENTARY INFORMATION: On March 11, 2009, the Department published its *Final Determination* in which it determined that HEDP from the PRC is being, or is likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (the "Act").[3]

Separate rate respondent companies Wujin Fine and Jiangsu Jianghai Chemical Group Co., Ltd. ("Jiangsu Jianghai") timely challenged certain aspects of the *Final Determination* to the CIT. Among the issues raised before the CIT was whether the Department properly corroborated the adverse facts available ("AFA") rate upon which it relied in calculating the separate rate.

On February 8, 2010, the CIT granted the United States' motion for a voluntary remand to reconsider the separate rate assigned to Wujin Fine and Jiangsu Jianghai after examining whether the Department corroborated the AFA rate upon which it relied in calculating the separate rate.[4] In a remand determination filed on May 3, 2010, the Department determined that the AFA rate upon which the Department relied in calculating the separate rate was not corroborated in the *Final Determination.*[5] Consequently, the Department calculated a revised separate rate of 15.47 percent for Wujin Fine and Jiangsu Jianghai relying on a second AFA rate that did not require corroboration.

On September 13, 2010, the CIT sustained the Department's remand redetermination, and subsequently dismissed the case.[6] On November 12, 2010, Jiangsu Jianghai filed an appeal with the United States Court of Appeals for the Federal Circuit ("CAFC") of the CIT's decision.[7] Wujin Fine, however, elected not to appeal the CIT's decision.

Consistent with the decision of the CAFC in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), the Department published in the **Federal Register** a notice of a court decision that is not "in harmony" with the Department's final determination.[8] The Timken Notice incorrectly stated that, "In the event the CIT's decision is affirmed on appeal, the Department will publish an amended final determination revising the separate rate assigned to Wujin Fine and Jiangsu Jianghai and issue revised cash deposit instructions to U.S. Customs and Border Protection."[9] As noted above, only Jiangsu Jianghai appealed the CIT's decision with the CAFC. Because Wujin Fine did not appeal the CIT's decision and the period to appeal that decision has expired, the CIT decision is final and conclusive for Wujin Fine. Accordingly, the Department is amending its *Final Determination* and *Antidumping Duty Order.*

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[1] See *Changzhou Wujin Fine Chemical Factory Co., Ltd.* v. *United States,* No. 09–00216, Slip Op. 10–85 (Ct. Int'l Trade Aug. 5, 2010); *Changzhou Wujin Fine Chemical Factory Co., Ltd.* v. *United States,* No. 09–00216, Slip Op. 10–103 (Ct. Int'l Trade Sept. 13, 2010).

[2] *See 1–Hydroxyethylidene-1, 1–Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 10545 (March 11, 2009) ("*Final Determination*"); *1–Hydroxyethylidene-1, 1–Diphosphonic Acid from India and the People's Republic of China: Antidumping Duty Orders,* 74 FR 19197 (April 28, 2009) ("*Antidumping Duty Order*").

[3] *See Final Determination,* 74 FR at 10545.

[4] See *Changzhou Wujin Fine Chemical Factory Co., Ltd.* v. *United States,* No. 09–00216 (Ct. Int'l Trade Feb. 8, 2010).

[5] See Final Results of Redetermination Pursuant to Court Order: *Changzhou Wujin Fine Chemical Factory Co., Ltd.* v. *United States* (May 3, 2010) at 1–9.

[6] See *Changzhou Wujin Fine Chemical Factory Co., Ltd.* v. *United States,* No. 09–00216, Slip Op. 10–103 (Ct. Int'l Trade Sept. 13, 2010).

[7] In the event the CIT's decision is affirmed on appeal, the Department will publish an amended final determination revising the separate rate assigned to Jiangsu Jianghai and issue revised cash deposit instructions to U.S. Customs and Border Protection ("CBP").

[8] *See 1–Hydroxyethylidene-1, 1–Diphosphonic Acid From the People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony,* 75 FR 78967 (December 17, 2010) ("*Timken Notice*").

[9] *Id.* at 78968.

Amendment to Final Determination and Antidumping Order

Because there is now a final and conclusive court decision with respect to Wujin Fine in this proceeding, the revised dumping margin and cash deposit rate for Wujin Fine in the *Final Determination* is as follows:

HEDP from the PRC			Amended final margin (Percent)
Exporter	Producer	Original final margin (Percent)	
Changzhou Wujin Fine Chemical Factory Co., Ltd.	Changzhou Wujin Fine Chemical Factory Co., Ltd.	36.21	15.47

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to collect a cash deposit of 15.47 percent for entries of subject merchandise produced and exported by Wujin Fine, effective September 23, 2010 in accordance with the *Timken Notice*.

This notice is issued and published in accordance with sections 735(d), 736(a), 516A(c)(1), and 777(i)(1) of the Act.

Dated: December 30, 2010.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–57 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Continuation of Antidumping Duty Order

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

DATES: *Effective Date:* January 6, 2011.

SUMMARY: As a result of the determinations by the Department of Commerce ("Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Tim Lord, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–7425.

SUPPLEMENTARY INFORMATION: On July 9, 2010, the Department published the notice of initiation of the sunset review of the antidumping duty order on petroleum wax candles from the PRC pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review*, 75 FR 39494 (July 9, 2010).

As a result of its review, the Department determined that revocation of the antidumping duty order on petroleum wax candles from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Petroleum Wax Candles From the People's Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order*, 75 FR 70713 (November 18, 2010).

On December 17, 2010, the ITC determined, pursuant to section 751(c)(1) of the Act, that revocation of the antidumping duty order on petroleum wax candles from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable future. *See Petroleum Wax Candles From China Determination*, 75 FR 80843 (December 23, 2010), and USITC Publication 4207 (December 2010), Petroleum Wax Candles From China: Investigation No. 731–TA–282 (Third Review).

Scope of the Order

The products covered by the order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were originally classifiable under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products are currently classifiable under the Harmonized Tariff Schedule ("HTSUS") item number 3406.00.00. The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on petroleum wax candles from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 29, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–28 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the New Shipper Review

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

DATES: *Effective Date:* January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian 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) 482–6412 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2010, the Department of Commerce ("the Department") published the initiation of the new shipper review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China ("PRC"). *See* Folding Metal Tables and Chairs: Initiation of New Shipper Review, 75 FR 44767 (July 29, 2010). This review covers the period June 1, 2009, through May 31, 2010. The preliminary results of review are currently due no later than January 19, 2011.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(i)(l) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated. The Department may, however, extend the 180-day period for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department finds that this case is extraordinarily complicated. Specifically, this case is extraordinarily complicated due to issues involving the universe of sales under review, affiliation, and surrogate country selection and valuation of factors of production. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act, the Department is extending the time period for completion of the preliminary results of this review, which is currently due on January 19, 2011, by 60 days. Therefore, the preliminary results are now due no later than March 20, 2011. However, because March 20, 2011, falls on a weekend, the actual due date will be the first business day following the weekend, i.e., March 21, 2011. The final results continue to be due 90 days after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: December 28, 2010.

Gary Taverman,

Acting Deputy Assistont Secretary for Antidumping and Countervoiling Duty Operations.

[FR Doc. 2010–33229 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Davis (Regiopytsa) or Edythe Artman (Maquilacero), 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) 782–7924 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2010, the Department of Commerce (Department) published the preliminary results of the 2008/2009 administrative review of the antidumping duty order covering light-walled rectangular pipe and tube from Mexico. *See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 55559 (September 13, 2010) *(Preliminary Results).* In the *Preliminary Results,* we invited parties to comment. *See Preliminary Results,* 75 FR at 55567. Respondent companies Nacional de Acero S.A. de C.V., Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa), and Maquilacero S.A. de C.V. (Maquilacero) submitted case briefs on October 13, 2010. On October 18, 2010, the domestic interested parties (Atlas Tube, Bull Moose Tube Company, and Searing Industries, Inc.), submitted a rebuttal brief to Maquilacero's case brief and requested that Regiopytsa's case brief be rejected because of improper service. Respondent Ternium Mexico S.A. de C.V. and its affiliates Hylsa S.A. de C.V., Galvak S.A. de C.V., and Industrias Monterrey S.A. de C.V., also submitted a rebuttal brief on October 18, 2010. On October 25, 2010, the Department accepted Regiopytsa's case brief but provided additional time for all interested parties to submit rebuttal comments on the brief. On October 27, 2010, the domestic interested parties submitted a rebuttal brief to Regiopytsa's case brief.

The current deadline for the final results of this review is January 11, 2011.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120-day time period for the final results up to 180 days.

The Department finds that it is not practicable to complete this review within the original time frame because additional time is required to analyze some of the more complex issues raised by interested parties. For example, among other things, we need to further analyze cost adjustments related to revenues earned by Maquilacero on a special project and those related to sales of merchandise not produced during the period of review. Accordingly, the Department is extending the time limit for completion of the final results of this administrative review until no later than February 10, 2011, which is 150 days after the date on which the preliminary results of review were published.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 30, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervoiling Duty Operations.

[FR Doc. 2011–64 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Review

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

DATES: *Effective Date:* January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, David Lindgren or Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0780, (202) 482–3870, and (202) 482–2316, respectively.

Background

On November 1, 2010, the Department of Commerce (the Department) issued the preliminary results of the new shipper review of fresh garlic from the People's Republic of China for Jinxiang Chengda Imp & Exp Co., Ltd., Jinxiang Yuanxin Imp & Exp Co., Ltd., and Zhengzhou Huachao Industrial Co., Ltd. covering the period November 1, 2008, through October 31, 2009. *See Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews and Preliminary Rescission, in Part,* 75 FR 69415 (November 12, 2010). The final results of review are currently due January 30, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, the Department may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Final Results

The Department determines that these new shipper reviews involve extraordinarily complicated issues regarding the valuation and analysis of certain factors of production. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the final results from 90 days to 150 days. Thus, the final results will now be due no later than March 31, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i)(I) of the Act.

Dated: December 30, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–25 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

DATES: Effective Date: January 6, 2011.

SUMMARY: The Department of Commerce ("Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on diamond sawblades and parts thereof ("diamond sawblades") from the People's Republic of China ("PRC"), received on November 30, 2010, meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is January 23, 2009 through October 31, 2010. In this instance, Hanson Diamond Tools (Danyang) Co., Ltd. ("Hanson") made a sale of subject merchandise during the POR as specified by the Department's regulations.

FOR FURTHER INFORMATION CONTACT: Ricardo Martinez, 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:* 202–482–4532.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on diamond sawblades from the PRC was published in the **Federal Register** on November 4, 2009. *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) ("*Antidumping Duty Order*"). On November 30, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), the Department received an NSR request from Hanson. Hanson's request was timely made on November 30, 2010, November being the annual anniversary month of the *Antidumping Duty Order.* Hanson certified that it is both the producer and exporter of the subject merchandise upon which the request was based. Hanson also submitted a public version of its request, which adequately summarized proprietary information and provided explanations as to why certain proprietary information is not capable of summarization.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Hanson certified that it did not export subject merchandise to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Hanson certified that, since the initiation of the investigation, it has never been affiliated with any Chinese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the POI. As required by 19 CFR 351.214(b)(2)(iii)(B), Hanson also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv)(A), (B) and (C), Hanson submitted documentation establishing the following: (1) The date on which Hanson first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(ii)(A), the POR for this NSR is January 23, 2009, through October 31, 2010.[1] For purposes of initiation, the Department accepts the contract dated within the POR as evidence that Hanson had a sale to the United States during the POR. However, the Department will consider further the proper date in the context of this NSR and whether that sale occurred during the POR.

[1] The POR begins January 23, 2009, because the suspension of liquidation began on January 23, 2009. *See* 19 CFR 351.214(g)(1)(ii)(A).

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that Hanson meets the threshold requirements for initiation of an NSR for the shipment of diamond sawblades from the PRC produced and exported by Hanson. *See* "Memorandum to The File from Ricardo Martinez, Case Analyst, Initiation of AD New Shipper Review: Certain Diamond Sawblades and Parts Thereof from the People's Republic of China (A–570–900)," dated concurrently with this notice.

The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Hanson, which will include a section requesting information with regard to Hanson's export activities for separate rates purposes. The review will proceed if the response provides sufficient indication that Hanson is not subject to either *de jure* or *de facto* government control with respect to its exports of subject merchandise.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Hanson in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Hanson certified that it both produced and exported the subject merchandise, the sale of which is the basis for this NSR request, we will apply the bonding privilege to Hanson only for subject merchandise which Hanson both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 30, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–63 Filed 1–5–11; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission ("CFTC").

ACTION: Notice of meeting of Technology Advisory Committee.

SUMMARY: The Technology Advisory Committee will hold a public meeting on January 27, 2011, from 1 p.m. to 5 p.m., at the CFTC's Washington, DC headquarters.

DATES: The meeting will be held on January 27, 2011 from 1 p.m. to 5 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by January 26, 2011.

ADDRESSES: The meeting will take place in the first floor hearing room at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, *attention:* Office of the Secretary. Please use the title "Technology Advisory Committee" in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Laura Gardy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5354.

SUPPLEMENTARY INFORMATION: Matters to be addressed at the meeting are:

Recommendations from the Pre-trade Functionality Subcommittee.

Consideration of Technology Challenges for Implementation of Architectures for Trade Processing and Records Management.

The meeting will be webcast on the CFTC's Web site, *http://www.cftc.gov.* Members of the public also can listen to the meeting by telephone. The public access call-in numbers will be announced at a later date.

Authority: 5 U.S.C. app. 2 § 10(a)(2).

By the Commodity Futures Trading Commission.

Dated: January 3, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–58 Filed 1–5–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army

Interim Change to the Military Freight Traffic Unified Rules Publication (MFTURP) NO. 1

AGENCY: Department of the Army, DoD.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it is releasing an interim change to the MFTURP No. 1 that will become effective January 1, 2011. The interim change updates the personnel security requirements for Dual Driver Protective Service (DDP) and Protective Security Service (PSS) in the MFTURP No.1.

ADDRESSES: Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 1 Soldier Way, Building 1900W, *Attn:* SDDC–OPM, Scott AFB, 62225. Request for additional information may be sent by e-mail to: *chad.t.privett@us.army.mil* or *george.alie@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Chad Privett, (618) 220–6901, or Mr. George Alie, (618) 220–5870.

SUPPLEMENTARY INFORMATION:

Reference: Military Freight Traffic Unified Rules Publications (MFTURP) No. 1.

Background: The MFTURP No. 1 governs the purchase of surface freight transportation in the Continental United States (CONUS) by DoD using Federal Acquisition Regulation (FAR) exempt transportation service contracts.

Miscellaneous: This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/Public/Global%20Cargo%20Distribution/Domestic/Publications/.*

Larry L. Earick,

Chief, SDDC, G9, Business Services.

[FR Doc. 2011–7 Filed 1–5–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, Defense Language Institute Foreign Language Center

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

Name of Committee: Board of Visitors, Defense Language Institute Foreign Language Center.

Date: February 2 and 3, 2011.

Time of Meeting: Approximately 8 a.m. through 4:30 p.m. Please allow extra time for gate security for both days.

Location: Defense Language Institute Foreign Language Center and Presidio of Monterey (DLIFLC & POM), Building 614, Conference Room, Monterey, CA, 93944.

Purpose of the Meeting: The purpose of the meeting is to provide an overview of DLIFLC's Language Science & Technology directorate. In addition, the meeting will involve administrative matters.

Agenda: Summary—February 2—Board administrative details to include parent committee introduction, board purpose, operating procedures review, and oath. DLIFLC functional areas will be discussed. February 3—The Board will be briefed on DLIFLC mission and functional areas.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. No member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board. Although open to the public, gate access is required no later than five work days prior to the meeting. Contact the Committee's Designated Federal Officer, below, for gate access procedures.

Committee's Designated Federal Officer or Point of Contact: Mr. Detlev Kesten, ATFL–APO, Monterey, CA, 93944, *Detlev.kesten@us.army.mil,* (831) 242–6670.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public may submit written statements to the Board of Visitors of the Defense Language Institute Foreign Language Center in response to the agenda. All written statements shall be submitted to the Designated Federal Officer of the Board of Visitors of the Defense Language Institute Foreign Language Center, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements should be sent to: *Attention:* DFO at ATFL–APO, Monterey, CA, 93944 or faxed to (831) 242–6495. Statements must be received by the Designated Federal officer at least five work days prior to the meeting. Written statements received after this date may not be provided to or considered by the Board of Visitors of the Defense Language Institute Foreign Language Center until its next meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Detlev Kesten, ATFL–APO, Monterey, CA, 93944, *Detlev.kesten@us.army.mil,* (831) 242–6670.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–8 Filed 1–5–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ZRIN 0710–ZA06

National Wetland Plant List

AGENCY: U. S. Army Corps of Engineers, Department of Defense.

ACTION: Notice.

SUMMARY: The National Wetland Plant List (NWPL) is used to delineate wetlands for purposes of the Clean Water Act and the Wetland Conservation Provisions of the Food Security Act. Other applications of the list include wetland restoration, establishment, and enhancement projects. To update the NWPL, the U.S. Army Corps of Engineers (Corps), as part of an interagency effort with the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS) and the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), is announcing the availability of the draft National Wetland Plant List (NWPL) and its web address to solicit public comments. The public will now be provided the opportunity to comment and vote on the wetland indicator status ratings of the plants, species nomenclature changes and the revisions to the definition of indicator status ratings contained in the NWPL.

DATES: Written comments must be submitted on or before March 7, 2011.

ADDRESSES: You may submit comments on indicator status evaluations and general comments through the Web site identified below. Whenever possible, commenters should submit comments on-line at: *http://wetland_plants.usace.army.mil/.* For instructions on how to submit comments online, please go to the supplementary section below.

For those without internet access, comments may be sent to Ms. Karen Mulligan, U.S. Army Corps of Engineers, Regulatory Community of Practice, 441 G St., NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Mulligan, Headquarters, Regulatory Community of Practice, Washington, DC or Mr. Robert Lichvar, Director of the National Wetland Plant List, Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory. Ms. Mulligan can be reached at (202) 761–4664 and Mr. Lichvar can be reached at (603) 646–4657.

SUPPLEMENTARY INFORMATION:

Background

The effort to develop a comprehensive wetland plant list began with the FWS in 1976 and paralleled the development of their wetland classification system for the National Wetland Inventory (NWI), which culminated in Classification of Wetlands and Deepwater Habitats of the United States in 1979. A brief footnote in that publication mentions that the FWS intended to produce "a list of hydrophytes and other plants occurring in wetlands of the United States" for use in conjunction with the NWI. At about the same time the NRCS, then known as the Soil Conservation Service (SCS), initiated an effort to prepare a preliminary list of hydric soils, again for use with the NWI. Through a series of subsequent drafts, the FWS effort eventually led to the production of the National List of Plant Species That Occur in Wetlands: 1988 National Summary (List 88)—and associated regional lists.

The FWS initially derived the lists by searching some 300 national and regional floras and other scientific publications. This effort produced the Annotated National Wetland Plant Species Database, which documented the taxonomy, nomenclature, distribution, and ecology of wetland flora in the U.S. In 1987, the SCS (through a contract with the Biota of North America Program [BONAP]) updated the taxonomy and nomenclature that culminated in List 88. During the initial development of the database, a wetland rating system was created based on habitat

descriptions derived from the various regional floras, botanical manuals, and other scientific works.

In the early 1980s, the four primary Federal agencies involved in wetland delineation (Corps, EPA, FWS, and NRCS) realized the potential utility of the plant and soil lists for wetland delineation purposes in conjunction with wetland delineation manuals that were under development at that time. All wetland delineation manuals produced at the Federal level during the 1980s referenced these plant lists in defining hydrophytic vegetation.

The four agencies agreed to participate cooperatively on Regional Interagency Review Panels. A National Panel of wetland ecologists was assembled to review and further revise the various plant lists and the wetland rating system established by the FWS. This rating system, based on the frequency that a particular plant occurs within wetlands versus uplands, eventually led to the five indicator categories listed in List 88 (i.e., obligate wetland, facultative wetland, facultative, facultative upland, and obligate upland).

The FWS realized that subsequent editions of their List 88 would be inevitable and an appeal procedure was established for submitting proposed changes to the list (*e.g.* additions, deletions, and changes in indicator statuses). Since the original publication of List 88, many changes to the taxonomy and nomenclature of wetland plants have been proposed and accepted. Following the original publication of List 88, the FWS adopted a revised taxonomic standard, Synonymized Checklist of the Vascular Flora of the United States, Canada, and Greenland (Kartesz 1994), as a basis for the names included within the proposed list, National List of Vascular Plant Species that Occur in Wetlands (List 96).

The National Panel and the FWS considered it necessary to respond to requests for changes to List 88 and to the numerous revisions in both taxonomy and nomenclature by proposing List 96 and its derivative regional lists. The FWS published proposed changes to List 88 in the **Federal Register** (62 CFR 2680) on January 17, 1997, in compliance with a 1996 Memorandum of Agreement between the Corps, EPA, FWS, and NRCS. The National Panel received comments and, in conjunction with the Regional Panels, reviewed and considered all comments in developing the final draft of List 96. For a variety of reasons, List 96 was never finalized, and List 88 remains the only approved list of wetland plant indicator statuses.

In 2005, the FWS developed plans to update and adopt List 96 as List 05. This new List was to include all of the changes in scientific names and wetland indicator statuses that were needed because of taxonomic and nomenclatural changes; however, this update never occurred. In December 2006, the administration of the list was transferred from the FWS to the Corps through a Memorandum of Agreement, which renamed the list as the National Wetland Plant List. The list continues to be an interagency product maintained by the Corps, FWS, EPA, and NRCS. The National Panel consists of representatives from each of the four participating agencies who direct the continued development of the NWPL. They guide the work by updating the taxonomy and nomenclature along with wetland indicator statuses of wetland plants nationwide. The number of plants listed has changed since List 88; growing from 6,728 species to 7,662 in List 96, with the majority of the increase resulting from taxonomic and nomenclatural changes, including the addition of many infraspecific taxa (*i.e.*, varieties and subspecies). By 2010, further advances in systematic science involving wetland plants resulted in an additional 1,600 infraspecific entries. Because of taxonomic and nomenclatural changes since 1988, the number of infraspecific taxa has increased to 2,200; substantially more than the original 12 in List 88 and 600 in List 96. Because this seemed to be an impractically high number of entries, the National Panel of the NWPL decided to revert back to the species-level taxonomy, and to not include any infraspecific taxa. Thus, the current review of the 8,558 species does not separately treat these infraspecific taxa with their own distinct wetland ratings and includes all the infraspecific taxa at the species-level.

Nomenclature Issues

Changes in nomenclature frequently affect the wetland indicator status. In the updated database, the currently accepted name is linked to the List 96 and List 88 scientific names and any former synonyms. This link allows a reviewer to consider all prior ratings, which may be critical information for species that have been merged or split. The National Panel established methods using List 96 draft ratings as the starting point to minimize effort and recognize prior updates from the 1990s. Many changes to nomenclature and scientific advances were considered during the updating of the NWPL, including the following outcomes:

1. Species names from List 96 that did not change and are currently accepted.
2. Species names from List 96 that were assigned a new species name (these include misapplication of genus, spelling, recognized author changed, etc.).
3. Two or more species names from List 96 that merged into one species name (these include all nomenclatural adjustments such as autonyms, homonyms, hybrids, isonyms, synonyms, tautonyms, etc.).
4. Species names from List 96 that were split into two or more species names.
5. New species of wetland taxa that were added since Kartesz's 1994 checklist.

Indicator Status Ratings

In List 88, there are five categories of indicator status, or ratings, used to describe a plant's likelihood for occurrence in a wetland versus an upland: Obligate Wetland (OBL), Facultative Wetland (FACW), Facultative (FAC), Facultative Upland (FACU), and Obligate Upland (UPL). These ratings represent the estimated probability of a species occurring in wetlands versus non-wetlands in a region. This method is problematic for two reasons: the ratings are not supported by numerical data, and the previous FWS definition of frequency, which was the basis for the division of groups that the wetland plant ratings were tied to, did not include a mathematical expression useful for testing the wetland ratings. These issues have led to misinterpretations of the frequency formula. To address some of these problems, the National Panel modified the definitions for the indicator status categories to increase clarity and to better describe species occurrences. The indicator status developed recently by the National Panel for updating the NWPL are; OBL—almost always is a hydrophyte, rarely in uplands; FACW—usually is a hydrophyte but occasionally found in uplands; FAC—commonly occurs as either a hydrophyte or non-hydrophyte; FACU—occasionally is a hydrophyte but usually occurs in uplands; UPL—rarely is a hydrophyte, almost always in uplands.

The original information supporting indicator status assignments, from List 88 through List 96, was qualitative and not quantitative. To better reflect this supporting information, the new category definitions are also based on qualitative descriptions, rather than numeric frequency ranges. The

percentage frequency categories used in the older definitions will only be used for testing problematic or contested species being recommended for indicator status changes.

The Update Process

Over the past year and a half, updates have occurred through a web-based application that allows many more users to access information, while also retaining a permanent and transparent update record. Using the secure Web site, the National and Regional Panels have been able work online in their efforts to generate a draft Federal update of the NWPL. Until this notice in the **Federal Register**, the public and other governmental entities have had access to the rest of the botanical data on the site, but not to the panel evaluations that were used to develop the draft NWPL.

Instructions for Providing Comments Online

When visiting the Web site the first time, the user will have to accept the Department of Defense (DoD) certificate associated with the secure Web site. Once on the Web site, the user needs to click on the link titled "PARTICIPATE IN THE NWPL UPDATE." The commenter will be sent to a login page where they will enter their name, a user name (first initial and last name), password, e-mail address and select their institutional affiliation. The automatic login generator will, by e-mail, confirm the registration of the user name and password and the user can then login and proceed to the query page. The Corps wetland supplement regions map is shown in a color-coded format. Comments may be made on one or multiple wetland supplement regions. The entire wetland plant list for each wetland supplement region is shown on the results page after a region is chosen and accepted. All prior votes associated with the update can also be shown on the query results page by selecting the "Yes" "Show All Votes?" radio button at the top of the page. Each species has a red "vote" link in each row. Clicking on the red word "VOTE" for that species will send the commenter to the species page where a vote may be made. The species page includes scientific and common names, synonyms, voting history by the panels, 1988 and 1996 statuses and maps based on North American distributions and counties. This information can be considered when submitting comments on the wetland rating for the species. Comments including literature citations, experiential references, monitoring data and other relevant reports should be submitted through the "Questions or Comments? Contact us!" link on the homepage. All votes and comments will be compiled and sent to the Regional Panel for their consideration. In the Atlantic and Gulf Coastal Plains region, "more input needed" is marked in red for 75 species. The Corps is requesting assistance in the form of comments, literature references, data or experience for these species in the comment box to help clarify their status.

In all cases, the most useful comments are from specific knowledge or studies related to individual species. Reviewers should use their regional botanical and ecological expertise, field observations, reviews of the most recent indicator status information, appropriate botanical literature, floras, herbarium specimens with notation of habitat and associated species, habit data, relevant studies, and historic list information. Guessing is inappropriate, and for plants unknown to the reviewer, it is preferable that commenters select the "I do not know (DK)" option rather than simply guessing an indicator status.

If the commenter has other comments in general that are not species specific, there is an email contact link on the homepage. The link is titled "Questions or Comments? Contact us!". By clicking on this link, the commenter can submit other comments in regard to the NWPL update in general.

For the purposes of determining a species frequency and abundance in wetlands, wetlands are defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3 and 40 CFR 230.3). Such wetlands are identified using the Corps 1987 Wetland Delineation Manual or relevant regional supplements, whichever is more recent. Wetlands are identified using the three-factor approach. Because the species being evaluated is part of a vegetation assemblage, examining the other species present in relation to their assigned wetland fidelity may be useful in assessing hydrophytic vegetation.

Species newly proposed as wetland plants have been added to the Draft NWPL. Commenters who would like to propose a new wetland species to the list may do so on the home page. These species will be checked for current nomenclatural status, and their supportive data will be added to the Web site to assist with the assignment of a wetland rating. These newly proposed species and suggested ratings will be sent to the Regional Panels for review and will go through the same evaluation process as for species already on the list.

Recommendations for a different indicator status for select species in additional subregions may be submitted. The subregions are based on Land Resource Regions (LRRs) and Major Land Resource Areas (MLRAs) (*http://soils.usda.gov/survey/geography/mlra/*) and are shown for each wetland supplement region on the NWPL Web site. If the commenter feels that a wetland supplement region needs a subregion that has not yet been developed, the commenter should identify the MLRAs involved and provide a list of species from within that region that need their own wetland ratings. These can be submitted on the home page by clicking on the link titled "PROPOSE NEW SPECIES."

When assigning wetland indicator statuses, reviewers should consider the ecological information on the Web site, which includes prior information obtained by the FWS and others.

Commenters should use the status definitions described above and developed by the National Panel for updating the NWPL. The percentage frequency categories used in the older definitions can be used for testing problematic or contested species being recommended for indicator status changes.

A sampling and testing protocol is being developed for future recommended additions to the NWPL. Future requests for changes to wetland ratings will be evaluated using scientific approaches using limited but strategic field data. Submissions for future recommended changes in indicator status must follow the established protocols and must include submission of ecological data, literature review, testing description, and geographical data.

Wetland indicator designations such as No Indicator (NI), No Occurrence (NO), and No Agreement (NA) will not be used in the updated NWPL. Inclusion of Upland (UPL) plants was considered, but it was decided for this update of the NWPL they will not be included until after the update is complete. The addition of upland plants later is necessary to support wetland delineations that are typically done at the ecotone between wetland and upland landscapes. If a plant species has been identified as occurring in a wetland habitat, but is not listed in a regional or state list, the NWPL should be consulted to verify whether that species occurs in wetlands in adjacent areas before it is assumed to be UPL and

the NWPL is updated to label these species with this rating.

The plus and minus modifiers have been dropped, and only five indicator designations (i.e., OBL, FACW, FAC, FACU, UPL) will be used in the NWPL. All plants previously assigned these modifiers have been merged into their broader indicator category during the review and revision process, with the exception of those plants assigned FAC–. The National and Regional Panels, as well as the academics, reviewed all species from the 1996 National List of Plant Species that Occur in Wetlands (hereafter called the List, with specific versions noted by their year of establishment) that were assigned FAC– to appropriately categorize their wetland rating.

Future Actions

Public comments received through the web-based system will be compiled and tracked to provide an administrative record.

Regional Panels, in conjunction with the National Panel, will review comments from the Tribes, other federal agencies, states, and the public and will develop the final regional lists. The majority of final wetland ratings will be developed based on the analysis of all input and comments. For those species without general agreement, the National Panel will assign ratings using a specific protocol developed for this purpose.

After the National Panel assigns wetland ratings to non-consensus species and reviews all regional lists, it will develop the final NWPL.

Notice of the final NWPL will be published in the **Federal Register** along with the web address.

Maintenance and annual reviews and updates of the NWPL will be done using the web-based system.

Future for the NWPL Web Site

Protocols were developed to ensure that updates to the NWPL will occur biennially or as necessary and that they will follow scientifically acceptable procedures. The updating process will provide guidelines established by the National Panel for testing wetland indicator status ratings for future recommended changes and additions to the NWPL. The process will be supported by an interactive Web site where all procedures and supportive information will be posted. Information on this searchable Web site will include the names of all National and Regional Panel members, prior ecological information obtained by the FWS or Kartesz (BONAP) for each species, any comments previously made by others that was retained in the FWS database on the NWPL, and links to botanical literature and plant ecology information to support assignment of wetland indicator statuses of all species under consideration.

Once the NWPL is initially updated, this Web site will be expanded to include upland plants and facilitate regular updates as additional information is submitted and nomenclature changes. These changes will be generated through a modification of the web-based process outlined above. Regular updates based on nomenclature changes will be developed on a biennial basis. Anyone may petition for a change in indicator status for any taxon by submitting appropriate ecological data, literature review, testing description, and geographic data. This will include frequency and abundance data for the taxon in wetlands and uplands in a broad range of the wetland supplement region or subregion for which the change is proposed. Such data will be reviewed and evaluated by the appropriate Regional Panel, and any changes they recommend will go through a vetting process similar to the initial NWPL update. The Web site will contain the most recent, currently valid indicator statuses.

Authority

We utilize the NWPL to conduct wetland determinations under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Dated: December 17, 2010.

Michael G. Ensch,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2011–3 Filed 1–5–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Project and Centers Program—Disability and Rehabilitation Research Projects (DRRPs)—Model Systems Knowledge Translation Center (MSKTC) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–3.

DATES:

Applications Available: January 6, 2011.

Date of Pre-Application Meeting: January 27, 2011.

Deadline for Transmittal of Applications: March 7, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

Priorities: The *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority is from the notice of final priorities for the Disability Rehabilitation Research Project and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Model Systems Knowledge Translation Center (MSKTC)* priority is from the notice of final priority for the funding of a Disability Rehabilitation Research Project to serve as the Model Systems Knowledge Translation Center (MSKTC), published in the **Federal Register** on June 2, 2006 (71 FR 32196).

Absolute Priorities: For FY 2011, these are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Model Systems Knowledge Translation Center (MSKTC).*

Note: The full text of these priorities is included in the pertinent notice of final priority or priorities published in the **Federal**

Register and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability Rehabilitation Research Project and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on June 2, 2006 (71 FR 32196).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $111,919,000 for NIDRR for FY 2011, of which we intend to use an estimated 800,000 for new awards for this competition for FY 2011. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to compete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. 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: 1.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

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/indes.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. 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: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A–3.

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. We recommend that you limit Part III to the equivalent of no more than 125 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.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III project narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: January 6, 2011.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on January 27, 2011. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza (PCP), room 5140, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov*. Deadline for Transmittal of Applications: March 7, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). 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. 7. *Other Submission Requirements* of 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 of 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:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements.* Applications for grants under this competition 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 Model Systems Knowledge Translation Center competition, CFDA number 84.133A–3, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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.*

You may access the electronic grant application for the Model Systems Knowledge Translation Center competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.133, not 84.133A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- 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 .PDF (Portable Document) format only. If you upload a file type other than a .PDF 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.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please

contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

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 the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *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 prevent 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: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140 PCP, Washington, DC 20202–2700 FAX: (202) 245–7323.

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 84.133A–3), 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 84.133A–3), 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 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 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 competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

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:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5140, PCP, Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@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: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 3, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–29 Filed 1–5–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year (FY) 2010 and of revisions to those reports.

SUMMARY: The Secretary announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey (NPEFS)) for FY 2010. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census (Bureau of the Census) is the data collection agent for the National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2012 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 2011. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 6, 2011.

Addresses and Submission Information: SEAs may mail ED Form 2447 to: Bureau of the Census, *Attention:* Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web ("Web") using the interactive survey form at: *http://surveys.nces.ed.gov/ccdnpefs.* If the Web form is used, it includes a digital confirmation page where a pin number may be entered. A successful entry of

the pin number serves as a signature by the authorizing official. A certification form also may be printed from the Web site, and signed by the authorizing official and mailed to the Governments Division of the Bureau of the Census, at the address listed in the previous paragraph. This signed form must be mailed within five business days of Web form data submission.

Alternatively, SEAs may hand-deliver submissions by 4:00 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 4600 Silver Hill Road, Suitland, MD 20746.

If an SEA's submission is received by the Bureau of the Census after September 6, 2011, in order for the submission to be accepted the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

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.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does 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.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Kennerly, Chief, Bureau of the Census, *Attention:* Governments Division, Washington, DC 20233–6800. *Telephone:* (301) 763–1559. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC 20208–5651. *Telephone:* (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per-pupil expenditure (SPPE) for elementary and secondary education, as defined in section 9101(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(2)).

In addition to utilizing the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, Title I, Part A of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Educational Technology State Grants program (Title II, Part D of the ESEA), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, and the Teacher Quality State Grants program (Title II, Part A of the ESEA), make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I, Part A allocations.

In February 2011, the Bureau of the Census, acting as the data collection agent for NCES, will e-mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 2011, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 6, 2011.

Having accurate and consistent information on time is critical to an efficient and fair allocation process and to the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 6, 2011, as the final date by which the NPEFS Web form or ED Form 2447 must be submitted. If an SEA submits revised data after the final deadline that result in a lower SPPE figure, its allocations may be adjusted downward or the Department may direct the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 6, 2011, the data also may be received too late to be included in the final NCES published dataset.

Electronic Access to This Document: You may 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: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 20 U.S.C. 9543.

Dated: January 3, 2011.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–27 Filed 1–5–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9249–1]

Notice of Nationwide Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) for the Use of Small Horsepower Vertical Hollow Shaft Electric Motors (Less Than 40 Horsepower) for Projects Financed Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a nationwide waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] for small-horsepower (HP) vertical hollow shaft (VHS) electric motors (less than 40 HP). This nationwide waiver applies to the use of the specified products and is applicable only for their purchase and installation for one-year subsequent to the effective date of the waiver. Based upon information gathered from multiple waiver request submittals and further research by its contractor, EPA has determined that

domestically manufactured small-HP VHS electric motors (less than 40 HP) are not reasonably available. The Assistant Administrator for the Office of Water is making this determination based on the review and recommendations of the Office of Ground Water and Drinking Water and the Office of Wastewater Management. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the nationwide purchase and installation of non-domestic VHS electric motors less than 40 HP up to one-year subsequent to the effective date of the waiver. EPA reserves the right to withdraw or amend this nationwide waiver based on new developments or changes in the domestic manufacturing capacity for these items.

DATES: *Effective Date:* December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Timothy Connor, Chemical Engineer, (202) 566–1059, Office of Wastewater Management (OWM) or Kirsten Kroner, Civil Engineer, (202) 564–3134, Office of Ground Water and Drinking Water (OGWDW), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, for the purchase and installation of non-domestic vertical hollow shaft electric motors less than 40 horsepower for one-year subsequent to the effective date for projects financed through the Clean or Drinking Water State Revolving Funds (SRF) using assistance provided under ARRA.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the assistance recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

As part of the implementation of the Buy American requirements of the ARRA, EPA reserved the right to issue national waivers that apply to particular categories of manufactured goods. A national categorical waiver may be developed based on the need to issue a waiver as discerned by the number of project specific waiver requests for a particular item that have been submitted by assistance recipients to one or more EPA region(s), and the detailed justifications for such requests. National waivers may be issued by EPA based on a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. To date, no nationwide waivers for a particular category of manufactured goods have been issued by EPA.

During August through October 2010, seven applications have been presented to five Regions (3, 5, 6, 7, and 10) requesting waivers for small-horsepower vertical hollow shaft (VHS) electric motors. The specific VHS electric motors included in the waiver requests range in size from 15 HP to 30 HP. Detailed justifications provided by the applicants (and verified by EPA and its contractor, as described below) reveal that there are no VHS electric motors less than 40 HP that are produced domestically in reasonably available quantities. As a result of these waiver requests, EPA and its contractor reviewed current technical knowledge regarding availability and location of manufacturers of VHS electric motors less than 40 HP.

EPA found that currently, there are no known domestic manufacturers of VHS electric motors less than 40 HP. Waiver applicants and EPA's contractor identified and evaluated more than twenty electric motor manufacturers in the search for domestic sources. The waiver applicants and EPA's contractor conducted independent research and manufacturer outreach in order to possibly identify a domestic manufacturer of small VHS electric motors. EPA further contacted the Water and Wastewater Equipment Manufacturers Association (WWEMA), a national association. At least four foreign manufacturers produce and sell VHS electric motors less than 40 HP. Much of the current manufacturing capability for the VHS electric motor technology appears to be located in China with additional manufacturing capability located in Mexico and Taiwan. Currently, there are no known manufacturers planning and/or considering offering VHS electric motors less than 40 HP that are/will be manufactured in the U.S. The only VHS electric motor manufacturer with manufacturing capability in the U.S., who does not manufacture nor intend to manufacture VHS electric motors less than 40 horsepower, estimates that a 1 year minimum timeframe would be required to set up manufacturing capability in their domestic manufacturing facility for small (*i.e.,* less than 40 HP) VHS electric motors. Those companies contacted with VHS electric motor manufacturing capability located overseas estimate that it would require between 2 and 3 years to construct and commission new production facilities in the U.S. to manufacture VHS electric motors in sizes less than 40 HP. While EPA did learn from the manufacturer's association that one-time, special-order VHS motors may be available from a domestic source, EPA's research revealed that current manufacturing capacity and availability do not exist and special orders could cause delay and displace the "shovel ready" status of projects.. Based on the time constraints and current lack of manufacturing capacity, one-time special-order small VHS motors do not meet the standard of being produced in the U.S. in sufficient and reasonably available quantity.

It is critical to move forward with a national categorical waiver for these products because there is clearly domestic unavailability, and lack of a waiver is currently impeding the progress of several Recovery Act projects funded by both the Clean Water and Drinking Water State Revolving Funds. The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' " ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.". To curtail the speed with which construction is completed by requiring that assistance recipients place one-time special orders or request individual waivers, when it is known that domestic products are simply not reasonably available, would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

EPA has conducted a thorough review of the domestic manufacturing practices for small-HP VHS electric motors and

has determined that domestically manufactured goods are not currently available. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Therefore, EPA has determined that a nationwide categorical waiver for this product is appropriate.

This waiver expires one year from the day it takes effect. Furthermore, EPA reserves the right to withdraw or amend this nationwide waiver based on new developments or changes in the domestic manufacturing capacity for these items.

Authority: Pub. L. 111–5, section 1605.

Dated: December 29, 2010.

Michael H. Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. 2011–19 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0605; FRL–9248–4]

Notice of Availability of the Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8–Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final "Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8–Tetrachlorodibenzo-*p*-dioxin and Dioxin-Like Compounds" (EPA/100/R–10/005). The purpose of this document is to assist EPA scientists in using the toxicity equivalence methodology to assess health risks from dioxins and dioxin-like compounds, as well as inform EPA decision makers, other agencies, and the public about this methodology. This guidance document summarizes the toxicity equivalence methodology, provides background information and assumptions on how the methodology has evolved, and recommends an approach for health risk assessors to use to apply the methodology. EPA's Risk Assessment Forum (RAF) oversaw the development of this document. Input was obtained from scientists throughout the Agency, from interested members of the public, and from external experts from a range of scientific disciplines via a contractor-led peer review.

ADDRESSES: The final document is available electronically through the EPA Office of the Science Advisor's Web site at: *http://www.epa.gov/osa/raf/hhtefguidance/*. A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; *telephone number:* 1–800–490–9198 or 513–489–8190; *facsimile number:* 301–604–3408; *e-mail: NSCEP@bps-lmit.com*. Please provide your name, mailing address, and title of the requested publication.

FOR FURTHER INFORMATION CONTACT: Julie Fitzpatrick, Risk Assessment Forum Staff, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4212; *facsimile number:* (202) 564–2070; *e-mail: fitzpatrick.julie@epa.gov*.

SUPPLEMENTARY INFORMATION: Dioxin and dioxin-like compounds (DLCs), including polychlorinated dibenzo-dioxins (PCDDs), polychlorinated dibenzofurans (PCDFs), and polychlorinated biphenyls (PCBs), are structurally and toxicologically related halogenated dicyclic aromatic hydrocarbons. Dioxins and DLCs are released into the environment from several industrial sources, including chemical manufacturing, combustion, and metal processing. There is global contamination of air, soil and water with trace levels of these compounds. Typically, dioxins and DLCs occur in the environment as chemical mixtures. Dioxins and DLCs do not readily degrade; therefore, levels persist in the environment, build up in the food chain, and accumulate in the tissues of animals. Human exposures to these compounds occur primarily through eating contaminated foods. The health effects from exposures to dioxins and DLCs have been documented extensively in toxicological and epidemiological studies.

Risk assessments have relied on the dioxin toxicity equivalence factors (TEFs) approach. Various stakeholders, inside and outside the Agency, have called for a more comprehensive characterization of risks. Therefore, EPA's RAF identified a need to examine the current recommended approach for application of the toxicity equivalence methodology in human health risk assessments. An RAF Technical Panel developed the draft guidance document, "Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8–Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds," to assist EPA scientists in using this methodology to assess health risks from dioxins and dioxin-like compounds, and inform EPA decision makers, other agencies, and the public about this methodology.

An external expert peer review was conducted by both letter and an open, public teleconference in October 2009. The peer review panel was provided with the public comments received in the official public docket for this activity under docket ID number EPA–HQ–ORD–2009–0605. The peer review panel also had the opportunity to hear public comments provided during the peer review teleconference. In preparing the final document, EPA considered the public comments submitted to EPA's docket during the public comment period and during the public teleconference, and the recommendations from the external peer reviewers provided in the peer review report and during the public teleconference.

EPA is currently addressing several issues related to dioxins and dioxin-like chemicals in the environment. More information on these activities is located at: *http://www.epa.gov/dioxin/scienceplan/*.

Dated: December 22, 2010.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–20 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Breast Cancer in Young Women (ACBCYW)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates

9 a.m.–5 p.m., January 31, 2011.

8 a.m.–3 p.m., February 1, 2011.

Place: Emory Conference Center Hotel and Emory Inn, 1615 Clifton Road, NE., Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: The committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

Matters To Be Discussed: The agenda will include discussions on evidence-based recommendations and the public health aspects of breast cancer in young women including biology, genomics, prevention, early diagnosis, treatment, and survivorship; appropriate venues to educate women at increased risk for developing breast cancer at younger ages; and approaches to increase awareness of clinicians/practitioners regarding topics such as breast health, symptoms, diagnosis, and treatment of breast cancer in young women.

Agenda items are subject to change as priorities dictate.

In order to assure that sufficient space and materials are available for meeting attendees, CDC is requesting that potential attendees register to attend this meeting at the following Web site: *http://www.cdc.gov/cancer/breast/what_cdc_is_doing/conference.htm.*

Contact Person for More Information: Temeika L. Fairley, PhD, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 5770 Buford Hwy, NE., Mailstop K52, Atlanta, Georgia, 30341, Telephone (770) 488–4518, Fax (770) 488–4760.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Dated: December 28, 2010.

Elaine Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–26 Filed 1–5–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: National Survey of Child and Adolescent Well-Being—Second Cohort (NSCAW II).

OMB No.: 0970–0202.

Billing Accounting Code (BAC): 418422 (G994426).

Description: The Department of Health and Human Services (HHS) intends to collect follow-up data on a sample of children and families for the National Survey of Child and Adolescent Wellbeing (NSCAW). The NSCAW was authorized under Section 427 of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996. The NSCAW is the only source of nationally representative, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. Information is collected about children's cognitive, social, emotional, behavioral, and adaptive functioning, as well as family and community factors that are likely to influence their functioning. Family service needs and service utilization also are addressed in the data collection.

Selection of the current NSCAW sample and baseline data collection began in 2007 with a final sample size of 5,873 children. The proposed data collection will allow for follow-up of this sample 36 months post-baseline, will follow the same format as that used in the baseline round and the 18-month follow-up, and will employ, with only modest revisions, the same instruments that were used in the previous rounds. Data from NSCAW are made available to the research community through licensing arrangements from the National Data Archive on Child Abuse and Neglect at Cornell University.

Respondents: Children and their associated permanent or foster caregivers, caseworkers, and teachers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Interview	1,424	1	1.33	1,894
Caregiver Interview	1,424	1	1.9	2,704
Caseworker Interview	285	3	1	855
Teacher Questionnaire	855	1	.50	428

Estimated Total Annual Burden Hours: 5, 882

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *E-mail address: OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 29, 2010.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2010–33241 Filed 1–5–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation Advisory Committee on Head Start Research and Evaluation

AGENCY: Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Administration for Children and Families (ACF). The meeting will be open to the public.

Name of Committee: Advisory Committee for Head Start Research and Evaluation.

General Function of Committee: The Advisory Committee for Head Start Research and Evaluation will provide feedback on the published final report for the Head Start Impact Study, offering interpretations of the findings, discussing implications for practice and policy, and providing recommendations on follow-up research, including additional analysis of the Head Start Impact Study data. The Committee will also be asked to provide recommendations to the Secretary regarding how to improve Head Start and other early childhood programs by enhancing the use of research-informed practices in early childhood. Finally, the Committee will be asked to provide recommendations on the overall Head Start research agenda, including—but not limited to—how the Head Start Impact Study fits within this agenda. The Committee will provide advice regarding future research efforts to inform HHS about how to guide the development and implementation of best practices in Head Start and other early childhood programs around the country.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on January 25, 2011, and from 8:30 a.m. to 4 p.m. on January 26, 2011.

ADDRESSES: Four Points by Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005, (202) 289–7600.

FOR FURTHER INFORMATION CONTACT: Jennifer Brooks, Office of Planning, Research, and Evaluation, e-mail *jennifer.brooks@acf.hhs.gov* or call (202) 205–8212.

Agenda: The Committee will review information on the federal Head Start program and the children and families it serves, review the design and findings of the Head Start Impact Study, and review plans for future research on the impact of Head Start. To inform its deliberations, the Committee will also review the evidence related to Early Head Start and programs supporting children from birth through age 5, as well as evidence related to elementary school quality and how best to sustain benefits from early childhood programs through the early elementary school years.

Procedure: Interested persons may present data, information or views, in writing, on issues pending before the Committee. Written submissions may be made to the contact person on or before January 15, 2011. All written materials provided to the contact person will be shared with the Committee members.

ACF welcomes the attendance of the public at this advisory committee meeting 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 Jennifer Brooks at least seven days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 22, 2010.

David A. Hansell,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2010–33242 Filed 1–5–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0635]

Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for 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 for industry and FDA staff entitled "Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products." In general, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) requires a premarket application and market authorization order for new tobacco products before they may be marketed; alternatively, manufacturers may submit a 905(j) report intended to demonstrate substantial equivalence to a predicate tobacco product. The guidance provides recommendations on submitting information intended to demonstrate that a new tobacco product is substantially equivalent to a predicate tobacco product. Manufacturers of tobacco products first introduced or delivered for introduction into interstate commerce for commercial distribution after February 15, 2007, and prior to March 22, 2011, must submit a report no later than March 22, 2011, or the products can no longer be legally marketed. Manufacturers of a new tobacco product first introduced or delivered for introduction into interstate commerce for commercial distribution after February 15, 2007 and before March 22, 2011, who submit a substantial equivalence report before March 23, 2011, may continue to market the tobacco product unless FDA issues an order finding that the product is not substantially equivalent. Because it is important that FDA's recommendations on submitting a substantial equivalence reports be available to assist new tobacco product manufacturers in preparing substantial equivalence reports in advance of March 23, 2011, this guidance document will be implemented immediately. This guidance, however, remains subject to comment in accordance with the Agency's good guidance practices (GGPs).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit electronic comments on the guidance, including comments regarding the proposed collection of information, to *http://www.regulations.gov*. Submit written comments on the guidance, including comments regarding the proposed collection of information, to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

Submit written requests for single copies of the guidance document entitled "Section 905(j) Reports: Demonstrating Substantial Equivalence for 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.

FOR FURTHER INFORMATION CONTACT: Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373, *annette.marthaler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance that provides recommendations related to reports under section 905(j) of the FD&C Act (21 U.S.C. 387e(j)), as amended by the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31). Section 905(j) authorizes FDA to establish the form for the submission of information related to substantial equivalence. The guidance is intended to assist persons submitting reports under section 905(j) of the FD&C Act. It explains, among other things, FDA's interpretation of the statutory sections related to substantial equivalence, and provides recommendations on the form and content of section 905(j) reports. The guidance also provides information on FDA's review of 905(j) reports.

II. Significance of Guidance

FDA is issuing this guidance document as a level 1 guidance consistent with FDA's GGPs (§ 10.115 (21 CFR 10.115)). The guidance discusses premarket statutory requirements that include certain submissions to be made to FDA no later than March 22, 2011. This guidance document is being implemented immediately without prior public comment under § 10.115(g)(2) because the Agency has determined that prior public participation is not feasible or appropriate, as interested parties need clarity as to FDA's expectations regarding 905(j) reports and sufficient time to prepare submissions in advance of the statutory deadline.

Manufacturers of tobacco products first introduced or delivered for introduction into interstate commerce for commercial distribution after February 15, 2007, and prior to March 22, 2011, must submit the report no later than March 22, 2011, or the tobacco product can no longer be legally marketed. If a 905(j) report is submitted prior to March 23, 2011, the tobacco product may continue to be marketed unless FDA issues an order that the tobacco product is not substantially equivalent to the predicate tobacco product (section 910(a)(2)(B) of the FD&C Act (21 U.S.C. 387j(a)(2)(B)), as amended by the Tobacco Control Act). It is important that this guidance be available in advance of March 23, 2011, to assist manufacturers in preparing 905(j) reports.

For 905(j) reports for tobacco products first marketed between February 15, 2007, and March 22, 2011 (many of which are from small manufacturers) that are submitted prior to March 23, 2011, FDA intends to allow manufacturers who have acted diligently in preparing their submissions a reasonable amount of time to supplement their initial submissions, provided these manufacturers submit a 905(j) report by the statutory deadline. FDA intends to determine what constitutes a reasonable period of time on a case-by-case basis.

This guidance 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. 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 0910–0673.

IV. Comments

This guidance document is being implemented immediately without prior public comment under § 10.115(g)(2) because the Agency has determined that prior public participation is not feasible or appropriate, as interested parties need clarity as to FDA's expectations regarding 905(j) reports and sufficient time to prepare submissions in advance of the statutory deadline. You may submit written comments to FDA on this guidance at any time for Agency consideration; in addition, we request that you submit any comments regarding any significant oversight in this guidance within 30 days of the issuance of this guidance (refer to the title page of the guidance for the issue date). Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will review any comments we receive and revise the guidance document when appropriate.

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: January 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–35 Filed 1–5–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1950–DR; Docket ID FEMA–2010–0002]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1950–DR), dated December 21, 2010, and related determinations.

DATES: *Effective Date:* December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 21, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

> I have determined that the damage in certain areas of the State of Arizona resulting from severe storms and flooding during the period of October 3–6, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Arizona.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated area. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make charges to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arizona have been designated as adversely affected by this major disaster:

The Sovereign Tribal Nation of the Havasupai Tribe for Public Assistance.

The Sovereign Tribal Nation of the Havasupai Tribe is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–33360 Filed 1–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1951–DR; Docket ID FEMA–2010–0002]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1951–DR), dated December 22, 2010, and related determinations.

DATES: *Effective Date:* December 22, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 22, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from a severe storm during the period of December 1–5, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Vermont. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Chittenden, Franklin, and Lamoille Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–33359 Filed 1–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1951–DR; Docket ID FEMA–2010–0002]

Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–1951–DR), dated December 22, 2010, and related determinations.

DATES: *Effective Date:* December 23, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Albert Lewis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals

and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–33361 Filed 1–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Exercise Information System

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden for the TSA Exercise Information System (EXIS). EXIS is a Web portal designed to serve stakeholders in the transportation industry in regard to security training exercises. It provides stakeholders with exercise information tailored to the transportation industry, best practices, and previous work for use in future exercises. It also allows stakeholders to design their own security exercises based on the unique needs of their specific transportation mode or method of operation. Utilizing and inputting information into EXIS is completely voluntary.

DATES: Send your comments by March 7, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose of Data Collection

The Exercise Information System (EXIS) is an Internet-accessible knowledge-management system developed by TSA serving stakeholders—industry, port authorities, Federal agencies, and State and local governments—and integrating other security-related training and exercise components at the sensitive security information level. It gives stakeholders valuable exercise information tailored to the transportation industry, best practices, and previous work for use in future exercises. With EXIS, transportation industry stakeholders can choose scenarios and objectives based on their particular needs, such as their transportation modes, or their regulated areas of operation.

EXIS is a data management system that provides end-to-end security exercise support, from the initial planning meeting, through exercise design, implementation, evaluation, and reporting. Working in a secure online environment, EXIS users can easily:

- Customize exercise design—develop objectives, scenarios, Master Scenario Events List (MSEL) items, contingency injects, evaluation metrics, and other data sets.
- Conduct robust analyses—sort evaluation data by exercise objectives, transportation modes, scenario types, or functional areas.
- Create analytical reports—identify and sort lessons learned, corrective actions, and best practices from past exercises or from those of other jurisdictions.
- Collaborate and share information—build relationships with partners.

EXIS was developed by TSA as part of its broad responsibilities and authorities under the Aviation and Transportation Security Act (ATSA),[1] and delegated authority from the Secretary of Homeland Security, for "security in all modes of transportation * * * including security responsibilities * * * over modes of transportation that are exercised by the Department of Transportation."[2] It is a component of TSA's Intermodal Security Training Exercise Program (I–STEP), which works with surface transportation stakeholders in developing and conducting security exercises. The I–STEP also fulfills requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act)[3] regarding the establishment of security training exercises for surface modes of transportation that can assess and improve the capabilities of these modes in preventing, preparing for, mitigating against, responding to, and recovering from acts of terrorism.[4]

EXIS helps users design an exercise through the use of a "wizard." The wizard walks the user through a step-by-step process allowing them to build a profile for their exercise. EXIS provides users with suggested scenarios and Master Scenario Events List (MSEL) items based on the area of focus and objectives selected by the user. Users also have the ability to create custom MSEL items or modify a Generic EXIS Community Scenario. Exercise Administrators may suggest modified scenarios and custom MSEL items for the MSEL and scenario libraries.

At the completion of the wizard, EXIS generates a collaborative workspace for exercise team members to work within. All exercise elements can be customized

[1] Public Law 107–71 (November 19, 2001).

[2] *See* 49 U.S.C. 114(d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HAS) of 2002, Public Law 107–296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HAS.

[3] Public Law 110–53 (August 3, 2007).

[4] 9/11 Act secs. 1407 (codified at 6 U.S.C. 1136(a)), 1516 (codified at 6 U.S.C. 1166), and 1533 (codified at 6 U.S.C. 1183). See also the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (Oct. 13, 2006) (codified at 6 U.S.C. 911(a)).

and saved. Lessons learned, best management practices, and corrective actions are pre-populated into the workspace based on the scenario and objectives of the exercise determined during its creation. EXIS is adaptable to changing exercise, tracking, and reporting needs as they mature and can support the addition of future exercise elements.

The program tags exercise objectives, scenarios, and findings, in order to automatically populate the database with lessons learned from past exercises conducted in similar environments. Users cannot only call up their own past experiences, but identify lessons learned by other organizations in the industry. Recognizing the extent to which surface modes include thousands of geographically dispersed owner/operators, such a Web-based capability is invaluable for connecting and sharing information.

By linking "exercise communities," users can also tackle cross-jurisdictional issues, such as interoperability. Users are able to focus on the underlying issues of transportation security and preparedness, and avoid repeating costly mistakes. Finally, users can also provide feedback on the usefulness of EXIS itself so that TSA may improve this system to better suit the stakeholders' future security needs.

TSA intends EXIS to be used primarily by individuals with security responsibilities, such as heads of security, for public and private owner/operators in the surface transportation community, including mass transit systems, freight/rail operators, highway/trucking companies, school bus operators, and pipeline systems. These individuals, and other stakeholders, can voluntarily contact TSA to request access to EXIS; TSA does not require participation in EXIS. Those seeking access or desiring more information about I–STEP products and services can contact a TSA modal representative or send their request by e-mail to *ISTEP@dhs.gov*.

Description of Data Collection

TSA will collect five types of information through EXIS. The collection is voluntary. EXIS users are not required to provide all information requested—however, if users choose to withhold information, they will not receive the benefits of EXIS associated with that information collection.

1. *User registration information.* TSA will collect this information to ensure only those members of the transportation community with a relevant interest in conducting security training exercises and with an appropriate level of need to access security training information can be allowed onto EXIS. Such registration information will include the user's name, professional contact information, agency/company, job title, employer, and employment verification contact information.

2. *Desired nature and scope of the exercise.* TSA will collect this information to generate an EXIS training exercise appropriate for the particular user. Users are asked to submit their desired transportation mode, exercise properties, objectives, scenario events, other participating agencies, and pre-exercise data (to assess the user's state of readiness for transportation security incidents prior to the exercise).

3. *Corrective actions/lessons learned/best practices.* TSA collects this information to document and share the users' ideas and methods for improving transportation security with other transportation stakeholders.

4. *Evaluation feedback.* TSA collects this information for the purpose of evaluating the usefulness of EXIS in facilitating security training exercises for the users. TSA can then modify EXIS to better suit its users' needs.

5. *After-Action Reports.* TSA collects reports that summarize information from items (2) and (3) mentioned above in order to create formal After-Action Reports. This includes reports on the exercise overview, goals and objectives, scenario event synopsis, analysis of critical issues, exercise design characteristics, conclusions, and the executive summary.

Use of Results

TSA will use this information to assess and improve the capabilities of all surface transportation modes to prevent, prepare for, mitigate against, respond to, and recover from transportation security incidents. A failure to collect this information will limit TSA's ability to effectively test security countermeasures, security plans, and the ability of a modal operator to respond to and quickly recover after a transportation security incident. Insufficient awareness, prevention, response, and recovery to a transportation security incident will result in increased vulnerability of the U.S. transportation network and a reduced ability of DHS to assess system readiness.

Based on industry population estimates and growth rates, and interest generated amongst the surface transportation modes prior to EXIS' release to the public, TSA estimates that there will be approximately 380,000 users within the first three years of the system's use. TSA estimates users will spend approximately 8 hours per EXIS user inputting the information described above. TSA estimates that an EXIS user will conduct one security training exercise per year. Given this information, the total annual hour burden for this information collection for all respondents within the first three years of EXIS' release is estimated to be approximately 3,000,000. There are no fees to use EXIS. The total annual cost burden to respondents is $0.00.

Issued in Arlington, Virginia on January 3, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–21 Filed 1–5–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N242; 91400–5110–0000–7B; 91400–9410–0000–7B]

Multistate Conservation Grant Program; Priority List for Conservation Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of priority list and approval of the projects.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the FY 2011 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (AFWA). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, AFWA submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant program. We have reviewed the list and will award the grants from the list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator, Division of Federal Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4020, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, (703) 358–2156 (phone) or *John_Stremple@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate

Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. We may award grants from a list of priority projects recommended to us by AFWA. The FWS Director, exercising the authority of the Secretary of the Interior, need not fund all projects on the list, but all projects funded must be on the list.

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements, and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation in at least 26 States, or in a majority of the States in any one FWS Region, or it must benefit a regional association of State fish and wildlife agencies. We may award grants to a State, a group of States, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting and Wildlife-Associated Recreation, we may award grants to the FWS, if requested by AFWA, or to a State or a group of States. Also, AFWA requires all project proposals to address its National Conservation Needs, which are announced annually by AFWA at the same time as its request for proposals. Further, applicants must provide certification that no activities conducted under a Multistate Conservation grant will promote or encourage opposition to regulated hunting or trapping of wildlife or to regulated angling or taking of fish.

Eligible project proposals are reviewed and ranked by AFWA Committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bowhunting, or archery. AFWA's Committee on National Grants recommends a final list of priority projects to the directors of State fish and wildlife agencies for their approval by majority vote. By statute, AFWA then must transmit the final approved list to the FWS for funding under the Multistate Conservation Grant program by October 1.

This year, we received a list of 12 recommended projects. We recommend them for funding in 2011. AFWA's recommended list follows:

MSCGP 2011 Cycle Recommended Projects

ID	Title	Submitter	WR request	SFR request	Total 2011 grant request
11–014	Coordination of Farm Bill Program Implementation to Optimize Fish & Wildlife Benefits to the States.	AFWA	$82,962.00	$82,962.00	$165,924.00
11–058	State Fish and Wildlife Agency Director Travel Coordination and Administration.	AFWA	83,325.00	83,325.00	166,650.00
11–060	Assessing Agency Capacities to Manage Fish and Wildlife Health.	Cornell University	90,042.00	90,042.00	180,085.00
11–063	National Fish Habitat Board Action Plan Implementation.	AFWA	0	240,000.00	240,000.00
11–026	Coordination of the Industry, Federal and State Agency Coalition.	AFWA	90,600.00	90,600.00	181,200.00
11–001	Review and Assessment of Bioenergy Provisions in the 2008 Farm Bill.	AFWA	46,200.00	46,200.00	92,400.00
11–071	Management Assistance Team	AFWA	487,923.00	487,923.00	975,846.00
11–015	Economic and other Benefits of State Public Access Programs and Implementation of the Voluntary Public Access and Habitat Incentive Program.	AFWA	85,525.00	85,525.00	171,050.00
11–069	Operation of the Reservoir Fisheries Habitat Partnership.	Arkansas Game & Fish.	0	296,000.00	296,000.00
11–023	Trailblazer Adventure Program: Involving Youth and Families in Conservation.	U.S. Sportsman Alliance Foundation.	160,000.00	0	160,000.00
11–009	Expanding Western Farm Bill Conservation Program Delivery through Biologist Partnerships.	Pheasants Forever & Quail Forever.	180,000.00	20,000.00	200,000.00
11–025	Conservation Leaders for Tomorrow Professional Development Project.	WMI	261,000.00	0	261,000.00
Total			1,522,577.00	1,567,577.00	3,090,154.00

Dated: October 28, 2010.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–53 Filed 1–5–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–65]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway, Tupelo, MS.

In 1951, unassociated funerary objects were removed from the Mangum site, Claiborne County, MS, during authorized National Park Service survey and excavation projects. The whereabouts of the human remains is unknown. The 34 unassociated funerary objects are 6 ceramic vessel fragments, 1 ceramic jar, 4 projectile points, 6 shell ornaments, 2 shells, 1 stone tool, 1 stone artifact, 1 polished stone, 2 pieces of petrified wood, 2 bone artifacts, 1 worked antler, 2 discoidals, 3 cupreous metal fragments and 2 soil/shell samples. The Mangum site is a large hilltop cemetery located in Claiborne County, MS. Objects recovered from the burials indicate that the site was in use during the Mississippian period (A.D. 1000–1650). In 1540, the De Soto expedition likely encountered the Taensa people in the vicinity of the Mangum site. In 1682, the de La Salle expedition documented the Taensa and Tunica in the same area. In 1706, the Taensa were driven from the area, migrating first to Bayogula, and then to Mobile, where they may have settled with the Choctaw. In 1764, the Taensa again moved, first to the Red River in south Louisiana, and finally to the Bayou Boeuf area where they lived with the Chitimacha. Representatives of the Chitimacha Tribe of Louisiana have identified similarities between the burial practices observed at the Mangum site and those of the Chitimacha. Historical documentation also indicates that the Tunica buried individuals in hilltop cemeteries in open country, matching the burial practice observed on the Mangum site. Historical documentation indicates that some Taensa may have married into the Alabama tribe, the descendants of whom now constitute the Alabama-Coushatta Tribes of Texas and the Alabama-Quassarte Tribal Town, Oklahoma.

Officials of Natchez Trace Parkway have determined, pursuant to 25 U.S.C. 3001(3)(B), that the 34 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of Natchez Trace Parkway also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Cameron H. Sholly, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680–4005, before February 7, 2011. Repatriation of the unassociated funerary objects to the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica-Biloxi Indian Tribe of Louisiana, may proceed after that date if no additional claimants come forward.

Natchez Trace Parkway is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: December 28, 2010.

Sangita Chari,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–4 Filed 1–5–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–65]

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS. The human remains and cultural items were removed from Claiborne County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway, Tupelo, MS.

This notice corrects the total number and types of associated funerary objects for a Notice of Inventory Completion published in the **Federal Register** (67 FR 910–911, January 8, 2002). Since publication an additional 148 associated funerary objects have been discovered. Therefore, in the **Federal Register**, page 910, paragraph number 4 is corrected by substituting the following paragraph:

In 1951 and 1963, human remains representing 124 individuals were recovered from the Mangum site during authorized National Park Service survey and excavation projects. No known individuals were identified. There are no funerary objects associated with the one individual recovered in 1951. The 123 individuals recovered in 1963 are associated with 182 funerary objects: 86 ceramic vessel fragments, 1 ceramic jar, 1 tobacco pipe, 1 frog effigy, 9 projectile points, 4 shell ornaments, 2 shells, 37 shell beads, 1 shell pendant, 1 shell dipper, 4 stone tools, 2 stone artifacts, 6 flakes, 2 pieces of shatter, 2 chisels, 3 polished stones, 8 celts, 2 faunal bones, 9 cupreous metal fragments and 1 cupreous metal plate.

In the **Federal Register**, page 910, paragraph number 6 is corrected by substituting the following paragraph:

Officials of the Natchez Trace Parkway have determined, pursuant to

25 U.S.C. 3001(9), that the human remains described above represent the physical remains of 124 individuals of Native American ancestry. Officials of the Natchez Trace Parkway also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 182 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Natchez Trace Parkway have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Cameron H. Sholly, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680–4005, before February 7, 2011. Repatriation of the human remains and associated funerary objects to the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica-Biloxi Indian Tribe of Louisiana, may proceed after that date if no additional claimants come forward.

Natchez Trace Parkway is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: December 28, 2010.

Sangita Chari,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–5 Filed 1–5–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 11, 2010. Pursuant to §§ 60.13 or 60.15 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 21, 2011.

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.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Maricopa County

Bohn, Louis J. and Lee, Gertrude, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 750 E Northern Ave, Phoenix, 10001165

Conway, Colonel Edward Power, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 7625 N 10th St, Phoenix, 10001164

Diller, Adam, House, 8702 N 7th Ave, Phoenix, 10001163

England, Abner Elliot, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 6234 N Central Ave, Phoenix, 10001162

Halm, George M. and Howard, Mary Alverda, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 6850 North Central Ave, Phoenix, 10001161

Jacobs, Judge Fred C., House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 6224 N Central Ave, Phoenix, 10001169

Morgan, David, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 8030 N Central Ave, Phoenix, 10001168

Smith, Walter Lee, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 7202 N 7th Ave, Phoenix, 10001167

Stubbs, Courtney and Hilda, House, (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959) 1245 E Ocotillo Rd, Phoenix, 10001166

ARKANSAS

Arkansas County

Maxwell Street Bridge, (Historic Bridges of Arkansas MPS) Maxwell St, E of Jefferson St, DeWitt, 10001148

North Jackson Street Bridge, (Historic Bridges of Arkansas MPS) North Jackson St, over Holt Branch, DeWitt, 10001151

Desha County

McGehee City Jail, SW corner of S First St and Pine St, McGehee, 10001149

Missouri Pacific Railway Van Noy Eating House, SE of the Seamans Dr and Railroad St Intersection, McGehee, 10001154

Faulkner County

Administration Building, University of Central Arkansas, (New Deal Recovery Efforts in Arkansas MPS) 201 Donaghey Ave, Conway, 10001153

Johnson County

Union School, (Public Schools in the Ozarks MPS) N side of CR 4670, W of Little Piney Creek, Hagarville, 10001150

Lincoln County

Tracy, Charles Hampton, House, 2794 Blair Rd, Star City, 10001156

Searcy County

Henley Hotel, (Searcy County MPS) 112 HWY 65 N, St. Joe, 10001152

Sebastian County

Fort Chaffee Building 803, (World War II Home Front Efforts in Arkansas, MPS) 7313 Terry St, Fort Smith, 10001155

Jones Memorial Methodist Church, 400 E Main St, Hartford, 10001157

CALIFORNIA

San Diego County

PILOT (Pilot Boat), Maritime Museum of San Diego, 1492 N Harbor Dr, San Diego, 10001160

CONNECTICUT

Hartford County

Spring Grove Cemetery, 2035 Main St, Hartford, 10001158

IDAHO

Valley County

Landmark Ranger Station, Boise National Forest, Cascade, 10001179

LOUISIANA

Orleans Parish

Charity Hospital of New Orleans, 1532 Tulane Ave, New Orleans, 10001173

MARYLAND

Anne Arundel County

Burle's Town Land, (Providence, MD: Archeology of a Puritan—Quaker Settlement Near the Severn River MPS) Hidden Cove Rd, Annapolis, 10001147

MASSACHUSETTS

Franklin County

Wilder, Homestead, The, Ashfield Rd, Buckland, 10001178

NORTH CAROLINA

Rowan County

Eastover, 5510 S Main St, Salisbury, 10001176

Stanly County

Denning, Thomas Marcellus, House, 415 N Second St, Albermarle, 10001177

OREGON

Multnomah County

Jacobberger, Joseph, Country House, 5545 SW Sweetbriar St, Portland, 10001171

Wallowa County

Warnock, William P., House Boundary Increase, 501 S Fifth St, Enterprise, 10001170

UTAH

Kane County

Kanab Post Office, (Kanab, Utah MPS) 22 N Main St, Kanab, 10001175

Millard County

Fillmore American Legion Hall, 80 S Main St, Fillmore, 10001174

Salt Lake County

Pacific Northwest Pipeline Building, 315 E 200 S, Salt Lake City, 10001159

WYOMING

Converse County

Huxtable Ranch, The, (Ranches, Farms, and Homesteads in Wyoming, 1860–1960 MPS) 1351 Box Elder Rd, Glenrock, 10001172

Other Actions: Request for Removal has been made for the following resources:

ARKANSAS

Pulaski County

Hopkins—Grace House, 1310 S Summit St, Little Rock, 99000764

Young House, 436 Skyline Drive, North Little Rock, 92000559

[FR Doc. 2011–59 Filed 1–5–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Birthing Simulators and Associated Systems*, DN 2778; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*, and 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 (*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: The Commission has received a complaint filed on behalf of Gaumard Scientific Company, Inc. on December 30, 2010. The complaint alleges 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 birthing simulators and associated systems. The complaint names as respondents Shanghai Honglian Medical Instrument Development Co., Ltd. of Shanghai, China and Shanghai Evenk International Trading Co., Ltd. of Shanghai, China.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2778") in a prominent place on the cover page and/or the first page. 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 Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential

treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: December 30, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–33356 Filed 1–5–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–394–A & 399–A (Second Review) (Fourth Remand)]

Ball Bearings From Japan and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of its fourth remand proceeding with respect to its affirmative determination in the five-year review of the antidumping duty order on ball bearings from Japan. For further information concerning the conduct of this proceeding 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, subpart A (19 CFR part 207).

DATES: *Effective Date:* December 30, 2010.

FOR FURTHER INFORMATION CONTACT: James McClure, Office of Investigations, telephone 202–205–3191, or David Goldfine, Office of General Counsel, telephone 202–708–5452, 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*).

SUPPLEMENTARY INFORMATION:

Background.—On December 9, 2010, the Court of International Trade (per Judge Barzilay) issued an opinion in *NSK Corp. et al.* v. *United States,* Slip Op. 10–133 ("*NSK V*"). In that opinion, the Court has again affirmed-in-part and remanded-in-part the Commission's determinations in *Certain Bearings and Parts Thereof from Japan and the United Kingdom,* Inv. Nos. 731–TA–394–A & 399–A (Second Review) (Third Remand), USITC Pub. 4194 (Aug. 2010). In *NSK V,* the Court affirmed the Commission's determination not to cumulate subject imports from the United Kingdom because they would not likely have a discernible adverse impact. *NSK V* at 4–6. The Court also affirmed the Commission's negative determination with respect to the United Kingdom. *Id.* at 6.

As to the remaining issues with respect to the cumulated subject imports from France, Germany, Italy, and Japan, the Court again affirmed the Commission's findings that the cumulated imports would likely have significant volume and price effects. *Id.* at 7. Nevertheless, with respect to the likely impact by cumulated subject imports, the Court again remanded the issue to the Commission. *Id.* at 8–12.

Under the remand schedule ordered by the Court, the Commission was required to file a status report with the Court on December 20, 2010, advising the Court as to whether it would be re-opening the record on the likely impact issue. The Court also directed the parties to submit a proposed joint scheduling order for the fourth remand proceedings.

On December 20, 2010, the Commission filed the requested status report with the Court, advising the Court that it will not be re-opening the record. On December 20, 2010, the parties also submitted a proposed joint scheduling order. On December 22, 2010, the Court approved the proposed scheduling order and directed the Commission to file its fourth remand determination by March 1, 2011. Under the remand schedule ordered by the Court, Plaintiffs, Plaintiff-Intervenors, and Defendant-Intervenors may file their comments with the Court regarding the Commission's fourth remand determination by April 1, 2011.

Participation in the proceeding.—Only those persons who were interested parties to the reviews (*i.e.,* persons listed on the Commission Secretary's service list) and parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding, unless they are adding new individuals to the list of persons entitled to receive business proprietary information under administrative protective order. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the reviews.

Written submissions.—The Commission is not re-opening the record in this remand proceeding. The Commission will permit the parties to file comments pertaining to the specific issues that are the subject of the Court's remand instructions. Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material. No appendices or other attachments are allowed. The parties may not themselves submit any new factual information in their comments and may not address any issue other than those that are the subject of the Court's remand instructions. Any such comments must be filed with the Commission no later than January 14, 2011.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, 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 Fed. Reg. 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: December 30, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–33355 Filed 1–5–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 17, 2010, and published in the **Federal Register** on June 28, 2010, 75 FR 36680, United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
3,4-Methylenedioxyamphetamine (7400).	I
Codeine-n-oxide (9053)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II

The company plans to import reference standards for sale to researchers and analytical labs.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of United States Pharmacopeial Convention to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated United States Pharmacopeial Convention to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: December 23, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–12 Filed 1–5–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 15, 2010, and published in the **Federal Register** on October 26, 2010, 75 FR 65660, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Thebaine (9333)	II
Tapentadol (9780)	II

The company plans to import Thebaine (9333) analytical reference standards for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: December 23, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–11 Filed 1–5–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Year 2010 Form M–1 With Electronic Filing Option, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice on the Availability of the Year 2010 Form M–1 with Electronic Filing Option.

SUMMARY: This document announces the availability of the Year 2010 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. It is generally identical to the 2009 Form M–1, except that a few changes were made to update the Part 7 compliance questions to reflect the current provisions of Part 7 that were effective in 2010. The Form M–1 may again be filed electronically over the Internet.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the Form M–1 filing requirement, contact Amy J. Turner or Beth L. Baum, Office of Health Plan Standards and Compliance Assistance,

at (202) 693–8335. For inquiries regarding how to obtain or file a Form M–1, see the Supplementary Information section below.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2010 Form M–1

This document announces the availability of the Year 2010 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). This year's Form M–1 is generally identical to the Year 2009 Form M–1, except that a few changes were made to update the Part 7 compliance questions to reflect the current provisions of Part 7 that were effective in 2010. The electronic filing option has been retained and filers are encouraged to use this method. The Year 2010 Form M–1 is due March 1, 2011, with an extension until May 2, 2011 available.

The Employee Benefits Security Administration (EBSA) is committed to working together with administrators to help them comply with this filing requirement. Copies of the Form M–1 are available on the Internet at *http://www.dol.gov/ebsa/forms_requests.html.* In addition, after printing, copies will be available by calling the EBSA toll-free publication hotline at 1–866–444–EBSA (3272). Questions on completing the form are being directed to the EBSA help desk at (202) 693–8360. For questions regarding the electronic filing capability, contact the EBSA computer help desk at (202) 693–8600.

Statutory Authority: 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1132, 1134, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, 1191a–c; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

Signed at Washington, DC this 3rd day of January 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2011–33 Filed 1–5–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Policy and Procedural Change Regarding the Publication of Notices of Funding Opportunities in the Federal Register

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is to announce that the Department of Labor, Employment and Training Administration (ETA) will no longer publish the full text of Solicitation of Grant Applications (SGAs) in the **Federal Register**. ETA will publish a Notice of Funding Opportunity in the **Federal Register**, and the full texts of all ETA SGAs will be posted at the government-wide Web site, *http://www.grants.gov,* in accordance with the policy directive issued by the Office of Management and Budget (OMB). An applicant for funding may access the full SGA associated with a synopsis posted at *http://www.grants.gov* by following the universal resource locator (URL) link included in the synopsis, or by visiting ETA's Web site at *http://www.doleta.gov.*

DATES: *Effective Date:* January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Daphne Jefferson, 200 Constitution Avenue, NW., Room N4653, Washington, DC 20210; *telephone:* 202–693–2800.

SUPPLEMENTARY INFORMATION: ETA continually searches for ways to improve its operating and economic efficiency. ETA's policies currently provide for publication of notices of SGAs in the **Federal Register**. In addition to publication of notices of SGAs in the **Federal Register** and its own Web site, ETA, like all Federal agencies, is mandated to publish SGAs on *http://www.grants.gov.* ETA has published the full text of SGAs in both the **Federal Register** and on the Web sites. The Web sites provide the public with a more efficient way to complete SGAs and expedite the process of obtaining any available funding.

On October 8, 2003, OMB issued a policy directive entitled "Requirement To Post Funding Opportunity Announcement Synopses at *http://www.grants.gov* and Related Data Elements/Format" [68 FR 58146, Oct. 8, 2003]. The directive requires every Federal agency that awards agreements to post synopses of its funding opportunity announcements in standard format on the Internet at *http://www.grants.gov* or such Web site/Internet address that may be identified by OMB. A single government-wide Web site provides prospective applicants the opportunity to locate funding opportunities in one place rather than having to search for announcements in multiple locations.

ETA has determined that we may more effectively and efficiently inform the public of our funding opportunities by modifying our policy of publishing the full text of SGAs in the **Federal Register**. Hereafter, we will post the full text of SGAs and any subsequent SGA amendments at *http://www.grants.gov* and on our own Web site, and will publish only an abbreviated notice in the **Federal Register** to announce the funding opportunity. The notice will direct interested parties to the appropriate Web sites for the full SGA. ETA has determined that publishing a Notice of Funding Opportunity for the SGA in the **Federal Register** serves as a cost-effective measure, substantially reducing government publication costs. The **Federal Register** will continue to serve the important mission of providing the public with notice of the funding opportunity contained in the SGA, but it will direct interested persons to obtain more detailed application information through the more efficient process provided by the Web sites referenced above. The public will still have access to the complete application package and other details regarding the SGA.

Signed at Washington, DC, this 29th day of December 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–33349 Filed 1–5–11; 8:45 am]

BILLING CODE 4510–FM–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–037; NRC–2008–0556]

Ameren Missouri, Combined License Application for Callaway Plant Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR), § 50.71(e)(3)(iii) for the Callaway Plant (Callaway), Unit 2, Combined License (COL) Application, Docket Number 52–037, submitted by Union Electric Company, doing business as Ameren UE (Ameren) for the proposed facility to be located in Callaway

County, Missouri. The NRC's review activities relating to the Callaway, Unit 2, COL application remain suspended since June 29, 2009, based on Ameren's request of June 23, 2009. Furthermore, the adjudicatory proceedings related to the Callaway, Unit 2. COL application were terminated by the Atomic Safety and Licensing Board (ASLB) after agreements were made between Ameren, the NRC, and the petitioners for intervention, as documented in "AMERENUE (Callaway Plant Unit 2) MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) LBP–09–23 (August 28, 2009)" (ML092400189). In accordance with 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment—Identification of the Proposed Action

The proposed action is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). During the period from the docketing of a COL application until the NRC makes a finding under 10 CFR 52.103(g) pertaining to facility operation, Union Electric Company, doing business as Ameren Missouri (Ameren) as of October 1, 2010, as noted in its letter to the NRC dated October 26, 2010, must, pursuant to 10 CFR 50.71(e)(3)(iii), submit an annual update to the Final Safety Analysis Report (FSAR). Ameren requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2010 and 2011 COL application FSAR updates, and proposed for approval a new submittal deadline of December 31, 2012, for the next FSAR update. The proposed exemption would allow Ameren to submit the next FSAR update at a later date, but still in advance of the NRC reinstating its review of the application, and in any event, by December 31, 2012. The current FSAR update schedule could not be changed, absent the exemption. The NRC is authorized to grant the exemption pursuant to 10 CFR 50.12.

The proposed action is in response to Ameren's request dated October 26, 2010, and can be found in the Agencywide Documents Access and Management System (ADAMS) under accession number ML103090556.

Need for the Proposed Action

The Callaway, Unit 2, COL application is based upon and linked to the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant Unit 3 (CCNPP3). The proposed action is needed to allow Ameren to submit the next FSAR update prior to any request to the NRC to resume review of the COL application and, in any event, by December 31, 2012.

Ameren has requested a one-time exemption from the requirements specified in 10 CFR 50.71(e)(3)(iii) in order to reduce the burden associated with identifying and incorporating all committed changes made to the RCOL application since the last revisions to the RCOL application and the U.S. EPR design control documents (DCD), when the updated FSAR will not be reviewed by the NRC until the application review is resumed.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no environmental impacts associated with the proposed exemption. The proposed exemption is solely administrative in nature in that it pertains to the schedule for submittal to the NRC of revisions to a COL application under 10 CFR Part 52.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with the proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

After the environmental scoping meeting was held on February 18, 2009, and prior to issuance of the scoping summary report and the subsequent Draft Environmental Impact Statement, the NRC suspended the Callaway, Unit 2, COL application review activities effective June 29, 2009, based on Ameren's request of June 23, 2009. The proposed action, therefore, does not involve the use of any different resources than those considered during the environmental scoping process.

Agencies and Persons Consulted

Contacting the State of Missouri and, in particular, the Missouri Department of Health and Senior Services, by the NRC staff for comments regarding the environmental impact of the proposed action was not necessary, since the review of the Callaway, Unit 2, COL application is suspended until further notice.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see Ameren's letter dated October 26, 2010. 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 O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically 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 by telephone at 1–800–397–4209 or 301–415–4737, or via e-mail at *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of December 2010.

For the Nuclear Regulatory Commission.

Prosanta Chowdhury,

Project Manager, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–9 Filed 1–5–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2010–0025]

Florida Power and Light Company, Turkey Point, Units 3 and 4; Exemption

1.0 Background

Florida Power and Light Company (FPL, the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41, which authorize operation of Turkey Point, Unit Nos. 3 and 4 (Turkey Point 3 and 4). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located in Florida City, Florida.

2.0 Request/Action

By letter dated October 13, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092950342), and pursuant to Title 10 of the *Code of Federal Regulations* (CFR), Section 26.9, FPL requested an exemption from the requirements of 10 CFR 26.205(c), "Work hours scheduling," and (d), "Work hour controls," during declarations of severe weather conditions such as tropical storm and hurricane force winds at the Turkey Point site. Supplemental responses and responses to requests for additional information (RAI) are dated March 9, 2010 (ADAMS Accession No. ML100770099), September 2, 2010 (ADAMS Accession No. ML102580335), October 6, 2010 (ADAMS Accession No. ML102850047), and October 20, 2010 (ADAMS Accession No. ML103060463).

The requested exemption applies to individuals who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5) who are sequestered onsite during the severe wind event, as travel to and from the site during severe wind conditions may be hazardous or not possible. The exemption request states that because of the unpredictable nature and potential speed of a storm, a need to activate the storm crew could occur on short notice and without the ability to meet work hour controls. The exemption request also states that although the plant may not meet the criteria for declaring an emergency based on the NRC-approved emergency action levels, emergency preparedness would require the implementation of the site emergency plan.

After the high wind conditions pass, wind damage to the plant and surrounding area might preclude sufficient numbers of individuals from immediately returning to the site. Additionally, if mandatory civil evacuations were ordered, this could also delay the return of sufficient relief personnel. The Emergency Coordinator (a senior management official at Turkey Point) will decide when weather conditions permit sufficient personnel to travel safely to and from the site. When this declaration is made, full compliance with 10 CFR 26.205(c) and (d) is again required.

The exemption would allow Turkey Point to sequester individuals onsite, when travel to and from the site during high wind conditions is hazardous or not possible due to severe weather conditions. According to the National Weather Service, sustained wind speed of 40 miles per hour (mph) makes travel unsafe for the common traveler.

If conditions are such that sustained winds of 73 mph are present onsite, then Turkey Point will declare a Notice of Unusual Event (UE). When this declaration is made, an exemption from these same work hour controls is available under 10 CFR 26.207(d).

3.0 Discussion

The NRC staff has reviewed the licensee's overall request against the regulations contained in 10 CFR 26.205 and 26.207 and related **Federal Register** Notice Statements of Consideration [73 FR 16965]. Also, the NRC staff reviewed the guidance in Regulatory Guide 5.73, Fatigue Management for Nuclear Power Plant Personnel. Information from the National Hurricane Center (NHC) (*http://www.nhc.noaa.gov/*) was used to understand various conditions or effects related to tropical storm and hurricane wind speeds.

10 CRF Part 26 Subpart I, Managing Fatigue

The fatigue management provisions in 10 CFR Part 26 Subpart I are designed as an integrated approach to managing both cumulative and acute fatigue. The requirement to schedule individuals' work hours consistent with the objective of preventing impairment from fatigue is found in 10 CFR 26.205(c). Section 26.205(d) of 10 CFR provides the actual work hour controls—which are 16 work hours in any 24-hour period, 26 work hours in any 48-hour period, and 72 work hours in any 7-day period. This section also provides limits on the number of hours an individual may work; limits on the minimum break times between work periods; and limits for the minimum number of days off an individual must be given.

Section 26.205(b) of 10 CFR is the requirement to count work hours and days worked. Section 26.205(b)(3) is the requirement to consider other periods of work not included in Section 26.205(d) so that they can be included in the work hour control calculations when a covered individual resumes covered work.

Regulatory Guide 5.73

Regulatory Guide 5.73, Fatigue Management for Nuclear Power Plant Personnel, endorses the Nuclear Energy Institute (NEI) report NEI 06–11, revision 1, "Managing Personnel Fatigue at Nuclear Power Plants," with certain clarifications, additions and exceptions.

Staff has endorsed this guidance for use during declared emergencies. After exiting the emergency, the licensee is immediately subject to the scheduling requirements of 10 CFR 26.205(c) and the work hour/rest break/minimum day off requirements of 10 CFR 26.205(d). As required by 26.205(b)(3), all time worked during the emergency must be tracked to ensure that individuals are not fatigued when work hour controls are reinstated. In a public meeting on July 2, 2010, to discuss lessons learned regarding submitting an exemption request from Part 26, Subpart I work hour controls during periods of severe winds such as a tropical storm or hurricane, the staff concluded that it finds NEI 06–11 Section 7.5 "Reset from Deviations" to be an acceptable method for resuming work hour controls after the recovery period.

Precedence

STP Nuclear Operating Company, the licensee for South Texas Project Units 1 and 2 has been granted a similar exemption from severe wind conditions, which can be found in the **Federal Register** dated July 12, 2010 (75 FR 39707).

Lessons Learned

The effects of Hurricane Andrew on the Turkey Point site were used to identify lessons learned to consider when evaluating this request. The following sources were reviewed:

- NUREG–1474, "Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992."
- NRC Information Notice 93–53, "Effect of Hurricane Andrew on Turkey Point Nuclear Generating Station and Lessons Learned."
- NRC Information Notice 93–53, Supplement 1, "Effect of Hurricane Andrew on Turkey Point Nuclear Generating Station and Lessons Learned."

• NUREG–0933, "Resolution of Generic Safety Issues," Issue 178: Effect of Hurricane Andrew on Turkey Point (Rev 2).

Hurricane Andrew was a Category 5 hurricane that struck the Turkey Point site on August 24, 1992. On September 10, 1992, the NRC and the Institute of Nuclear Power Operations jointly sponsored a team to review the damage of Hurricane Andrew on the nuclear units and the utility's actions to prepare for the storm and recover from it and compile lessons learned that might benefit other nuclear utilities. The licensee exemption request and the licensee's site procedures related to severe winds were compared to the actions and lessons learned documented in NUREG--1474, including an indication that detailed methodical preparations should be made prior to the onset of hurricane force winds.

The NRC staff has reviewed the FPL exemption request for the Turkey Point site and agrees that preparing the site for the onset of severe wind conditions such as hurricanes, including sequestering enough essential personnel to provide for shift relief, is prudent to ensure plant and personnel safety.

10 CFR 26.207(d) Exemption

Pursuant to 10 CFR 26.207(d) licensees need not meet the requirements of Section 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. The FPL RAI response letter dated March 9, 2010, clarified that the entry condition for the exemption is when site preparations are commenced per the licensee's severe weather preparation procedure (confirmed tropical storm watch or warning, or confirmed hurricane watch or warning). As defined by the NHC, a tropical storm watch is declared when sustained winds of at least 39 mph are expected somewhere within the specified coastal area. The entry condition for a Turkey Point declaration of an Unusual Event is a confirmed hurricane warning, which is defined by the NHC when sustained winds of 74 mph are expected somewhere within the specified coastal area. Therefore, entry conditions for the requested exemption may precede the declaration of a UE.

Section 26.207(d) states that licensees need not meet the requirements of 26.205(c) and (d) during declared emergencies, therefore there is no need for an additional exemption to be granted during the period of a declared emergency for severe winds. Although work hours, breaks, and days off are calculated as usual during a license-declared plant emergency, licensees are unconstrained in the number of hours they may allow individuals to work performing covered duties or the timing and duration of breaks they must require them to take.

The FPL RAI response letter dated March 9, 2010, clarifies that the exit condition for the exemption is when the Emergency Coordinator determines there are sufficient personnel available to meet the requirements of 10 CFR 26.205 (c) and (d). Therefore, exit conditions for this exemption request can possibly come well after the exit of the UE.

To summarize, the FPL exemption request for Turkey Point Units 3 and 4 can be characterized, as having three parts: A high wind exemption; a recovery exemption immediately following an Emergency Plan exemption; and a recovery exemption immediately following a high wind exemption.

High Wind Exemption

A high wind exemption encompasses the period starting with the entry conditions prior to the declaration of a UE (confirmed hurricane warning is in effect). As a tropical storm or hurricane approaches landfall, high wind speeds—in excess of wind speeds that create unsafe travel conditions—are expected. During these times, the National Weather Service typically publishes a projected path of the storm. This condition will be described as the "high wind condition," or "period of high winds."

FPL requests an exemption from 10 CFR 26.205(c) and (d) work hour controls during periods of high winds. For the purposes of this exemption, declaration of the entry condition allows any onsite individual who performs duties identified in 10 CFR 26.4(a)(1) through (a)(5) to not have to meet the requirements of 10 CFR 26.205(c) and (d) if they are designated as part of the storm crew. This entry condition occurs when there is a confirmed tropical storm watch or warning or when there is a confirmed hurricane watch or warning and the Emergency Coordinator indicates that site preparations should be commenced per the severe weather preparation procedure.

The NHC defines a hurricane warning as an announcement that hurricane conditions (sustained winds of 74 mph or higher) are expected somewhere within the specified coastal area. Because severe wind preparedness activities become difficult once winds reach tropical storm force, a hurricane warning is issued 36 hours in advance of the anticipated onset of tropical-storm-force winds (39 to 73 mph).

Lessons learned that are published in NUREG–1474 include the acknowledgement that detailed, methodical preparations should be made prior to the onset of hurricane force winds. The NRC staff finds the Turkey Point proceduralized actions are consistent with the lessons learned.

Recovery Exemption Immediately Following a High Wind Exemption

The period immediately following the high wind exemption, but when the conditions for a UE no longer exist, may still require a recovery period. Also, high winds that make travel unsafe but that fall below the threshold of an emergency, could be present for several days. After the high wind condition has passed, sufficient numbers of personnel may not be able to access the site to relieve the sequestered individuals. An exemption during these conditions is consistent with the intent of the 10 CFR 26.207(d) exemption.

Recovery Exemption Immediately Following an Emergency Plan Exemption

Following a declared emergency, under 10 CFR 26.207(d), due to high wind conditions, the site may not be accessible by sufficient numbers of personnel to allow relief of the sequestered individuals. Once the high wind conditions have passed and the UE exited, a recovery period might be necessary. An exemption during these circumstances is consistent with the intent of 10 CFR 26.207(d).

Once Turkey Point has entered into either the high wind exemption or the 10 CFR 26.207(d) exemption, the licensee should not need to make a declaration that it is invoking the recovery exemption.

Unit Shutdown

If a hurricane warning is in effect and the storm is projected to reach the site as a Category 1 or 2 hurricane, then shutdown of the units to hot standby (mode 3) is commenced at least two (2) hours before the projected onset of sustained hurricane force winds at the site. Both units will remain offline for the duration of the hurricane force winds (or restoration of reliable offsite power). If the storm is projected to reach the site as a category 3, 4, and 5 hurricane prior to landfall, specific shutdown conditions are established at least two (2) hours before the projected onset of sustained hurricane force winds at the site. Because severe weather preparations are likely commenced prior to the shutdown of the units, then

this exemption will allow sufficient personnel onsite to ensure that the facility is properly secured for severe weather.

Lessons learned from Hurricane Andrew, NUREG–1474, include having both units shutdown and on residual heat removal when the storm strikes so that a loss of offsite power will not jeopardize core cooling. The NRC staff finds the Turkey Point plan is consistent with the lessons learned.

Storm Crew

Turkey Point plans to sequester sufficient individuals to staff two 12-hour shifts of workers consisting of personnel from operations, maintenance, health physics, chemistry, and security, to maintain the safe and secure operation of the facility. The Turkey Point hurricane plan provides for bunking facilities that provide an accommodation for restorative rest for the off crew. A 12-hour break provides each individual with an opportunity for restorative rest. Although, the accommodations and potentially stressful circumstances may not be ideal for restorative rest, the NRC finds that these actions are consistent with the practice of fatigue management when limited personnel are available during severe weather conditions.

Maintenance

The FPL RAI response letter dated September 2, 2010, clarified that the exemption request does not apply to discretionary maintenance activities. Suspension of work hour controls is for storm preparation activities and those deemed critical for plant and public safety. The staff finds the exclusion of discretionary maintenance from the exemption request to be consistent with the intent of the exemption.

Procedural Guidance

By letter dated October 20, 2010, Turkey Point committed to maintain the following guidance, applicable to this exemption, in a site procedure:

- The conditions necessary to sequester site personnel that are consistent with the conditions specified in the Turkey Point exemption request.
- Provisions for ensuring that personnel who are not performing duties are provided an opportunity as well as accommodations for restorative rest.
- The condition for departure from the exemption is based on the Emergency Coordinator's determination that adequate staffing is available to meet the requirements of 10 CFR 26.205(c) and (d)..

Returning to Work Hour Controls

Turkey Point must return to work hour controls when the Emergency Coordinator determines that adequate staff is available to meet the 10 CFR 26.205(c) and (d) requirements. Upon exiting the exemption, the work hour controls in Section 26.205(c) and (d) apply and the requirements in 26.205(b)(3) must be met.

Authorized by Law

As stated above, this exemption would apply to the storm crew sequestered on site. The licensee's request states that adherence to all work hour controls could impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. As stated above, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR 26.205(c) and (d). The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 26.205(c) and (d) are to prevent impairment from fatigue due to duration, frequency, or sequencing of successive shifts. Based on the above evaluation, no new accident precursors are created by utilizing whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status; therefore, the probability of postulated accidents is not increased. Even though it might be necessary to utilize whatever staff resources during severe weather preparation and storm crew activation, opportunities for restorative sleep will be maintained. Also, the consequences of postulated accidents are not increased, because there is no change in the types of accidents previously evaluated. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the licensee to utilize whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. The licensee will provide sufficient numbers of management and supervision over the storm crew or the resources utilized during the plant emergency to provide additional oversight for monitoring the effects of fatigue to ensure that the safety and security of the facility are maintained. Also, during the plant emergency, opportunities for restorative sleep will be maintained. Therefore, the common defense and security is not impacted by this exemption.

Otherwise in the Public Interest

The proposed exemption would increase the availability of the licensee staff. The exemption would allow licensee staff to return to the site and perform additional duties to ensure the plant is in a safe configuration during the emergency. Therefore, granting this exemption is otherwise in the public interest.

4.0 Conclusion

Granting this exemption is consistent with 10 CFR 26.207(d) Plant Emergencies, which allows the licensee to not meet the requirements of 10 CFR 26.205 (c) and (d) during declared emergencies as defined in the licensee's emergency plan. The Part 26 Statements of Consideration, page 17148 states that "Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of § 26.205(c) and (d)." The objective of the exemption is to ensure that the control of work hours do not impede a licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status.

The actions described in the exemption request and submitted procedures are consistent with the recommendations in NUREG–1474. Also consistent with NUREG–1474, NRC staff expects the licensee would have completed a reasonable amount of hurricane preparation prior to the need to sequester personnel, in order to minimize personnel exposure to high winds.

Based on the considerations discussed above, the NRC staff has determined that (1) the proposed exemption is authorized by law, (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed exemption (3) such activities will be consistent with the Commission's regulations and guidance, and (4) the issuance of the exemption will not be contrary to the common defense and security or to the health and safety of the public. Therefore, the staff finds this request to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75FR 34776; June 18, 2010). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of December 2010.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10 Filed 1–5–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63624; File No. SR–NYSEArca–2010–120]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading Shares of the SPDR Nuveen S&P High Yield Municipal Bond ETF

December 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 21, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the SPDR Nuveen S&P High Yield Municipal Bond ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following series of the SPDR Series Trust ("Trust") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units"), based on the S&P Municipal Yield Index ("Index"): SPDR Nuveen S&P HighYield Municipal Bond ETF ("Fund" or "ETF").[3]

The SPDR Nuveen S&P High Yield Municipal Bond ETF[4] seeks to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Index, which tracks the U.S. municipal bond market, and to provide income that is exempt from regular federal income taxes.[5]

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on U.S. indexes. The Index meets all such requirements except for those set forth in Commentary .02(a)(2).[6] Specifically, as of December 20, 2010, 26.47% of the weight of the Index components have a minimum principal amount outstanding of $100 million or more.

According to the Registration Statement, the Index is designed to measure the performance of high yield municipal bonds issued by U.S. states and territories or local governments or agencies, such that interest on the securities is exempt from U.S. federal income tax, but may be subject to the alternative minimum tax and to state and local income taxes. High yield securities are generally rated below investment grade and are commonly referred to as "junk bonds." The Index is a sub-set of the Standard & Poor's/Investortools Municipal Bond Index and the Standard & Poor's/Investortools High Yield Bond Index and includes publicly issued U.S. dollar denominated, fixed rate, municipal bonds that have a remaining maturity of at least one year.

The Index consists of categories of bonds in the following proportions: (i) 70% of the Index constituents are components of the Standard & Poor's/Investortools High Yield Bond Index, which are non-rated or are rated below investment grade; (ii) 20% of the Index constituents are components of the Standard & Poor's/Investortools Bond Index that are rated Baa3, Baa2, or Baa1 by Moody's Investors Service, or BBB-, BBB, or BBB+ by Standard and Poor's or Fitch; and (iii) 10% of the Index constituents are components of the Standard & Poor's/Investortools Bond Index that are rated A3, A2, or A1 by Moody's Investor Services, or A-, A, or A+ by Standard & Poor's or Fitch. Bonds that have been escrowed will not be included in the Index. Prerefunded bonds will not be included in the Index. Where the ratings assigned by the agencies are not consistent, the Index will use the middle rating if three ratings are available, and the lower of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has previously approved listing and trading of Units based on certain fixed income indexes. *See, e.g.*, Securities Exchange Act Release No. 48662 (October 20, 2003), 68 FR 61535 (October 28, 2003) (SR–PCX–2003–41) (approving listing and trading pursuant to unlisted trading privileges ("UTP") of fixed income funds and the UTP trading of certain iShares® fixed income funds). In addition, the Commission has approved NYSE Arca generic listing rules for Units based on a fixed income index in Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36). The Commission has approved pursuant to Section 19(b)(2) of the Exchange Act the listing on the American Stock Exchange ("Amex") of exchange traded funds based on fixed income indexes. *See, e.g.*, Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003) (SR–Amex–2003–75) (order approving listing on Amex of eight series of iShares Lehman Bond Funds). In addition, the Commission has approved two actively managed funds of the PIMCO ETF Trust that hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (August 27, 2009) (SR–NYSEArca–2009–79) (order approving PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund, among others).

[4] Standard & Poor's Financial Services LLC is the Index Sponsor with respect to the Index. The Index Sponsor is not affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

[5] See the Trust's registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the Investment Company Act of 1940 (15 U.S.C. 80a), dated February 22, 2010 (File No. 333–57793 and 811–08839) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[6] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum principal amount outstanding of $100 million or more.

two ratings if only two ratings are available.[7]

As of December 20, 2010, there were approximately 21,141 issues included in the Index.

The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3[8] under the Exchange Act for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[9]

As of December 20, 2010, there were approximately 21,141 issues included in the Index and 46.47% of the weight of the Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Index was approximately $532.82 billion and the average dollar amount outstanding of issues in the Index was approximately $25.22 million. Further, the most heavily weighted component represents 0.86% of the weight of the Index and the five most heavily weighted components represent 2.52% of the weight of the Index.[10] Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2), the Index is sufficiently broad-based to deter potential manipulation, given that the Index is comprised of approximately 21,141 issues. In addition, the Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (46.47%) of the Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more; and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Index issues, as referenced above.

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.spdr.com*), as applicable.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 5.2(j)(3) and Commentary .02 thereto are intended 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 any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–120 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–2010–120. 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

[7] The Standard & Poor's/Investortools Municipal Bond Index is composed of bonds held by managed municipal bond fund customers of Standard & Poor's Securities Pricing, Inc. that are priced daily. Index calculations are provided by Investortools, Inc. Only bonds with total outstanding amounts of $2,000,000 or more qualify for inclusion. The Standard and Poor's/Investortools Municipal Bond High Yield Index is comprised of all bonds in the Standard and Poor's/Investortools Municipal Bond Index that are non-rated or whose ratings are BB+ S&P and/or BA–1 Moody's or lower. This index does not contain bonds that are prerefunded or are escrowed to maturity.

[8] 17 CFR 240.10A–3.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[10] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[11] 15 U.S.C. 78f(b)(5).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–120 and should be submitted on or before January 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33362 Filed 1–5–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63625; File No. SR–NYSEArca–2010–119]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Teucrium WTI Crude Oil Fund Under NYSE Arca Equities Rule 8.200

December 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 20, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 list and trade shares of the Teucrium WTI Crude Oil Fund under NYSE Arca Equities Rule 8.200. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").[3] The Exchange proposes to list and trade shares ("Shares") of the Teucrium WTI Crude Oil Fund (the "Fund") pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the Commission has previously approved the listing and trading of other issues of Trust Issued Receipts on the American Stock Exchange LLC,[4] trading on NYSE Arca pursuant to unlisted trading privileges ("UTP"),[5] and listing on NYSE Arca.[6] Among these is the Teucrium Corn Fund, a series of the Teucrium Commodity Trust ("Trust").[7] In addition, the Commission has approved other exchange-traded fund-like products linked to the performance of underlying commodities.[8]

The Shares represent beneficial ownership interests in the Fund, as described in the Registration Statement for the Fund.[9] The Fund is a commodity pool that is a series of the Trust, a Delaware statutory trust. The Fund is managed and controlled by Teucrium Trading, LLC ("Sponsor"). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association.

Teucrium WTI Crude Oil Fund

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in percentage terms of the Shares' net asset value ("NAV") reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for futures contracts for Western Texas Intermediate ("WTI") crude oil, also known as Texas Light Sweet crude oil ("Oil Futures Contracts") traded on the New York Mercantile Exchange ("NYMEX"), specifically (1) the nearest to spot June or December Oil Futures Contract, weighted 35%; (2) the June or December Oil Futures Contract following the aforementioned (1), weighted 30%; and (3) the December Oil Futures Contract following the aforementioned (2),[10] weighted 35%; before taking Fund expenses and interest income into account. This weighted average of the three referenced

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] See, e.g., Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39).

[5] See, e.g., Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73).

[6] See, e.g., Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91).

[7] See Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (order approving listing on the Exchange of Teucrium Corn Fund).

[8] See, e.g., Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (order granting accelerated approval for NYSE Arca listing the ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFS Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (order approving listing on NYSE Arca of the ETFS Platinum Trust).

[9] See registration statement on Amendment No. 1 to Form S–1 for Teucrium Commodity Trust, dated September 7, 2010 (File No. 333–167594) ("Registration Statement"). The discussion herein relating to the Trust and the Shares is based on the Registration Statement.

[10] See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2010.

Oil Futures Contracts is referred to herein as the "Oil Benchmark," and the three Oil Futures Contracts that at any given time make up the Oil Benchmark are referred to herein as the "Oil Benchmark Component Futures Contracts."[11]

The Fund seeks to achieve its investment objective by investing under normal market conditions in Oil Benchmark Component Futures Contracts or, in certain circumstances, in other Oil Futures Contracts traded on the NYMEX and to a lesser extent the IntercontinentalExchange ("ICE"). The Fund may also invest in other kinds of crude oil futures contracts traded on the NYMEX or ICE or on other domestic or foreign exchanges. In addition, and to a limited extent, the Fund will invest in crude oil-based swap agreements that are cleared through the NYMEX or ICE or their affiliated providers of clearing services ("Cleared Oil Swaps") in furtherance of the Fund's investment objective, and to the extent permitted and appropriate in light of the liquidity in the Cleared Oil Swaps market. Once position limits and accountability levels in Oil Futures Contracts are applicable, the Fund's intention is to invest first in Cleared Oil Swaps to the extent permitted by the position limits and accountability levels applicable to Cleared Oil Swaps and appropriate in light of the liquidity in the Cleared Oil Swaps market,[12] and then in contracts or instruments such as cash-settled options on Oil Futures Contracts and forward contracts, swaps other than Cleared Oil Swaps, and other over-the-counter transactions that are based on the price of crude oil and Oil Futures Contracts (collectively, "Other Oil Interests," and together with Oil Futures Contracts and Cleared Oil Swaps, "Oil Interests").[13] The circumstances under which such investments in Other Oil Interests may be utilized (*e.g.*, imposition of position limits or accountability levels) are discussed below.

Light Sweet Crude Oil Futures Contracts traded on the NYMEX are listed for the current year and the next 8 years. However, the nature of the Oil Benchmark is such that the Fund will not hold futures contracts beyond approximately the first 24 months of listed Oil Futures Contracts.[14]

It is the intent of the Sponsor to never hold the next-to-expire an Oil Benchmark Component Futures Contract (commonly called the "spot" contract). For example, in terms of the Oil Benchmark, in April of a given year, the Oil Benchmark Component Futures Contracts will be the contracts expiring in June (the first-to-expire Oil Benchmark Component Futures Contract), December (the second-to-expire Oil Benchmark Component Futures Contract), and June of the following year (the third-to-expire Oil Benchmark Component Futures Contract). Because the next-to-expire Oil Benchmark Component Futures Contract (the June contract) will become spot on the third-to-last trading day prior to the 25th calendar day in April, the Sponsor will "roll" or change that contract prior to the third-to-last trading day prior to the 25th calendar day in April for a position in December of the following year, not intending to hold any futures contract to spot.

According to the Registration Statement, the Fund seeks to achieve its investment objective primarily by investing in Oil Interests such that daily changes in the Fund's NAV will be expected to closely track the changes in the Oil Benchmark. The Fund's positions in Oil Interests will be changed or "rolled" on a regular basis in order to track the changing nature of the Oil Benchmark. For example, two times a year (in the month in which an Oil Benchmark Component Futures Contract is set to become the first-to-expire Oil Futures Contract listed on NYMEX), the first-to-expire Oil Benchmark Component Contract will become the next-to-expire (spot) Oil Futures Contract and will no longer be an Oil Benchmark Component Futures Contract, and the Fund's investments will have to be changed accordingly. In order that the Fund's trading does not cause unwanted market movements and to make it more difficult for third parties to profit by trading based on such expected market movements, the Fund's investments typically will not be rolled entirely on that day, but will typically be rolled over a period of several days.

Consistent with achieving the Fund's investment objective of closely tracking the Oil Benchmark, the Sponsor may for certain reasons cause the Fund to enter into or hold Oil Futures Contracts other than Oil Benchmark Component Futures Contracts, Cleared Oil Swaps and/or Other Oil Interests. For example, certain Cleared Oil Swaps have standardized terms similar to, and are priced by reference to, a corresponding Oil Benchmark Component Futures Contract. Additionally, Other Oil Interests that do not have standardized terms and are not exchange-traded can generally be structured as the parties to the Oil Interest contract desire. Therefore, the Fund might enter into multiple Cleared Oil Swaps and/or over-the-counter Other Oil Interests intended to exactly replicate the performance of each of the three Oil Benchmark Component Futures Contracts, or a single over-the-counter Other Oil Interest designed to replicate the performance of the Oil Benchmark as a whole. According to the Registration Statement, assuming that there is no default by a counterparty to an over-the-counter Other Oil Interest, the performance of the Other Oil Interest will necessarily correlate exactly with the performance of the Oil Benchmark or the applicable Oil Benchmark Component Futures Contract.[15] The Fund might also enter into or hold Other Oil Interests to facilitate effective trading, consistent with the discussion of the Fund's "roll" strategy in the preceding paragraph. In addition, the Fund might enter into or hold Oil Interests that would be expected to alleviate overall deviation between the Fund's performance and that of the Oil Benchmark that may result from certain

[11] Western Texas Intermediate crude oil futures volume on NYMEX for 2009 and 2010 (through November 30, 2010) was 137,352,118 contracts and 156,155,620 contracts, respectively. As of November 30, 2010, NYMEX open interest for Western Texas Intermediate crude oil was 1,342,325 contracts, and open interest for near month futures was 323,184 contracts. The contract price was $84,110 ($84.11 USD per barrel and 1,000 barrels per contract). The approximate value of all outstanding contracts was $112.9 billion. The position limits for all months is 20,000 contracts and the total value of contracts if position limits were reached would be approximately $1.68 billion (based on the $84.11 contract price). Western Texas Intermediate crude oil futures are also traded on ICE and the Singapore Mercantile Exchange.

[12] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 27, 2010.

[13] The Commission has previously approved listing of similar funds which held forward contracts or swaps on the American Stock Exchange ("Amex") and NYSE Arca. *See, e.g.*, Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (order approving Amex listing of United States Oil Fund, LP); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR–Amex–2007–70) (order approving Amex listing of United States Heating Oil Fund, LP and United States Gasoline Fund, LP); 61881 (April 9, 2010), 75 FR 20028 (April 16, 2010) (SR–NYSEArca–2010–14) (order approving listing and trading of United States Brent Oil Fund, LP); and 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (order approving listing and trading of United States Commodity Index Fund).

[14] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2010.

[15] According to the Registration Statements [sic], the Fund faces the risk of non-performance by the counterparties to over-the-counter contracts. Unlike in futures contracts, the counterparty to these contracts is generally a single bank or other financial institution, rather than a clearing organization backed by a group of financial institutions. As a result, there will be greater counterparty credit risk in these transactions.

market and trading inefficiencies or other reasons.

The Fund invests in Oil Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Oil Interests.[16] After fulfilling such margin and collateral requirements, the Fund will invest the remainder of its proceeds from the sale of baskets in obligations of the United States Government ("Treasury Securities") or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). Therefore, the focus of the Sponsor in managing the Fund is investing in Oil Interests and in Treasury Securities, cash and/or cash equivalents. The Fund will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through each Fund's custodian, the Bank of New York Mellon (the "Custodian" and the "Administrator").

The Sponsor endeavors to place the Fund's trades in Oil Interests and otherwise manage the Fund's investments so that the Fund's average daily tracking error against the Oil Benchmark will be less than 10 percent over any period of 30 trading days. More specifically, the Sponsor will endeavor to manage the Fund so that A will be within plus/minus 10 percent of B, where A is the average daily change in the Fund's NAV for any period of 30 successive valuation days, *i.e.*, any trading day as of which the Fund calculates its NAV, and B is the average daily change in the Oil Benchmark over the same period.[17]

According to the Registration Statement, the Sponsor employs a "neutral" investment strategy intended to track the changes in the Oil Benchmark regardless of whether the Oil Benchmark goes up or down. The Fund's "neutral" investment strategy is designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing indirectly in crude oil in a cost-effective manner. Such investors may include participants in the crude oil market and other industries seeking to hedge the risk of losses in their crude oil-related transactions, as well as investors seeking exposure to the crude oil market. The Sponsor does not intend to operate the Fund in a fashion such that its per share NAV will equal, in dollar terms, the spot price of a barrel of WTI light, sweet crude oil or the price of any particular Oil Futures Contract.

The CFTC and U.S. designated contract markets such as the NYMEX have established accountability levels and position limits on the maximum net long or net short futures contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge) may hold, own or control. For example, the current accountability level for investments at any one time is 20,000 Oil Futures Contracts. While this is not a fixed ceiling, it is a threshold above which the NYMEX may exercise greater scrutiny and control over an investor, including limiting an investor to holding no more than 20,000 Oil Future Contracts. With regard to position limits, the NYMEX limits an investor from holding more than 3,000 net futures in the last 3 days of trading in the near month contract to expire. The Fund, however, does not believe the current position limits imposed by the NYMEX will have any impact on the Fund.[18]

In addition to accountability levels and position limits, the exchanges set price fluctuation limits on futures contracts. For Oil Futures Contracts, the price fluctuation limit establishes the maximum amount that the price of futures contracts may vary either up or down from the previous day's settlement price or from the price at which the limit was last imposed. When a price fluctuation limit has been reached for a particular futures contract, no trades may be made at a price beyond that limit.[19]

The Fund does not intend to limit the size of the offering and will attempt to expose substantially all of its proceeds to the oil market utilizing Oil Interests. If the Fund encounters position limits, accountability levels, or price fluctuation limits for Oil Futures Contracts on the NYMEX or Cleared Oil Swaps on the NYMEX or ICE, it may then, if permitted under applicable regulatory requirements, purchase Other Oil Interests, including oil futures contracts listed on foreign exchanges. However, the oil futures contracts available on such foreign exchanges may have different underlying sizes, deliveries, and prices. The crude oil futures contracts available on such foreign exchanges may be subject to their own position limits and accountability levels. In any case, notwithstanding the potential availability of these instruments in certain circumstances, position limits and accountability levels could force the Fund to limit the number of Creation Baskets (as defined below) that it sells.

Creation and Redemption of Shares

The Fund creates and redeems Shares only in blocks called Creation Baskets and Redemption Baskets, respectively, each consisting of 25,000 Shares. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets. An Authorized Purchaser is under no obligation to create or redeem baskets, and an Authorized Purchaser is under no obligation to offer to the public Shares of any baskets it does create. Baskets are generally created when there is a demand for Shares, including, but not limited to, when the market price per share is at (or perceived to be at) a premium to the NAV per share. Similarly, baskets are

[16] The Sponsor represents that the Fund will invest in Oil Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

[17] The Sponsor believes that market arbitrage opportunities will cause the Fund's Share price on the NYSE Arca to closely track the Fund's NAV per share. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between the Fund's NAV and the Benchmark will be that the changes in the price of the Fund's Shares on the NYSE Arca will closely track, in percentage terms, changes in such Benchmark, less expenses.

[18] As stated in the Fund's Registration Statement, on July 21, 2010, "The Dodd-Frank Wall Street Reform and Consumer Protection Act" ("Dodd-Frank Act") was signed into law. This new law contains broad changes to the financial services industry including provisions changing the regulation of commodity interests. Such changes include the requirement that position limits on energy-based commodity futures contracts be established; new registration, recordkeeping, capital and margin requirements for "swap dealers" and "major swap participants"; the forced use of clearinghouse mechanisms for most over-the-counter transactions; and the aggregation, for purposes of position limits, of all positions in energy futures held by a single entity and its affiliates, whether such positions exist on U.S. futures exchanges, non-U.S. futures exchanges, or in over-the-counter contracts; and the aggregation, for purposes of position limits, of all positions in energy futures held by a single entity and its affiliates, whether such positions exist on U.S. futures exchanges, non-U.S. futures exchanges, or in over-the-counter contracts. The CFTC has announced that in accord with the significant amendments introduced to the Commodity Exchange Act of 1936 ("CEA") (7 U.S.C. 1) by the Dodd-Frank Act, the CFTC plans to issue a notice of rulemaking proposing position limits for regulated exempt commodity contracts, including energy commodity contracts, as directed by the CEA. *See* Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 FR 50950 (August 18, 2010).

[19] More specifically, the NYMEX imposes a $10.00 per barrel ($10,000 per contract) price fluctuation limit for Oil Futures Contracts. This limit is initially based off of the previous trading day's settlement price. If any Oil Futures Contract is traded, bid or offered at the limit for five minutes, trading is halted for five minutes. When trading resumes it begins at the point where the limit was imposed and the limit is reset to be $10.00 per barrel in either direction of that point. If another halt were triggered, the market would continue to be expanded by $10.00 per barrel in either direction after each successive five-minute trading halt. There is no maximum price fluctuation limit during any one trading session.

generally redeemed when the market price per share is at (or perceived to be at) a discount to the NAV per share. Retail investors seeking to purchase or sell Shares on any day are expected to effect such transactions in the secondary market, on the NYSE Arca, at the market price per share, rather than in connection with the creation or redemption of baskets.

The total deposit required to create each basket ("Creation Basket Deposit") is the amount of Treasury Securities and/or cash that is in the same proportion to the total assets of each Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the purchase order date. The redemption distribution from each Fund will consist of a transfer to the redeeming Authorized Purchaser of an amount of Treasury Securities and/or cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

Purchase or redemption orders for Creation and Redemption Baskets must be placed by 12 p.m. E.T. or the close of regular trading on the New York Stock Exchange, whichever is earlier.

The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 [20] under the Act, the Trust relies on the exception contained in Rule 10A–3(c)(7).[21] A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

A more detailed description of Oil Interests as well as investment risks, are set forth in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Net Asset Value

The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.[22] With respect to the Teucrium WTI Crude Oil Fund, in determining the value of Oil Futures Contracts, the Administrator will use the NYMEX closing price (usually determined as of 2:30 p.m. E.T.). The value of over-the-counter Oil Interests will be determined based on the value of the commodity or futures contract underlying such Oil Interest, except that a fair value may be determined if the Sponsor believes that the Fund is subject to significant credit risk relating to the counterparty to such Oil Interest.

Treasury Securities held by the Fund will be valued by the Administrator using values received from recognized third-party vendors and dealer quotes. NAV will include any unrealized profit or loss on open Oil Interests and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

The Exchange also will disseminate on a daily basis via the Consolidated Tape Association ("CTA") information with respect to recent NAV, and shares outstanding. The Exchange will also make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and the corresponding NAV.

Availability of Information Regarding the Shares

The Web site for the Fund (*http://www.teucriumoilfund.com*) and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per share daily and the prior business day's NAV and the reported closing price; (b) the midpoint of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) the bid-ask price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the prospectus; and (g) other applicable quantitative information. The Fund will also disseminate Fund's holdings on a daily basis on the Fund's Web site.

The closing price and settlement prices of the Oil Futures Contracts are also readily available from the NYMEX (*http://www.cmegroup.com*) and ICE (*http://www.theice.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Oil Benchmarks [sic] will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. E.T. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.nyse.com* to each Fund's Web site, which will display all intraday and closing Oil Benchmark levels, the intraday Indicative Trust Value (*see* below), and NAV.

In addition, various data vendors and news publications publish futures prices and data. The Exchange represents that quotation and last sale information for the Oil Futures Contracts are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for the Oil Futures Contracts is available by subscription from Reuters and Bloomberg. The NYMEX and ICE also provide delayed futures information on current and past trading sessions and market news free of charge on their Web sites. The specific contract specifications for the futures contracts are also available at the NYMEX and ICE Web sites, as well as other financial informational sources. The spot price of WTI Crude Oil also is available on a 24-hour basis from major market data vendors. Price and volume information for cleared swaps is available from major market data vendors and on the NYMEX Web site.

The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price and market value of Financial Instruments held by the Fund and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. This Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same

[20] 17 CFR 240.10A–3.

[21] 17 CFR 240.10A–3(c)(7).

[22] The NAV will be calculated by taking the current market value of the Fund's total assets and subtracting any liabilities. Under the Fund's current operational procedures, the Administrator will calculate the NAV of the Fund's Shares as of the earlier of 4 p.m. Eastern Time ("E.T.") or the close of the New York Stock Exchange (ordinarily, 4 p.m. E.T.) each day. NYSE Arca will calculate an approximate net asset value every 15 seconds throughout each day that the Fund's Shares are traded on the NYSE Arca for as long as NYMEX's main pricing mechanism is open.

time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site.

Dissemination of Indicative Trust Value

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Indicative Trust Value ("ITV") will be calculated. The ITV is calculated by using the prior day's closing NAV per share of the Fund as a base and updating that value throughout the trading day to reflect changes in the value of the applicable Oil Benchmark Component Futures Contracts. As stated in the respective Registration Statements [sic], changes in the value of over-the-counter Oil Interests, Treasury Securities and cash equivalents will not be included in the calculation of the ITV. The ITV disseminated during NYSE Arca trading hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day.

The ITV will be disseminated on a per Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session. The normal trading hours for Oil Futures Contracts on NYMEX are 9 a.m. to 2:30 p.m. E.T. The ITV will not be updated, and, therefore, a static ITV will be disseminated, between the close of trading on NYMEX of Oil Futures Contracts and the close of the NYSE Arca Core Trading Session. The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and the NYMEX and ICE when the Shares are traded on NYSE Arca after normal trading hours of Oil Futures Contracts.

The Exchange believes that dissemination of the ITV provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule[23] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the ITV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the ITV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYMEX and ICE, which are members of the Intermarket Surveillance Group ("ISG"). A list of ISG members is available at *http://www.isgportal.org*.[24]

In addition, with respect to the Fund's futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the ITV is

[23] *See* NYSE Arca Equities Rule 7.12.

[24] The Exchange notes that not all Oil Interests may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of Oil Futures Contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Fund and that the NAV for the Shares is calculated after 4 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Fund is publicly available on the Fund's Web site.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5),[26] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Equities Rule 8.200 are intended to protect investors and the public interest.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–119 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—2010–119. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–119 and should be submitted on or before January 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33363 Filed 1–5–11; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63626; File No. SR–Phlx–2010–185]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pilot Program for Cabinet Trading Below $1.00 Per Contract Until June 1, 2011

December 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on December 21, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 To Amend [sic]π

Exchange Rule 1059 to allow cabinet trading to take place below $1 per option contract.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow cabinet trading to take place below $1 per option contract. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades.[3]

The purpose of this rule change is to temporarily amend the procedures through June 1, 2011 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower priced transactions would be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions would only be permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures would also be made available for trading in options participating in the Penny Pilot Program.

The Exchange believes that allowing a price of at least $0 but less than $1 will better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might now be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out its position even at the $1 cabinet price (*e.g.*, the series might be quoted no bid).

Exchange Rule 1059 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange. A specialist registered in each class of option contracts supervises the operation of the cabinet for that class. Only closing limit orders at a price of $1 per option contract for the accounts of customer, firm, specialists and Registered Options Traders ("ROTs") may be placed in the cabinet.[4]

All orders placed in the cabinet are assigned priority based upon the sequence in which such orders are received by the specialist. All closing bids and offers must be submitted to the specialist in writing, and the specialist shall effect all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and ROTs may be made at $1 per option contract, but such orders may not be placed in and must yield to all orders in the cabinet. Specialists effect all cabinet transactions by matching closing purchase or sale orders which have been placed in the cabinet or, provided there is no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.[5] All cabinet transactions are reported to the Exchange following the close of each business day.[6]

Notwithstanding the provisions of Rule 132, any (i) member, (ii) member organization, or (iii) other person who is a non-member broker or dealer and who directly or indirectly controls, is controlled by, or is under common control with, a member or member organization (any such other person being referred to as an affiliated person) may effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the Exchange for a premium not in excess of $1.00 per contract.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or

[3] Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the market.

[4] Orders must be submitted to the specialist in writing.

[5] Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

[6] *See* Exchange Rule 1059.

[7] *See* U.S.C. 78f(b).

[8] *See* U.S.C. 78f(b)(5a).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[11]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission hereby grants the request. The Commission notes that the proposal is nearly identical to the rules of another exchange.[12] Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay 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 summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

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–Phlx–2010–185 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–Phlx–2010–185. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–185 and should be submitted on or before January 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33364 Filed 1–5–11; 8:45 am]

BILLING CODE 8011–01–P

[11] In addition, Rule 19b–4(f)(6) provides that the Exchange must provide the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See* CBOE Rule 6.54, Interpretations and Policies .03.

[13] 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).

[14] 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63627; File No. SR–Phlx–2010–153]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change To Update and Streamline the Process for Specialist Evaluations and Clarify the Time Within Which SQTs and RSQTs Must Begin To Electronically Quote After Assignment

December 30, 2010.

I. Introduction

On November 5, 2010, the NASDAQ OMX PHLX LLC ("Phlx" 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 update and streamline the process for specialist evaluations and clarify the time within which Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs") must begin to electronically quote after assignment. The proposed rule change was published for comment in the **Federal Register** on November 17, 2010.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to amend Phlx By-Law Article XI Section 11–1; Rules 507, 508, 510, 511, and 515; and OFPA C–8 to revise the process the Exchange will use to assess specialist performance, as well as to ensure timely electronic quotations by SQTs and RSQTs and the ability of the Exchange to control allocation transfers.

Rules 500 through 599 (the "Allocation and Assignment Rules") generally describe the process for: application for becoming and appointment of specialists; allocation of classes of options to specialist units and individual specialists;[4] application for becoming and approval of SQTs[5] and RSQT[6] (collectively, the "Streaming Quote Traders")[7] and assignment of options to them; and performance evaluations for specialist units and SQTs. The Allocation and Assignment Rules also indicate, among other things, under what circumstances new specialist allocations and Streaming Quote Trader assignments may not be made.

Rules 511 and 515 deal with specialist evaluations and certain allocation procedures. Currently, Rule 511

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63305 (November 10, 2010), 75 FR 70331 ("Notice").

[4] A specialist unit may have one or more individual specialists. *See* proposed Supplementary Material .05 to Rule 511.

[5] An SQT is a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Rule 1014(b)(ii)(B).

[7] SQTs also include Directed SQTs ("DSQTs") and Directed RSQTs ("DRSQTs"), which are SQTs and RSQTs that receive a Directed Order. Exchange Rule 1080(l)(i)(A) defines Directed Order.

indicates, among other things, that specialist performance evaluations may be used to inform Exchange decisions regarding allocating new options classes, reallocating options classes for substandard performance, determining whether a specialist that has been transferred an options class is performing adequately, and determining whether a staff reorganization or material change with respect to a specialist unit has affected the ability of the unit to continue to perform adequately in order to retain allocated securities. Rule 511 also discusses the process and timing for doing routine and special (cause) evaluations and reviews.

Currently, Rule 515 discusses specialist performance evaluations for options specialists and indicates, among other things, the timing and frequency of evaluations. The criterion to evaluate specialists may include, but is not limited to, quality of markets, observance of ethical standards, administrative responsibilities, and trade correction and exemptive relief data. Rule 515, as well as OFPA C–8, also discusses the use of floor broker questionnaires in the specialist evaluation process, which asks floor brokers their opinions of specialist performance.[8]

The Exchange now proposes to consolidate Rules 511 and 515 into a combined Rule 511 and to adopt for specialist units[9] an objective review process that is similar to the process currently in use for Streaming Quote Traders per current Rule 510. The Exchange also proposes to relocate portions of the existing evaluation process from Rule 515 into Rule 511. As such, there would be two types of specialist evaluations or reviews per revised Rule 511: (i) Routine Specialist Performance Evaluations, which would be conducted on at least an annual basis, and would take into account any Minimum Performance Reviews conducted by the Exchange; and (ii) Special Circumstance Evaluations, which may be conducted on an ad hoc basis.

Further, the Exchange proposes changes to Rule 511 so that specialist suspension, termination, or restriction of allocations in one or more options may occur after two or more consecutive sub-standard Minimum Performance Reviews or after Special Circumstance Evaluations and after written notice. As discussed below, following substandard minimum performance, a specialist unit may have an opportunity for an informal meeting with Exchange staff. Moreover, the proposed rules provide the circumstances under which a specialist or specialist unit[10] may appeal, after filing a written notice of appeal with the Exchange, from a decision of the Exchange following a Minimum Performance Review or a Special Circumstance Evaluation in accordance with Exchange By-Law Article XI, Section 11–1.[11]

Routine Specialist Performance Evaluations

Routine Specialist Performance Evaluations pursuant to proposed Rule 511(c) would be conducted at annual (or more frequent) intervals to determine whether specialists have fulfilled performance standards that may include, but are not limited to, trade correction data, exemptive relief data, quality of markets data, proper execution of duties as a specialist unit, competition among market makers and in representing the Exchange as specialist unit, observance of ethical standards, and administrative factors. The Exchange also may consider, when doing routine evaluations, any other relevant information including, but not limited to, trading data, regulatory history, the number of requests for quote spread parameter relief, how a specialist unit optimizes the submission of quotes through the Specialized Quote Feed as defined in Rule 1080 by evaluating the number of individual quotes per quote block received by the Exchange, and such other factors and data as may be pertinent in the circumstances.

The Exchange also proposes to establish new minimum performance standards for specialist units.[12] Specifically, new Rule 511(d) proposes minimum acceptable performance standards for specialist units using the following criteria: (i) The percentage of time that the specialist unit represents or exceeds the Phlx Best Bid or Offer ("PBBO") in the options allocated to the unit[13] and (ii) quoting requirements of specialist units pursuant to Rule 1014.[14] If the percentage of the total time that the options allocated to a specialist unit represent or exceed the PBBO is in the lowest quartile of all specialist units for two or more consecutive months, this may be considered sub-standard performance, that is, performance that does not attain minimum performance standards. If a specialist unit fails to meet the quoting requirements as prescribed by Rule 1014, this may be considered sub-standard performance.

The Exchange proposes a process that would allow a specialist to meet with Exchange staff regarding alleged sub-standard performance. Specifically, the Exchange proposes in new Rule 511(d)(ii) that if the Exchange finds that a specialist unit failed to meet Minimum Performance Standards, it would provide written notice to the unit. Pursuant to new Rule 511(d)(iii), the specialist unit may request and the Exchange may hold an informal meeting with the head specialist and any other appropriate specialist of the specialist unit to discuss the failure to meet

[8] The Exchange currently presumes that a specialist unit performed below minimum standards if the specialist unit was rated in the bottom 10% of all units in the aggregate results for all questionnaires.

[9] Proposed Supplementary Material .05 to Rule 511 states that reference to specialist unit within Rule 511 means the unit as a whole or any subpart of its operation that is acting in a specialist capacity on the Exchange and is subject to evaluation; and that a specialist unit may have one or more individual specialists. As such, individual specialist actions may be attributable to relevant specialist units in respect of matters discussed in this proposal such as evaluations. The proposed language in Rule 511 was moved from Rule 515 and updated to reflect current usage.

[10] In proposed Rule 511(d) and Rule 511(e), a specialist has the right to request an appeal on behalf of his specialist unit.

[11] By-Law Article XI Section 11–1(c) states that an appeal shall be heard by a special committee of the Board of Governors composed of three (3) Governors, of whom at least one (1) shall be an Independent Governor. The person requesting review may appeal by filing a written notice thereof with the Secretary of the Exchange within ten (10) days after a decision. The person requesting review shall be permitted to submit a written statement to and/or appear before this special committee. The Secretary of the Exchange shall certify the record of the proceeding, if any and the written decision and shall submit these documents to the special committee. The special committee's review of the action shall be based solely on the record, the written decision and any statement submitted by the person requesting the review. The special committee shall prepare and deliver to such person a written decision and reasons therefor. If the special committee affirms the action, the action shall become effective ten (10) days from the date of the special committee's decision. There shall be no appeal to the Board of Governors from any decision of the special committee.

The Exchange is correcting a reference in By-Law Article XI Section 11–1(c) from Rule 511(e) to Rule 511(d) or (e), in light of the internal numbering changes proposed in Rule 511; and cross-referencing Rule 507, which notes the availability of the appeal process.

[12] For consistency, the Exchange proposes appeal language in Rules 510 and 511 that is similar, in relevant part, to that of Rule 507: An appeal to the Board of Governors from a decision of the Exchange * * * may be requested * * * by filing with the Secretary of the Exchange written notice of appeal within ten (10) days after the decision has been rendered, in accordance with Exchange By-Law Article XI, Section 11–1.

[13] In that the Exchange would specifically establish a measure of specialist performance on Phlx, the Exchange would change the requirement to PBBO from NBBO (National Best Bid or Offer). A reference in Commentary .01 of Rule 510 would similarly be changed to PBBO for the sake of conformity.

[14] This rule change proposal would make no changes to current quoting requirements for specialists delineated in Rule 1014.

minimum standards and to explore possible remedies. The Exchange would give notice of the meeting and no verbatim record would be kept. If, after receiving such notice from the Exchange, the specialist unit refuses or otherwise fails without reasonable justification to meet with the Exchange, the Exchange may refer the matter to the Exchange's Business Conduct Committee for the commencement of formal disciplinary proceedings. If the Exchange believes there are no mitigating circumstances that would demonstrate substantial improvement of or reasonable justification for the failure to meet minimum standards, the Exchange could take remedial action pursuant to Rule 511(d)(ii).

The Exchange proposes in Rule 511(d)(ii) that if it finds sub-standard minimum performance by a specialist unit, the Exchange may take the following remedial actions: (i) Restriction of allocations in additional options (subsection (d)(ii)(A)); (ii) suspension, termination, or restriction of allocations in one or more options (subsection (d)(ii)(B)); or (iii) suspension, termination, or restriction of the specialist or specialist unit's registration in general (subsection (d)(ii)(C)). Specialist units or specialists therein may appeal to the Board of Governors from a decision of the Exchange pursuant to subsection (d)(ii)(B) or subsection (d)(ii)(C) by filing the requisite notice of appeal. Under the proposal, Minimum Performance Reviews would be conducted at least annually but may be conducted more frequently, including at monthly intervals.

The Exchange also proposes to eliminate the floor broker questionnaire. The Exchange believes that the questionnaire, which is subjective in nature and not based on data, provides limited value in the Exchange's current specialist review process. Instead, the Exchange believes that the proposed revised specialist performance evaluations it now proposes will better inform the evaluation process and make it increasingly data-based, thereby rendering the floor broker questionnaires unnecessary.

Special Circumstance Evaluations

Under the proposal, the Exchange may also, but is not required to, conduct Special Circumstance Evaluations pursuant to proposed Rule 511(e) whenever the Exchange believes that circumstances warrant such reviews. For example, a Special Circumstance Evaluation may be conducted if a specialist unit's performance appeared to be so deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining efficient, fair and orderly markets. Special Circumstance Evaluations also may be conducted within six months of new allocations [15] and within four months of transfers of allocations to specialist units.[16] Special Circumstance Evaluations may incorporate the same review methodology and procedures as established for routine Specialist Performance Evaluations or Minimum Performance Reviews. However, Special Circumstance Evaluations may instead (or in addition) examine such other matters related to a specialist unit's performance as the Exchange deems necessary and appropriate.

The Exchange may determine, pursuant to a Rule 511 Special Circumstance Evaluation, that a specialist unit that received a new allocation has not complied with the commitments that it made when applying for the options class, including, but not limited to, commitments regarding capital, personnel and order flow (subsection (e)(i)(A)) or that the performance of a specialist unit was inadequate after the transfer of one or more options classes or when there has been a material change in the specialist unit (subsection (e)(i)(B)). After the Exchange indicates to the applicable specialist unit why its performance is inadequate, the specialist unit would be afforded thirty days in which to improve its performance. If the specialist unit does not improve its performance, the Exchange may, after written notice, remove and reallocate one or more securities that were allocated to such unit. Specialist units and specialists therein may appeal to the Board of Governors from a decision of the Exchange pursuant to proposed subsection (e)(ii) by filing the requisite notice of appeal.[17]

Additionally, the proposed rules establish limits on the allocation of new options to specialist units that fail to perform adequately. Under proposed Rule 511(e)(iii), if a specialist allocation in an option is terminated as a result of a Special Circumstance Evaluation, the specialist unit may not receive an allocation (or re-allocation) in the terminated option or options for a period not to exceed six months. Similarly, under proposed Rule 511(d)(v), if an allocation is terminated because a specialist exhibits sub-standard performance in terms of best bid and offer or in terms of quoting requirements, such specialist may not receive an allocation (or re-allocation) in the terminated option or options for a period not to exceed six months; and if an allocation is terminated because a specialist unit exhibits sub-standard performance in terms of minimum quoting requirements per Rule 1014, such specialist unit may not receive an allocation (or re-allocation) in the terminated option or options for a period not to exceed twelve months.

As discussed, all specialists and specialist units would have the right to appeal from an Exchange decision that was taken pursuant to a Specialist Evaluation or a Special Circumstance Evaluation. Moreover, the Exchange would provide written notice regarding the lack of adequate performance and give specialist units an opportunity to discuss performance before the Exchange would take remedial action.

In Rule 510 (regarding SQTs and RSQTs) and Rule 511 (regarding specialists), the Exchange proposes to eliminate the right to appeal from an Exchange's determination to restrict additional options allocations based on failure to meet minimum performance requirements. The Exchange believes that a formal appeal process for restriction of allocations or assignments in additional (not currently allocated or assigned) options, which would require a 10 day notice period followed by a potentially lengthy appeals proceeding, is not necessary and may be counterproductive in light of the Exchange's desire to efficiently allocate or assign additional options on a timely basis.

Assignment in Options

Rule 507 deals with the process of applying for approval as an SQT or RSQT on the Exchange and assignment of options to SQTs and RSQTs.[18] The Exchange proposes to add new Commentary .01 to Rule 507 to state that within not more than thirty business days after assignment of an option pursuant to this rule, an assigned SQTs

[15] For purposes of conformity with the proposed six month period, 90 days would be changed to 180 days (six months) in Rule 511(b).

[16] While Special Circumstance Evaluations are optional during the noted four month and six month periods, the Exchange also may conduct separate Minimum Performance Reviews during that period.

[17] *See supra* note 11.

[18] Rule 507 also defines the Maximum Number of Quoters ("MNQ") in equity options, which establishes the greatest number of SQT and RSQT assignments that the Exchange may make in a particular class of option. MNQ in equity options is currently set in Commentary .02 to Rule 507 at no more than: (i) Twenty-four market participants (SQTs and RSQTs) for equity options in the top 5% most actively traded options; (ii) nineteen market participants for the next 10% most actively traded options; (iii) and seventeen market participants for all other options.

or RSQTs shall begin to generate and submit electronic quotations for such option through the Exchange's electronic quotation, execution, and trading system. Should an assigned SQT or RSQT not generate electronic quotes within the requisite time frame, the Exchange would have the ability to terminate the assignment in question after providing written notice to the assigned SQT or RSQT, and make a re-assignment, unless there are exigent circumstances that the Exchange believes may not have allowed timely generation and submission of electronic quotes.

Transfer of Allocated Option Classes

Rule 508 deals with agreements between specialist units to transfer one or more options classes that are already allocated by the Exchange to one of such units. Currently, Rule 508 states that failure to provide the Exchange with prior notice of an arranged (agreed-upon) transfer of one or more already allocated options classes in accordance with this rule permits the Exchange to reallocate such options classes. Pursuant to the proposed change, Rule 508 would state that failure to provide the Exchange prior notice of a transfer in accordance with this Rule, or failure to obtain Exchange approval of a transfer, would permit the Exchange to recover the allocated securities and reallocate them. The Exchange believes that this is appropriate given that the Exchange initially makes the allocation of the option class after evaluating the relevant factors, and should continue to have a similar ability to evaluate the propriety of subsequent transfer of the same option class.

The Exchange proposes to delete Commentary .01 to Rule 508 that currently indicates that no member may effect a change in the floor trading location of any equity option or index option class until forty-five calendar days after final approval of the change by the Exchange has been disseminated to the option floor. The Exchange believes that the 45-day period is unnecessarily long in light of the current fast-paced trading environment. In addition, the Exchange proposes technical rule changes to ensure conformity of rule language and delete references that are obsolete or no longer in use. The reference to Registrant would be changed to specialist or specialist unit in Rules 508 and 511, and the reference to "grant" would be changed to "allocate" in Rule 511 for purposes of conformity.[19] The Exchange further proposes to remove the reference to initial implementation of the existing rule in Commentary .02 of Rule 510. The Exchange also proposes to make conforming changes in Rule 511 in light of the changes to Rule 515.

[19] The Exchange notes that this change in terminology conforms it to current usage.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[20] and, in particular, the requirements of Section 6(b) of the Act[21] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[22] 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.

The Commission believes that the Exchange's proposal updates its specialist evaluation process to make it more objective and more consistent with the process used for other Streaming Quote Traders. While the Exchange is changing its process for evaluating specialists, it is not proposing any changes to existing specialist obligations, including the quoting requirements for specialists delineated in Rule 1014. Further, though the Exchange would replace the current formal appeal and hearing process with a more informal hearing process in the context of alleged failure of performance, it would retain an opportunity for the specialist or specialist unit to be heard on the matter before the Exchange takes remedial action. In addition, the Exchange would preserve the requirement to provide advance written notice to a specialist or a specialist unit to inform it of its right to appeal an Exchange's decision regarding a specialist's failure to meet the minimum performance standards. Accordingly, the Commission believes the streamlined specialist evaluation procedures are reasonable and will allow the Exchange to monitor and review specialist performance in the interests of ensuring compliance with all applicable requirements.

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

Further, the Commission believes that the proposed time requirement for a SQT or a RSQT to electronically quote, *i.e.*, within thirty business days after assignment, is reasonable. This provision will allow the Exchange to ensure that new appointments are utilized promptly and would enable the Exchange to, in the absence of exigent circumstances, reassign those options after a written notice is provided to the previously assigned SQT or RSQT.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2010–153) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33365 Filed 1–5–11; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 7, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Application for Survivors Benefits—20 CFR 404.611(a) and (c)—0960–0062. Surviving family members of armed services personnel can file for Social Security and Veterans benefits at SSA or the Veterans Administration (VA). Applicants file for title II survivor benefits at the VA by completing Form SSA–24. The VA forwards Form SSA–24 to SSA for processing. SSA uses the information to determine eligibility for benefits. The respondents are survivors of deceased armed services personnel who are applying for benefits at the VA.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,200.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 800 hours.

2. Request for Medical Treatment in an SSA Employee Health Facility: Patient Self-Administered or Staff-Administered Care — 0960–0772 — SSA's Employee Health Clinic (EHC) provides emergency care, treatment of on-the-job illnesses and injuries, and health care for employees with chronic medical conditions and allergies who require allergy antigens. SSA also permits employees to use the EHC for self-administration of medical treatments for a chronic health condition. SSA collects information on Form SSA–5072 to approve or deny requests for medical treatment in an SSA EHC. The respondents are the private physicians of the SSA employees seeking medical treatment in an SSA EHC.

Type of Request: Revision of an OMB-approved information collection.

Medication dosage changes	Number of respondents	Frequency of response	Total number of responses	Average burden per response (minutes)	Estimated annual burden (hours)
Annually	25	1	25	5	2
Bi-Annually	75	2	150	5	13
Totals	100		175		15

Dated: December 31, 2010.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–1 Filed 1–5–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7287]

Bureau of Nonproliferation; Determination Under the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for Arms Control and International Security has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: December 29, 2010.

Vann H. Van Diepen,

Acting Assistant Secretary of State for Nonproliferation.

[FR Doc. 2011–22 Filed 1–5–11; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Heber Valley Railroad

[Waiver Petition Docket Number FRA–2010–0156]

The Heber Valley Railroad (HVRR) seeks a waiver of compliance from certain provisions of 49 CFR Part 215, Railroad Freight Car Safety Standards, specifically, 49 CFR 215.303 (Stenciling of Restricted Cars), which requires that restricted railroad freight cars shall be stenciled or marked in clearly legible letters with the letter "R" and a series of designated terms to completely indicate the basis for the restricted operation of the car. In addition, HVRR seeks a waiver of compliance from all of 49 CFR Part 224 (Reflectorization of Rail Freight Rolling Stock).

The waiver petition concerns HVRR 366, which is a former Santa Fe (AT&SF) railroad flat car of riveted construction built in 1951, which has been converted to passenger service for tourist and excursion railroad service by the addition of walls, roof, and bench seats to allow passengers to sit in the open air for tourist train rides. HVRR 366 is more than 50 years old, measured from the date of original construction, and is requested by petitioner for special approval for continued operation under § 215.203(c). HVRR 366 is not interchangeable and operates on 16 miles of Class 1 & 2 track of the former Denver and Rio Grande Western branch line between Heber City, Utah, and Vivian Park, UT, at no more than 25 miles per hour. This branch line is not connected to the general railroad system.

HVRR, in support of its petition, has stated that the stenciling of non-complying elements and adding reflective striping would detract from both the aesthetic and historical nature of their vintage rolling stock. HVRR 366 has been inspected by HVRR shop personnel and has been deemed safe for service. The car has been in continuous service on HVRR since 1995, and has operated without incident or safety violations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2010–0156) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on January 3, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–52 Filed 1–5–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MEDEA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0113 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 7, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2010–0113. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MEDEA is:

Intended Commercial Use of Vessel: "The Maritime Museum of San Diego is a 501c non profit corporation, which owns and operates a variety of historical vessels, including the world's oldest active sailing vessel, the Star of India. To maintain this fleet every possible source of revenue must be pursued. In the current economy, donations to the museum have decreased considerably, but the cost of maintaining the ships has not. The Museum would like to offer a high end dinner cruise on the Medea, as a supplemental source of income to the Museum. The Medea is an elegant 1904 Edwardian steam yacht and is the only steam-powered yacht on the west coast. It was built as a private yacht, but was commandeered into Allied service in both World War I and II, and is probably the only ship still active that saw service in both wars. It is currently in excellent seaworthy condition, but the cost and effort to get it under way is considerable. As a result, the Museum does not intend to use the boat for regular passenger or charter service, but occasional high-end dinner cruises, to supplement our fund raising efforts. We do not anticipate these charters occurring more than 4 or 5 times a year. We understand that the passenger limit on such a cruise would be limited to 12."

Geographic Region: "California only, limited to Southern California, south of Point Conception."

Privacy Act

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

Dated: December 13, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–24 Filed 1–5–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0114]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OCEAN BOUND.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0114 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 7, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2010–0114. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OCEAN BOUND is:

Intended Commercial Use of Vessel: "6 passenger sailing trips."

Geographic Region: "Washington, Oregon, California, and Florida."

Privacy Act

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

Dated: December 13, 2010.

By the Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–56 Filed 1–5–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0108]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OCEAN BOUND.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0108 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 7, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2010–0108. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OCEAN BOUND is:

Intended Commercial Use of Vessel: "6 passenger sailing trips."

Geographic Region: "Washington, Oregon, California, and Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: December 13, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–60 Filed 1–5–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, "Policy Communications Survey."

DATES: Comments must be submitted on or before March 7, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0226, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0223, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Policy Communications Survey.

OMB Control Number: 1557–0226.

Description: This information collection would provide the OCC with information needed to properly evaluate the effectiveness of the OCC's policy guidance, found in publications such as bulletins, advisories, and the Comptroller's Handbook. The collection would focus on one communications product, issuances known as bank supervision policy guidance.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Responses:

Estimated Frequency of Response: 1 to 2 times annually.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden: 750 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 30, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2011–13 Filed 1–5–11; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Date/Time: Thursday, January 20, 2011 (9:30 a.m.–5:30 p.m.); Friday, January 21, 2011 (9 a.m.–12:30 p.m.).

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: January 20–21, 2011 Board Meeting; Approval of Minutes of the One Hundred Thirty-Eighth Meeting (September 15, 2010) of the Board of Directors; Chairman's Report; President's Report; Introduction of the Senior Fellows Slate; Strategic Plan Update; Building Move Issues; Board Executive Session; Other General Issues.

Contact: Tessie F. Higgs, Executive Office. *Telephone:* (202) 429–3836.

Dated: December 29, 2010.

Michael Graham,

Vice President for Management and CFO, United States Institute of Peace.

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Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249
Registration of Municipal Advisors; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–63576; File No. S7–45–10]

RIN 3235–AK86

Registration of Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") to require municipal advisors, as defined below, to register with the Securities and Exchange Commission ("Commission" or "SEC") effective October 1, 2010. To enable municipal advisors to temporarily satisfy this requirement, the Commission adopted an interim final temporary rule and form, Exchange Act rule 15Ba2–6T and Form MA–T, effective October 1, 2010. Rule 15Ba2–6T will expire on December 31, 2011.

The Commission is proposing new rules 15Ba1–1 through 15Ba1–7 and new Forms MA, MA–I, MA–W, and MA–NR under the Exchange Act. These proposed rules and forms are designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, would establish a permanent registration regime with the Commission for municipal advisors and would impose certain record-keeping requirements on such advisors.

DATES: Comments should be received on or before February 22, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–45–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–45–10. 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/proposed.shtml*). Comments will also be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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.

FOR FURTHER INFORMATION CONTACT: Martha Haines, Assistant Director and Chief, Office of Municipal Securities, at (202) 551–5681; Dave Sanchez, Attorney Fellow, Office of Municipal Securities, at (202) 551–5540; Victoria Crane, Assistant Director, Office of Market Supervision, at (202) 551–5744; Ira Brandriss, Special Counsel, Office of Market Supervision, at (202) 551–5651; Jennifer Dodd, Special Counsel, Office of Market Supervision, at (202) 551–5653; Steve Kuan, Special Counsel, Office of Market Supervision, at (202) 551–5624; Daniel Gien, Attorney-Adviser, Office of Market Supervision, at (202) 551–5747; Yue Ding, Law Clerk, Office of Market Supervision, at (202) 551–5842; or any of the above at Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is proposing rules 15Ba1–1 to 15Ba1–7 [17 CFR 240.15Ba1–1 to 240.15Ba1–7] under the Exchange Act, and Forms MA, MA–I, MA–W, and MA–NR [17 CFR 249.1300, 1310, 1320, and 1330].

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I. Introduction

A. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] The Dodd-Frank Act was enacted, among other things, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] With Section 975 of Title IX of the Dodd-Frank Act, Congress amended Section 15B of the Exchange Act[3] to, among other things, make it unlawful for municipal advisors[4] to provide certain advice to, or solicit, municipal entities[5] or certain other persons without registering with the Commission.[6]

1. Overview of Municipal Securities Market

a. Municipal Advisors

Until the passage of the Dodd-Frank Act, the activities of municipal advisors were largely unregulated and municipal advisors were generally not required to register with the Commission or any other Federal, State or self-regulatory entity with respect to their municipal advisory activities. As discussed below in this section, some entities that are now subject to registration as municipal advisors pursuant to Section 15B of the Exchange Act, and rules or regulations promulgated thereunder, currently are subject to regulation by various Federal and State regulators in other capacities. These entities include brokers, dealers, municipal securities dealers, investment advisers, and banks. Such regulations, however, generally do not apply to their activities as municipal advisors.

Municipal advisors engage in municipal advisory activities in a variety of contexts. For example, municipal advisors participate in the majority of issuances of municipal securities.[7] According to the Municipal Securities Rulemaking Board ("MSRB" or "Board"), approximately $315 billion (70%)[8] of the municipal debt issued in 2008 was issued with the participation of municipal advisors commonly referred to as "financial advisors."[9] Research also suggests that participation by municipal advisory firms in the issuance of municipal securities is rising, with the MSRB noting a 63% participation rate in 2006, a 66% participation rate in 2007, and a 70% participation rate in 2008.[10] A study that looked at historical involvement by "financial advisors" identified participation rates of approximately 50% in a nearly twenty-year period ending in 2002.[11]

Municipal advisors also engage in municipal advisory activities with respect to municipal financial products.[12] For example, as derivatives have developed in the municipal securities market, some municipal advisory firms developed expertise in that area. These municipal advisory firms are generally referred to as "swap advisors."[13] Swap advisors may provide advice solely with respect to a municipal derivative transaction or may provide such advice in connection with other types of municipal advisory activities.

In addition, municipal advisors may provide advice to municipal entities concerning investment strategies. These advisory firms assist in investing proceeds from bond offerings as well as manage other public monies. Such public monies include, for example, the general funds of states and local governments, public pension plans and funds dedicated to other public programs, such as public transportation, police and fire protection, public health, and public education. In addition, municipal advisors provide risk management, asset allocation, financial planning and cash management services and help State and local governments find and evaluate other advisors that manage public funds and provide other types of services.[14] As discussed in more detail below, unless excluded, these firms generally will have to register as municipal advisors under Section 15B of the Exchange Act.[15] Municipal advisors subject to registration may include Federal and State registered investment advisers, depending on the activities in which they are engaged.[16]

Depending on their role with respect to investment strategies for municipal entities, commercial banks subject to regulation by various Federal and State regulators may also engage in activities that would subject them to registration as municipal advisors. Such commercial banks may act as trustees with respect to an issuance of municipal securities or otherwise provide advice with respect to municipal financial products. Other persons that are subject to registration as municipal advisors include those who solicit municipal entities on behalf of the types of municipal advisors discussed above, as well as on behalf of brokers, dealers, municipal securities dealers and other parties.

b. Municipal Entities and Municipal Financial Products

The municipal securities market consists of over 51,000 issuers,[17] a diverse group that includes states, their political subdivisions such as cities, towns and counties, and their instrumentalities such as school districts or port authorities. These public bodies are governed by State and local laws, including State constitutions, statutes, city charters, and municipal codes.[18] Such constitutions, statutes, charters, and codes impose on municipal issuers a vast and varied multiplicity of requirements relating to

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[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* Public Law 111–203 Preamble.

[3] 15 U.S.C. 78*o*–4. All references in this Release to the Exchange Act refer to the Exchange Act as amended by the Dodd-Frank Act.

[4] *See infro* Section II.A.1. (discussing the term "municipal advisor").

[5] *See infra* note 82, and accompanying text (discussing the term "municipal entity").

[6] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

[7] With respect to the issuance of municipal securities, municipal advisors (which may include entities registered as broker-dealers acting as municipal advisors) engage in such activities as assisting municipal entities in developing a financing plan, assisting in the selection of other parties to the financing such as bond counsel and underwriters, coordinating the rating process, ensuring adequate disclosure, and evaluating and negotiating the financing terms. *See* JayaramanVijayakumar and Kenneth N. Daniels, 2006, *The Role and Impoct of Financial Advisors in the Morket for Municipol Bonds* ("Vijayakumar and Daniels"), Journal of Financial Services Research, 30:43, at 46.

[8] *See* Municipal Securities Rulemaking Board, "Unregulated Municipal Market Participants: A Case for Reform" (Apr. 2009), available at *http://www.msrb.org/News-ond-Events/Press-Releoses/Press-Releoses/~/media/Files/Special-Publicotions/MSRBReportonUnregulotedMorketPorticipants_April09.ashx* ("MSRB Study").

[9] *See id.* (referring to municipal advisors as "financial advisors"). Approximately 43% of the $453 billion of municipal debt issued in 2008 (by par amount of bonds) (or 62% of the $315 billion of municipal debt issued with financial advisors) was issued with the assistance of "financial advisors" that were not part of dealer firms regulated by the MSRB. *Id.*

[10] *See id.*

[11] *See* Arthur Allen and Donna Dudney, May 2010, *Does the Quality of Financiol Advice Affect Prices?* The Financial Review 45: 389 ("Allen and Dudney") (analyzing data from 1984 to 2002).

[12] *See infra* note 93 and accompanying text (discussing the term "municipal financial products").

[13] *See* MSRB study, *supra note* 8.

[14] *See* Investment Advisers Act Release No. IA–2910 (August 3, 2009), 74 FR 39840, 39840–41 (August 7, 2009) ("Political Contributions Proposed Rule").

[15] *See infra* Section II.A.1. (discussing the term "municipal advisor").

[16] *See id.*

[17] *See Report on Transactions in Municipol Securities,* Office of Economic Analysis and Office of Municipal Securities, the Division of Trading and Markets, U.S. Securities and Exchange Commission, (July 1, 2004).

[18] *See* American Bar Association, Disclosure Roles of Counsel in State and Local Government Securities Offerings 1 (Third Edition, 2009) ("Disclosure of Bond Counsel").

governance, budgeting, accounting, and other financial matters.[19] The governing bodies of municipal issuers are as varied as the types of issuers, ranging from State governments, cities, towns, and counties with elected officials to commissions and other special purpose enterprises having appointed members.[20] Municipal securities are issued by government entities to pay for a variety of public projects, for cash flow and other governmental needs, and to fund non-governmental private projects by acting as a conduit on behalf of private organizations that wish to obtain tax-exempt interest rates.[21] As of March 31, 2010, municipal issuers had an outstanding principal amount of securities in excess of $2.8 trillion.[22] In 2009 alone, 15,055 new issuances of municipal securities took place, with a value of over $474.5 billion.[23] As of 2009, the average daily trading volume for the municipal bond market was $12.5 billion, as compared to $16.8 billion in the corporate bond market and $407.9 billion in the Treasury bond market.[24]

Presently, there is no definitive public information regarding the size of the municipal securities derivative market. Estimates of the size of the market have been reported to range from $100 billion to $300 billion, annually, in notional principal amount.[25] Estimates of the number of municipal issuers that have engaged in derivative transactions also vary. Since interest rate swaps are bilateral contracts entered into privately, there is no comprehensive data on how many municipal issuers are active in the $450 trillion interest-rate swap market, although some anecdotal evidence suggests a relatively wide use. For instance, a review of Pennsylvania Department of Community and Economic Development records revealed that 185 school districts, towns and counties in Pennsylvania have engaged in derivative transactions since 2003, when the State's law was explicitly changed to allow for such transactions.[26] However, other estimates have pointed to a less widespread use of derivatives among municipal issuers.[27] Since 2008, the use of derivatives by municipal entities has declined and many municipal entities have terminated existing interest rate swaps.[28]

According to recently available United States census data, as of 2008, there were approximately 2,550 state and local government employee retirement systems.[29] These "public pension plans" had over $2.2 trillion of assets and represented one-third of all U.S. pension assets.[30] Public pension plans might seek advice with respect to municipal financial products. In addition, third parties might solicit these public pension plans on behalf of firms seeking to provide services to these plans.[31]

College savings plans ("529 Plans") that comply with Section 529 of the Internal Revenue Code ("IRC") provide tax advantages designed to encourage saving for future college costs.[32] 529 Plans are sponsored by states, state agencies, or educational institutions. 529 plan assets have increased from $8.6 billion in 2000 to $104.9 billion in the fourth quarter of 2008, and the number of 529 plan participants has increased from 1.3 million in 2000 to 11.2 million in the fourth quarter of 2008.[33] Like public pension plans, 529 Plans might be solicited on behalf of third parties seeking to do business with such plans.[34] 529 Plans might also seek advice with respect to municipal financial products and the issuance of municipal securities.[35]

In addition to public pension plans and 529 Plans, state and local government agencies also maintain other pools of assets including their general funds and other special funds. Governmental entities generally invest such funds in a combination of individualized investments, investment agreements or local government investment pools ("LGIPs").[36]

2. Historical Regulation of Municipal Securities and Municipal Advisors

a. Municipal Securities Market

The Securities Act of 1933 ("Securities Act")[37] and the Exchange Act[38] were both enacted with broad exemptions for municipal securities from all of their provisions except for the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act.[39] In the early 1970s, the municipal securities market was still relatively small.[40] Up until that time, the standard issue was usually a general obligation bond, with fairly

[19] *See id.* at 2.

[20] *See id.* at 78.

[21] The Internal Revenue Code delineates the purposes for which tax-exempt municipal bonds may be issued for the benefit of organizations other than states and local governments, *i.e.*, conduit borrowers. *See* 26 U.S.C. 142–145, 1394.

[22] *See* Federal Reserve Board, *Flow of Funds Accounts, Flows and Outstandings*, First Quarter 2010.

[23] *See The Bond Buyer Yearbook* 14 (SourceMedia Inc.) (2010).

[24] *See* SIFMA, *Average Daily Trading Volume in the U.S. Bond Markets*, available at *http://www.google.com/url?q=http://www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/CM-US-Bond-Market-Trading-Volume-SIFMA.xls&sa=U&ei=5EHsTLvBFoT58AbPqdGjAQ&ved=0CBYQFjAA&usg=AFQjCNHv-FKIpdi_QB8m7jgvg2ssJJ1ikg* (last visited November 23, 2010).

[25] *See* MSRB Study, *supra* note 8.

[26] *See* Martin Z. Braun, *Deutsche Bank Swap Lures County as Budgets Crumble*, Bloomberg (November 26, 2008).

[27] In a 2007 study, Standard & Poor's identified 750 municipal issuers that used swaps. *See* Joe Mysak, *California Declares War on State Bond Short-Sellers*, Bloomberg Businessweek (Apr. 27, 2010). In October 2009, Moody's undertook a review of the state and local governments that it rates with outstanding swaps and identified 500 of such entities. *See id.* Moody's also estimated that Pennsylvania issuers accounted for 22% of all municipal derivative transactions, suggesting that broad participation by municipal entities in Pennsylvania did not translate into broad participation by municipal entities nationwide. *See* Joe Mysak, *Swaps Nightmares Become Real for Amateur Financiers*, Bloomberg (Dec. 15, 2009).

[28] *See, e.g.*, Michael McDonald, *Wall Street Collects $4 Billion From Taxpayers as Swaps Backfire*, Bloomberg (Nov. 10, 2010), available at *http://www.bloomberg.com/news/2010-11-10/wall-street-collects-4-billion-from-taxpayers-as-swaps-backfire.html.*

[29] *See* U.S. Census Bureau, *State & Local Government Employee Retirement Systems*, available at *http://www.census.gov/govs/retire.*

[30] *See* Federal Reserve Board, *Flow of Funds Accounts, Flows and Outstanding*, First Quarter 2009 (at table L.119).

[31] *See* Investment Advisers Act Release No. IA–3043 (July 1, 2010), 75 FR 41018, 41019 (July 14, 2010) ("Political Contributions Final Rule").

[32] *See* 26 U.S.C. 529.

[33] *See* Investment Company Institute, *529 Plan Program Statistics, December 2008* (May 22, 2009), available at *http://www.ici.org/research/stats/529s/529s_12-08.*

[34] *See* Political Contributions Final Rule, *supra* note 31, at 41019.

[35] *See* MSRB, *Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market*, Interpretative Notice of Rule D–12, dated January 18, 2001, available at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Definitional/Rule-D-12.aspx?tab=2* (citing Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, to Diane G. Klinke, General Counsel, MSRB, dated February 26, 1999, in response to letter from Diane G. Klinke, General Counsel, MSRB, to Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, dated June 2, 1998).

[36] 45 states have LGIPs with assets totaling more than $250 billion. *See* Jeff Pentages, *Local Government Investment Pools and the Financial Crisis: Lessons Learned*, October 2009, Government Finance Review 25. States have several trillion dollars in state funds, including general funds, public pension plans, and 529 plans. *See e.g.*, The National Association of State Treasurers, *Reforming Corporate Governance*, State Government News (June/July 2003), available at *http://www.csg.org/knowledgecenter/docs/sgn0307Reforming Corporate.pdf.*

[37] 15 U.S.C. 77a *et seq.*

[38] 15 U.S.C. 78a *et seq.*

[39] *See, e.g.*, Securities Act Section 3(a)(2) (15 U.S.C. 77c(a)(2)); Securities Act Section 12(a)(2) (15 U.S.C. 77*l*(a)(2)); Exchange Act Section 3(a)(12) (15 U.S.C. 78c(a)(12)); Exchange Act Section 3(a)(29) (15 U.S.C. 78c(a)(29)).

[40] There were $235.4 billion of bonds outstanding in 1975 after an issuance of $58 billion in that year. *See* The Bond Buyer's Municipal Finance Statistics, 1975 (June 1976).

standard features, and the typical participants were banks, underwriters, and bond counsel.[41]

The regulation of the market for municipal securities at the Federal level essentially began in 1975. Congress, as part of the Securities Act Amendments of 1975 ("1975 Amendments") created a limited regulatory scheme for the municipal securities market at the Federal level.[42] That scheme included mandatory registration with the Commission of brokers and dealers in municipal securities and gave the Commission broad rulemaking and enforcement authority over such brokers and dealers. At the same time, however, Congress prohibited the Commission from requiring issuers of municipal securities to file disclosures, such as a prospectus, with the Commission before selling municipal securities to investors. Thus, the Commission's oversight of the municipal securities market has been focused on the intermediaries between municipal entities and investors, rather than on municipal entities themselves. In addition, the 1975 Amendments authorized the creation of the MSRB and granted it authority to promulgate rules concerning broker and dealer transactions in municipal securities.

As noted above, pursuant to the 1975 Amendments, all brokers and dealers that underwrite or trade municipal securities are required to register with the Commission.[43] If a person engages in the activities of a broker or dealer in municipal securities and does not satisfy an exception from the registration provisions of the Exchange Act, such person must register with the Commission and may have to join a self-regulatory organization ("SRO") such as the Financial Industry Regulatory Authority, Inc. ("FINRA"). The Exchange Act defines a "municipal securities dealer" as any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise[44] and requires such person to register with the Commission.[45] All brokers, dealers, and municipal securities dealers that engage in municipal securities transactions also must register with the MSRB and may not act in contravention of its rules.[46]

Since 1975, the municipal securities market has grown and evolved significantly to encompass a wide variety of bond structures[47] and credit enhancement. Municipal bond insurance was first introduced in 1971 and letter of credit-supported municipal bonds became very popular after the introduction of variable rate municipal bonds in the early 1980s.[48] In 1988, auction rate securities were introduced into the municipal market.[49] In addition, the municipal securities market has experienced a proliferation of complex derivative products beginning generally with interest rate swap transactions in the mid 1980s.[50] The availability of such a variety of financing options has led to an increasing reliance on external advisors by municipal entities that issue municipal securities to assist them in deciding among the multiplying array of structural choices for their debt and to help them negotiate with the multiplying number of intermediaries.[51]

b. Municipal Advisors

As discussed above, many market professionals are involved in issuing municipal securities and advising municipal entities with respect to municipal financial products. Historically, however, municipal advisors have been largely unregulated. For example, Commission staff has taken the position that financial advisors that limit their advisory activities to advising municipal issuers as to the structuring of their financings rather than providing advice for compensation regarding the investment of assets may not need to register as investment advisers.[52] Also, while dealers who act as municipal financial advisors are subject to regulation,[53] those regulations apply primarily to their business as dealers rather than their activities as municipal financial advisors.[54] Only in limited circumstances do those rules also apply to their municipal advisory activities.[55]

Additionally, approximately fifteen states, as well as a number of municipalities, have rules relating to the conduct of some municipal advisors (generally, financial advisors and swap advisors). For example, these governmental entities have enacted pay-to-play prohibitions that range from broad proscriptions relating to all state and local contracts to narrowly defined rules that only apply to specific situations.[56] Some state and local entities also require certain types of municipal advisors to disclose actual or apparent conflicts of interest.[57]

As discussed in more detail below, the Dodd-Frank Act amended the Exchange Act to require municipal advisors to register with the Commission.[58] In addition, the Exchange Act, as amended by the Dodd-Frank Act, grants the MSRB regulatory authority over municipal advisors,[59] and imposes a fiduciary duty on municipal advisors when advising municipal entities.[60]

[41] See Ann Judith Gellis, *Municipal Securities Market: Same Problems—No Solutions*, 21 Del. J. Corp. L. 427, 428 (1996).

[42] See, e.g., Exchange Act Sections 15(c)(1), 15(c)(2), 15B(c)(1), 15B(c)(2), 17(a), 17(b), and 21(a)(1) (15 U.S.C. 78o(c)(1), 78o(c)(2), 78o–4(c)(1), 78o–4(c)(2), 78q(a), 78q(b), and 78u(a)(1)).

[43] See 15 U.S.C. 78o–4(a)–(b).

[44] See 15 U.S.C. 78c(a)(30).

[45] See 15 U.S.C. 78o–4(a)–(b).

[46] See MSRB rule A–12. These requirements for registration with the Commission and MSRB were in effect prior to passage of the Dodd-Frank Act and remain in effect.

[47] Although it is helpful to think of municipal securities as either (1) general obligation bonds backed by the "full faith and credit" or an unlimited taxing power of the issuing entity or (2) revenue bonds, these general categories mask a broad range of diversity and complexity in the underlying security for municipal bonds. See Gary Gray and Patrick Cusatis, Municipal Derivative Securities—Uses and Valuation 21 (1995) (discussion of revenue bonds). See *also* Disclosure of Bond Counsel, *supra* note 18, at 54–55 (discussion of conduit bonds).

[48] See Gray and Cusatis, *supra* note 47, at 30–31. The Commission notes that although the use of letters of credit and bond insurance have declined since 2008, these forms of credit enhancement remain an option for municipal entities to consider when issuing municipal securities.

[49] See *id.* at 41.

[50] See *id.* at 49. Municipal market derivatives must often be structured in accordance with the provisions of the tax code and other laws that apply to the issuance of tax-exempt financings. See David L. Taub, *Understanding Municipal Derivatives*, August 2005, Government Finance Review 21. Therefore, the most common use for derivatives in the municipal securities market is the execution of interest rate swaps to hedge issuers' interest rate exposure for new, anticipated, or outstanding debt. See *id.*

[51] See Vijayakumar and Daniels, *supra* note 7, at 43–44.

[52] See Division of Investment Management: Staff Legal Bulletin No. 11, Applicability of the Advisers Act to Financial Advisors of Municipal Securities Issuers (Sep. 19, 2000), available at *http://www.sec.gov/interps/legal/slbim11.htm* (explaining the staff's views as to the circumstances under which financial advisors (a) may be investment advisers, and (b) may give advice to issuers of municipal securities regarding the investment of offering proceeds without being deemed to be investment advisers).

[53] See *supra* notes 43–46, and accompanying text.

[54] See, *e.g.*, 17 CFR 240.15Ba2–2.

[55] For example, MSRB rule G–37 currently prohibits a broker, dealer or municipal securities dealer from engaging in "municipal securities business with an issuer within two years after any contribution to an official of such issuer * * *" MSRB rule G–37. The rule further defines "municipal securities business" to include, among other things, underwriting and the provision of financial advisory services. See *id.*

[56] See MSRB study, *supra* note 8.

[57] See *id.*

[58] See Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78o–4(a)(1)(B).

[59] See 15 U.S.C. 78o–4(b).

[60] See 15 U.S.C. 78o–4(c). Specifically, Exchange Act Section 15B(c)(1) provides that: "A municipal advisor and any person associated with such

Continued

B. Interim Final Temporary Rule 15Ba2–6T and Form MA–T

The registration requirement for municipal advisors became effective on October 1, 2010.[61] Consequently, municipal advisors must now be registered in order to continue their municipal advisory activities. To enable municipal advisors to temporarily satisfy the registration requirement, and to make relevant information available to the public and municipal entities, the Commission adopted interim final temporary rule 15Ba2–6T[62] under the Exchange Act on September 1, 2010.[63] Pursuant to rule 15Ba2–6T, a municipal advisor must temporarily satisfy the statutory registration requirement by submitting certain information electronically through the Commission's public Web site on Form MA–T.[64]

Form MA–T requires a municipal advisor to indicate the purpose for which it is submitting the form (*i.e.*, initial application, amendment or withdrawal), provide certain basic identifying and contact information concerning its business, indicate the nature of its activities, and supply information about its disciplinary history and the disciplinary history of its associated municipal advisor professionals.[65]

The interim final temporary rule provides that, unless rescinded, a municipal advisor's temporary registration by means of Form MA–T will expire on the earlier of (1) the date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule establishing a permanent registration regime; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) December 31, 2011.[66] The temporary registration procedure was developed as a transitional step toward the implementation of a permanent registration regime for municipal advisors. Accordingly, as discussed in more detail below, the Commission is proposing rules and forms that, if adopted, would establish a permanent registration regime for municipal advisors that would require registration by all persons meeting the definition of municipal advisor, including those persons currently registered on Form MA–T. In discussing the proposed permanent registration regime, the Commission addresses issues, concerns, and suggestions relevant to this proposal raised by commenters in response to the interim final temporary rule.[67]

II. Discussion

Section 15B(a)(1) of the Exchange Act, as amended by the Dodd-Frank Act, makes it unlawful for a municipal advisor[68] to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission.[69] Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[70]

Consistent with the requirements of the Dodd-Frank Act, as discussed in detail below, the Commission is proposing new rules and forms that, if adopted, would establish a permanent Commission registration regime for municipal advisors. The Commission believes that the information disclosed pursuant to the proposed rules and forms would provide significant value to the Commission in its oversight of municipal advisors and their activities in the municipal securities markets. The information provided pursuant to these rules and forms would also aid municipal entities and obligated persons in choosing municipal advisors, engaging in transactions with municipal advisors, or participating in municipal securities transactions in which a municipal advisor is also engaged.

A. Proposed Rules for the Permanent Registration of Municipal Advisors

1. Proposed Rule 15Ba1–1: Definition of "Municipal Advisor" and Related Terms

a. Statutory Definition of "Municipal Advisor"

Section 15B(e)(4)(A) of the Exchange Act,[71] as amended by the Dodd-Frank Act, defines the term "municipal advisor" to mean a person (who is not a municipal entity[72] or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person[73] with respect to municipal financial products[74] or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity.[75]

The statutory definition of a "municipal advisor" is broad and includes persons that traditionally have not been considered to be municipal financial advisors. Specifically, the definition of a "municipal advisor" includes "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors" that engage in municipal advisory activities.[76] These persons are included if they provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal

municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board." 15 U.S.C. 78*o*–4(c)(1).

[61] *See* Section 975(i) of the Dodd-Frank Act.

[62] 17 CFR 240.15Ba2–6T.

[63] *See* Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) ("Temporary Registration Rule Release").

[64] 17 CFR 249.1300T. A municipal advisor that completes the temporary registration form and receives confirmation from the Commission that the form was filed is temporarily registered for purposes of Section 15B. Approximately 800 firms and individuals have registered on Form MA–T as municipal advisors.

[65] *See* Temporary Registration Rule Release, *supra* note 63, for a full description of the requirements of Form MA–T.

[66] *See* 17 CFR 240.15Ba2–6T(e).

[67] The Commission received seven comment letters in response to the interim final temporary rule. The comment letters are available on the Commission's Internet Web site at *http://www.sec.gov/comments/s7-19-10/s71910.shtml*. The Commission also received one comment letter in response to SEC regulatory initiatives under the Dodd-Frank Act that discussed municipal advisors in connection with pay-to-play rules and, therefore, is outside the scope of this release relating to the registration of municipal advisors. This comment letter is available on the Commission's Internet Web site at *http://www.sec.gov/comments/df-title-ix/municipal-securities-municipal-advisors/municipal-securities-municipal-advisors.shtml*.

[68] *See infra* Section II.A.1. (discussing the term "municipal advisor").

[69] *See* 15 U.S.C. 78*o*-4(a)(1)(B). For a discussion of the terms "municipal entity," "obligated person," "municipal financial product," and "solicitation of a municipal entity or obligated person," see *infra* Section II.A.1.b.

[70] *See* 15 U.S.C. 78*o*–4(a)(2).

[71] 15 U.S.C. 78*o*–4(e)(4)(A).

[72] *See infra* note 82, and accompanying text (discussing the term "municipal entity").

[73] *See infra* note 86, and accompanying text (discussing the term "obligated person").

[74] *See infra* note 93, and accompanying text (discussing the term "municipal financial products").

[75] *See infra* note 103, and accompanying text (discussing the term "solicitation of a municipal entity or obligated person").

[76] *See* 15 U.S.C. 78*o*–4(e)(4).

securities (including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues) or undertake a solicitation of a municipal entity or obligated person (*i.e.*, "municipal advisory activities").[77]

The definition of "municipal advisor" explicitly excludes "a broker, dealer, or municipal securities dealer serving as an underwriter," [78] as well as attorneys offering legal advice or providing services that are of a traditional legal nature and engineers providing engineering advice.[79] Further, the definition of "municipal advisor" excludes "any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice" and "any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps." [80]

Consequently, the statutory definition of "municipal advisor" includes distinct groups of professionals that offer different services and compete in distinct markets. The three principal types of municipal advisors are: (1) Financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "municipal advisor"); and (3) third-party marketers and solicitors.

[77] The proposed definition of "municipal advisory activities" has the same meaning as the definition of "municipal advisory services" in connection with rule 15Ba2–6T. Thus, in proposed rule 15Ba1–1 the Commission is proposing to define "municipal advisory activities" to mean "advice to or on behalf of a municipal entity (as defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(8)) or obligated person (as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(10)) with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or a solicitation of a municipal entity or obligated person." Proposed rule 15Ba1–1(e).

[78] *See infr*o note 105 (defining the term "underwriter").

[79] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[80] *See id.*

b. Interpretation of the Term "Municipal Advisor"; Definition of Related Terms

As noted above, Section 15B(e)(4) defines the term "municipal advisor" to mean, in part, a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or (ii) undertakes a solicitation of a municipal entity or obligated person.[81] The Commission discusses below the terms "municipal entity," "obligated person," "municipal financial products," and "solicitation of a municipal entity or obligated person" as well as other terms relating to the definition of "municipal advisor."

The registration requirement for municipal advisors under Section 15B of the Exchange Act applies to every person, including every natural person, who provides the types of advice described in the definition of "municipal advisor"—whether that person is an organized entity, sole proprietor, employee of a municipal advisory firm, or otherwise. For clarity, the Commission refers to each organized entity that is a municipal advisor, including sole proprietors, as a "municipal advisory firm," and each municipal advisor that is a natural person, including sole proprietors, as a "natural person municipal advisor."

Municipal Entity

Exchange Act Section 15B(e)(8) provides that the term "municipal entity" means "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities." [82] To provide additional clarification with respect to clause (B) of the definition of "municipal entity," the Commission notes that the definition includes, but is not limited to, public pension funds, local government investment pools and other state and local governmental entities or funds, as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans.

[81] *See* 15 U.S.C. 78*o*–4(e)(4).

[82] 15 U.S.C. 78*o*–4(e)(8).

One commenter asked whether "small issuers such as individual charter schools (that are deemed public schools by the state with individual charters)" would be included in the definition of "municipal entity." [83] Charter schools are considered to be public schools and generally derive their charter from a political subdivision of a state (for example, local school boards, state universities, community colleges or state boards of education) [84] and, therefore, would fall under the definition of municipal entity.[85]

Obligated Person

Exchange Act Section 15B(e)(10) provides that the term "obligated person" means "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities." [86] One commenter stated that this definition in Exchange Act Section 15B(e)(10) is "potentially very broad" and asked for clarification regarding the definition.[87] In particular, the commenter encouraged the Commission to interpret the definition of "obligated person" for purposes of the definition of "municipal advisor" consistently with the definition of "obligated person" for purposes of rule 15c2–12.[88]

The Commission believes that the definition of "obligated person" for purposes of the definition of "municipal advisor" should be consistent with the

[83] *See* letter from Brad R. Jacobsen, dated September 7, 2010 ("Jacobsen Letter").

[84] *See, e.g.*, US Charter Schools, *Answers to Frequently Asked Questions*, available at *http://www.uschorterschools.org/pub/uscs_docs/o/foq.html* (last visited November 2, 2010).

[85] 15 U.S.C. 78*o*-4(e)(8). Charter schools, or persons that operate charter schools such as charter school management organizations that are organized as non-profit corporations, may issue municipal securities through a municipal entity for capital needs such as facilities that are not provided for by state funding or other reasons. *See, e.g.*, US Charter Schools, *Charter Schaal Facilities: A Resaurce Guide on Development and Financing*, available at *http://www.uschorterschools.org/gb/dev_fin/financing.htm* (last visited November 23, 2010). In that instance, the charter school or charter school management organization would be an obligated person with respect to the issuance of municipal securities and any related municipal financial products.

[86] 15 U.S.C. 78*o*–4(e)(10). Obligated persons can include entities acting as conduit borrowers such as private universities, non-profit hospitals, and private corporations.

[87] *See* letter from John J. Wagner, Kutak Rock LLP, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated September 28, 2010 ("Kutak Rock Letter").

[88] *See id.* Rule 15c2–12 relates to municipal securities disclosures. *See* 17 CFR 240.15c2–12.

definition of "obligated person" for purposes of rule 15c2–12. Rule 15c2–12 defines the term "obligated person" to mean "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)."[89] Thus, pursuant to the exemptive authority granted in Section 15B(a)(4) of the Exchange Act, the Commission proposes to exempt from the definition of "obligated person" providers of municipal bond insurance, letters of credit, or other liquidity facilities. Specifically, proposed rule 15Ba1–1(i) provides that the term "obligated person" shall not include providers of municipal bond insurance, letters of credit, or other liquidity facilities.[90] The Commission believes that this interpretation does not conflict with the goals of the Dodd-Frank Act to provide further protections for certain entities that participate in borrowings in the municipal securities market and would help ensure uniformity among rules relating to such market. Providers of municipal bond insurance, letters of credit, or other liquidity facilities are generally non-governmental providers of credit enhancements.[91] As providers of credit enhancement, these entities are not borrowing funds through a municipal entity and, therefore, the Commission believes they do not require the type of protection that should be applicable with respect to those who borrow funds through municipal entities in municipal securities transactions. In addition, the Commission notes that this interpretation would further uniformity among rules relating to the definition of obligated persons in the municipal securities market.[92]

Municipal Financial Products; Investment Strategies

Section 15B(e)(5) provides that the term "municipal financial product" means "municipal derivatives, guaranteed investment contracts, and investment strategies."[93] Exchange Act Section 15B(e)(3) provides that "the term 'investment strategies' includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments."[94] One commenter requested that the Commission clarify the term "investment strategies" for purposes of the definition of "municipal financial products."[95] The Commission notes that the definition of "investment strategies" provides that it "includes" plans or programs for the investment of the proceeds of municipal securities and, therefore, the Commission interprets the definition to mean that it includes, without limitation, the investment of the proceeds of municipal securities. Further, the Commission interprets this definition to include plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity, and, therefore, any person that provides advice with respect to such funds must register as a municipal advisor unless it is covered by one of the exclusions discussed below. Consistent with this interpretation, proposed rule 15Ba1–1(b) provides that the term "investment strategies" includes "plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity."[96] In proposing this interpretation of the term "investment strategies," the Commission considered the statutory definitions of "municipal advisor" and "municipal entity." Specifically, the Commission noted that the definition of a "municipal entity" includes "any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof."[97] Based on these definitions, the Commission believes it was Congress's intent to include in the definition of "municipal advisor" persons that provide advice with respect to plans, programs or pools of assets that invest funds held by, or on behalf of, a municipal entity, such as a 529 college savings plan, LGIP or public pension plan. Such plans, programs, and pools of assets are generally funded from sources other than proceeds of municipal securities, such as families who wish to save for a child's college expenses, general monies of state and local governments being temporarily invested prior to their budgeted expenditure, and pension contributions from employees and state and local government employers. As a result, the Commission does not believe that it was Congress's intent to limit the requirement to register as a municipal advisor only to those persons that provide advice with respect to plans or programs for the investment of proceeds from municipal securities. Also, because every bank account of a municipal entity is comprised of funds "held by or on behalf of a municipal entity," money managers providing advice to municipal entities with respect to their bank accounts could be municipal advisors. The Commission notes, however, that to the extent a person is providing advice to a pooled investment vehicle in which a municipal entity has invested funds along with other investors that are not municipal entities, the pooled investment vehicle would not be considered funds "held by or on behalf of a municipal entity" and, therefore, the person providing advice to the pooled investment vehicle would not have to register as a municipal advisor.[98]

One commenter that asked for clarification regarding the definition of the term "investment strategies" stated that it assumes that "once the proceeds of a municipal securities offering are commingled with other operating funds or the general funds of the municipal entity that they lose their characteristic as 'proceeds' under the statute, and the provision of advice by a bank to the municipal entity with respect to the investment of such operating or general funds would not make the bank a 'municipal advisor' under the statute."[99] Further, this commenter stated that it assumes that "the proceeds of a municipal securities offering that are used to fund a municipal pension

[89] *See* 17 CFR 240.15c2–12(f)(10). "Offering" as used in this definition is defined in rule 15c2–12(a). *See* 17 CFR 240.15c2–12(a).

[90] *See* proposed rule 15Ba1–1(i). *See also* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

[91] The Commission notes that a municipal entity that provides credit enhancement could be an obligated person for purposes of the proposed rule.

[92] *See* Kutak Rock Letter.

[93] 15 U.S.C. 78*o*–4(e)(5).

[94] 15 U.S.C. 78*o*–4(e)(3).

[95] *See* letter from Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association ("ABA"), and Deputy General Counsel, ABA Securities Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 13, 2010 ("ABA Letter"). *See also* letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Martha Haines, Assistant Director and Chief, Office of Municipal Securities, Commission, dated November 15, 2010 ("SIFMA Letter") (suggesting interpretations of the term "investment strategies").

[96] Proposed rule 15Ba1–1(b).

[97] 15 U.S.C. 78*o*–4(e)(8)(B).

[98] To the extent that the pooled investment vehicle is a LGIP, the pooled investment vehicle would be considered to be funds "held by or on behalf of" a municipal entity and, therefore, a person providing advice with respect to a LGIP would have to register as a municipal advisor. *See also supra* note 36 (discussing LGIPs).

[99] *See* ABA Letter. *See also* SIFMA Letter (suggesting that moneys in a commingled account would not be considered proceeds unless the municipal entity specifically communicates that such investment is being made with proceeds of an issue of municipal securities).

plan, once deposited in the plan and commingled with other funds, would likewise lose their characteristic as proceeds under the statute; and the provision of advice by a bank to the municipal entity with respect to the investment of plan assets would not make the bank a 'municipal advisor' under the statute." [100]

As noted above, the Commission is proposing to interpret the term "investment strategies" to include plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity, as well as plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, or the recommendation of or brokerage of municipal escrow investments. Municipal entities utilizing the services of advisors with respect to plans, programs or pools of assets that invest funds are subject to the same risks regardless of whether those funds are the proceeds of municipal securities. The Commission does not have any evidence that the competency of the advisors or quality of advice needed by municipal entities with respect to the proceeds of municipal securities and municipal escrow investments is any different than with respect to the investment of other public funds—which may exceed the amount of proceeds of municipal securities or municipal escrow investments. Furthermore, this approach avoids any need to trace the investment of proceeds of municipal securities commingled with other public funds and eliminates the potential for abuse from the artificial commingling of the proceeds of municipal securities with other public funds solely to avoid registration as a municipal advisor and compliance with any rules or regulations relating to such advisors.

Municipal Derivatives

The term "municipal derivatives" is not defined in Section 15B of the Exchange Act. Accordingly, the Commission is proposing, in rule 15Ba1–1(f), that the term "municipal derivatives" means "any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which a municipal entity is a counterparty, or to which an obligated person, acting in its capacity as an obligated person, is a counterparty." [101] Thus, the Commission is including in the definition of "municipal derivatives" the definitions of "swap" and "security-based swap," as those terms are defined by statute (and any rules or regulations thereunder). The Commission believes it is appropriate to use such definitions for purposes of defining the term "municipal derivatives" where the counterparty is a municipal entity or obligated person.

Solicitation of a Municipal Entity or Obligated Person

The definition of "municipal advisor" in Exchange Act Section 15B(e)(4) includes a person that undertakes a solicitation of a municipal entity or obligated person.[102] Exchange Act Section 15B(e)(9) provides that the term "solicitation of a municipal entity or obligated person" means "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-2]) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity." [103] As a result of this definition, the Commission notes that, unless an exclusion applies, any third-party solicitor that seeks business on behalf of a broker, dealer, municipal securities dealer, municipal advisor or investment adviser from a municipal entity must register as a "municipal advisor." For example, a third-party solicitor that seeks business on behalf of an investment adviser from a municipal pension fund or a local government investment pool must register as a "municipal advisor." In addition, the determination regarding whether a solicitation of a municipal entity requires a person to register as a municipal advisor is not based on the number, or size, of investments that are solicited. Thus, the Commission would consider a solicitation of a single investment of any amount in a municipal entity to require the person soliciting the municipal entity to register as a municipal advisor.

As noted above, the definition of "solicitation of municipal entity or obligated person" applies to solicitations on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation. Accordingly, persons soliciting on behalf of affiliated entities would not fall within the definition of municipal advisor and would not be required to register pursuant to Section 15B of the Exchange Act. The statute would not, however, preclude such persons from registering as municipal advisors and being subject to the rules and regulations applicable to registered municipal advisors. For example, a person that makes a direct or indirect communication with a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such communication, where the communication is for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity, may voluntarily file Form MA or MA–I, as applicable, and apply to register as a municipal advisor. By registering as a municipal advisor, such person must comply with all Federal securities laws and rules or regulations promulgated thereunder relating to registered municipal advisors, including the

[100] See ABA Letter.

[101] See proposed rule 15Ba1–1(f).

[102] See 15 U.S.C. 78o–4(e)(4)(A)(ii). The Commission notes that the definition of "municipal advisor" under Section 15B(e)(4)(A) means, in part, a person that "undertakes a solicitation of a municipal entity." *Id.* In defining the phrase "solicitation of a municipal entity," Section 15B includes within that phrase, the words "or obligated person." See 15 U.S.C. 78o–4(e)(9). Section 15B(a)(1)(B) also includes solicitations of obligated persons. Thus, the Commission interprets the definition of "municipal advisor" to include the solicitation of a municipal entity or obligated person.

[103] 15 U.S.C. 78o–4(e)(9).

obligation to comply with MSRB rules that apply to municipal advisors.[104]

c. Exclusions From the Definition of "Municipal Advisor"

Broker, Dealer, or Municipal Securities Dealer Serving as an Underwriter

The definition of "municipal advisor" in proposed rule 15Ba1–1(d) would clarify that the exclusion from the definition for a broker, dealer, or municipal securities dealer serving as an underwriter[105] does not apply when such persons are acting in a capacity other than as an underwriter on behalf of a municipal entity or obligated person.[106] The Commission interprets the exclusion to apply solely to a broker, dealer, or municipal securities dealer serving as an underwriter on behalf of a municipal entity or obligated person in connection with the issuance of municipal securities.[107] Thus, a broker, dealer or municipal securities dealer would not be excluded from the definition of a "municipal advisor" if the broker, dealer or municipal securities dealer engages in municipal advisory activities when acting in a capacity other than as an underwriter on behalf of a municipal entity or obligated person. For example, a broker-dealer advising a municipal entity with respect to the investment of bond proceeds or the advisability of a municipal derivative, would be a municipal advisor with respect to those activities. In addition, a broker-dealer acting as a placement agent for a private equity fund that solicits a municipal entity or obligated person to invest in the private equity fund would be a municipal advisor with respect to that activity. The Commission notes that including such activities within the scope of municipal advisory activities is consistent with the Exchange Act.[108]

One commenter asked for clarification regarding whether a broker-dealer or another entity that provides advice or assistance to a municipal entity on an informal non-contractual (and non-compensated) basis would have to register as a municipal advisor.[109] This commenter believes that such persons should not have to register as municipal advisors.[110] Another commenter, however, stated that "[a]ny advisor who provides 'free' service will be compensated at some point for this service. The services being rendered are the trigger for registration and the corresponding fiduciary duty, not the title of the relationship, the terms of the contract, or the compensation received. Such advisor should not be permitted to avoid registration and fiduciary responsibilities."[111] Similarly, another commenter stated that individuals that offer "'free' or 'voluntary' Municipal Securities Advisory Services should not be exempt from registration."[112]

In defining the term "municipal advisor" in Exchange Act Section 15B(e)(4), Congress did not distinguish between those municipal advisors who are compensated for providing advice and those who are not compensated for providing advice. Thus, consistent with Congress's definition of the term "municipal advisor," the Commission does not believe the issue of whether a municipal advisor is compensated for providing municipal advice should factor into the determination of whether the municipal advisor must register with the Commission.[113]

Registered Investment Advisers

Proposed rule 15Ba1–1(d)(2)(ii) would clarify the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(e)(4)(C) for Commission-registered investment advisers.[114] Specifically, consistent with the Commission's interpretation in connection with rule 15Ba2–6T, proposed rule 15Ba1–1(d)(2)(ii) would provide that the term "municipal advisor" shall not include: "An investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or a person associated with such registered investment adviser, unless the registered investment adviser or person associated with the investment adviser engages in municipal advisory activities other than providing investment advice that would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940."[115]

Thus, the Commission interprets the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(4)(C) for registered investment advisers and their associated persons who are providing investment advice, to mean that a registered investment adviser or an associated person of a registered investment adviser would not have to register as a "municipal advisor" with respect to the provision of any investment advice subject to the Investment Advisers

[104] Recently proposed amendments to the Investment Advisers Act seek to permit investment advisers to pay any "regulated municipal advisor" to solicit government entities on its behalf. See Investment Advisers Act Release No. IA–3110 at 69 (November 19, 2010). Such solicitors may include affiliated entities of the investment adviser. As part of its deliberations with respect to the Dodd-Frank Act, Congress expressed its intent that municipal advisors be permitted to solicit government clients and be subject to regulation as municipal advisors. See *id.* at n. 217. Allowing entities to register as municipal advisors and subject themselves to the regulatory regime for municipal advisors as a condition to being paid as solicitors on behalf of affiliated investment advisers does not contravene this Congressional intent.

[105] The term "underwriter" is defined in Section 2(a)(11) of the Securities Act of 1933. See 15 U.S.C. 77b(a)(11).

[106] See 15 U.S.C. 78o–4(e)(4)(C) (providing that the definition of "municipal advisor" does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933)).

[107] See Temporary Registration Rule Release, supra note 63, at 54467, n.19. See *also* S. Rep. No. 176, 111th Cong., 2d. Sess. 148 (2010) ("Senate Report") (noting the need to subject activities such as solicitation of a municipal entity to engage an investment adviser to MSRB regulation). The Commission believes that Congress excluded a broker, dealer or municipal securities dealer acting as an underwriter on behalf of a municipal entity or obligated person in connection with the issuance of municipal securities because such activity is already subject to MSRB rules.

[108] See Exchange Act Section 15B(e)(4)(A) and (B) (including placement agents and solicitors that undertake a solicitation of a municipal entity in the definition of municipal advisor); Senate Report; Letter from Senator Christopher J. Dodd, U.S. Senate Committee on Banking, Housing and Urban Affairs, to Elizabeth M. Murphy, Secretary, Commission, dated February 2, 2010.

[109] See Kutak Rock Letter. See *also* letter from Amy Natterson Kroll and W. Hardy Callcott, Bingham McCutchen LLP, to Elizabeth M. Murphy, Secretary, Commission, dated October 13, 2010 ("Bingham Letter") (stating that it urges "the Commission to clarify that providing uncompensated introductions to potential underwriters or other potential financing participants does not constitute a 'solicitation' that would trigger registration as a municipal advisor").

[110] See Kutak Rock Letter.

[111] See letter from Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, to Commission, dated October 8, 2010 ("NAIPFA Letter"). See *also* Bingham Letter (acknowledging that "clean energy services companies ultimately do receive compensation for their projects—but they do not get paid separately (either by municipal entities, or by the firms providing financing) for making introductions").

[112] See letter from Joy A. Howard, Principal, WM Financial Strategies, to Commission, dated October 5, 2010 ("Howard Letter").

[113] The Commission notes that in defining the term "solicitation of a municipal entity or obligated person" Congress included language that such solicitation means, in part, "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation." "Indirect compensation" has been interpreted by other regulatory agencies to include non-monetary compensation. For example, the Commodity Futures Trading Commission ("CFTC") has interpreted the term "indirect compensation," in the context of the registration requirements and procedures for introducing brokers, to include, among other things, soft compensation such as research. See CFTC Release on Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35251 (August 3, 1983) (the CFTC's definition of "introducing broker" excludes those persons who are not compensated, directly or indirectly, for their activities as introducing brokers).

[114] See proposed rule 15Ba1–1(d)(2)(ii).

[115] See *id.* See *also* Temporary Registration Rule Release, *supra* note 63, at 54467.

Act.[116] A registered investment adviser or an associated person of a registered investment adviser must register with the Commission as a municipal advisor if the adviser or associated person engages in any municipal advisory activities that would not be investment advice subject to the Investment Advisers Act.[117] For example, a Commission-registered investment adviser that provides advice with respect to how a municipal entity should structure or issue municipal securities would be required to register as a municipal advisor.[118] A Commission-registered investment adviser that solicits a municipal entity on behalf of a municipal advisor would also be required to register as a municipal advisor. The Commission believes that this interpretation is in furtherance of the goals of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities.

Commodity Trading Advisors

Consistent with the Commission's interpretation in connection with rule 15Ba2–6T, the Commission interprets the exclusion in the Dodd-Frank Act for registered commodity trading advisors and their related persons providing advice related to swaps to apply only to such persons when they are providing advice related to swaps, as that term is defined in Section 1a(47) of the Commodity Exchange Act and Section 3(a)(69) of the Exchange Act,[119] and any rules or regulations promulgated thereunder.[120] Accordingly, proposed rule 15Ba1–1(d)(2)(iii) would provide that the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(e)(4)(C) for registered commodity trading advisors, or any person associated with a registered commodity trading advisor, is only available to a commodity trading advisor or person associated with a commodity trading advisor, to the extent such commodity trading advisor or associated person of the commodity trading advisor is providing advice related to swaps. The exclusion would not apply to the commodity trading advisor or associated person of the commodity trading advisor to the extent he or she engages in municipal advisory activities other than the provision of advice related to swaps.[121] A commodity trading advisor, or an associated person of a commodity trading advisor, must register with the Commission as a municipal advisor if the commodity trading advisor, or an associated person of a commodity trading advisor, engages in any municipal advisory activities that do not include advice related to swaps.[122] For example, if an advisor is providing advice to a municipal entity with respect to engaging in a swap transaction and provides advice to the municipal entity with respect to the structure of a municipal securities offering, the advisor would have to register with the Commission as a municipal advisor and would be subject to regulation by the MSRB as a municipal advisor. In addition, a commodity trading advisor must register with the Commission if the advisor provides advice with respect to swaps on behalf of a municipal entity or obligated person, but is not registered as a commodity trading advisor.

Attorneys, Engineers and Other Professionals

The definition of municipal advisor in Exchange Act Section 15B(e)(4) excludes professionals such as attorneys offering legal advice and engineers providing engineering advice.[123] One commenter noted that the definition of "municipal advisor" does not contemplate a specific exclusion for accountants offering "traditional accounting advice."[124] In discussing what is "traditional accounting advice," the commenter noted the engagement of accountants by municipal entities in connection with the issuance of municipal securities for the purpose of consenting to the use of accountant prepared or audited financial statements and/or providing bring down or comfort letters[125] relating to such financial statements.[126]

Because accountants may provide advice to municipal entities that includes advice about the structure, timing, terms, and other similar matters concerning the issuance of municipal securities, the Commission does not believe it is appropriate to exclude these professionals from the definition of municipal advisor entirely. Accountants may also be engaged by municipal entities to provide other services, such as conducting feasibility studies or preparing financial projections.[127] In addition, as noted by this commenter, in defining "municipal advisor" in Exchange Act Section 15B(e)(4), Congress only excluded attorneys offering legal advice or services of a traditional legal nature, or engineers providing engineering advice.[128] At this time, the Commission believes that it is not necessary or appropriate to exclude all accountants from the definition of "municipal advisor."

The Commission believes, however, that the preparation or audit of financial statements, or the issuance of letters for underwriters[129] by accountants would not constitute the provision of advice within the meaning of Exchange Act Section 15B(e)(4)(A)(i).[130] Accordingly, in proposed rule 15Ba1–1(d)(2)(vi), the Commission proposes to exclude from the definition of a "municipal advisor" accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[131]

In addition, with respect to the exclusion from the definition of "municipal advisor" for attorneys offering legal advice or services of a traditional legal nature, the Commission interprets this exclusion to apply only when the legal services are to a client of the attorney that is a municipal entity or obligated person. Accordingly, proposed rule 15Ba1–1(d)(2)(iv) provides that the

[116] *See id.* The staff interprets broadly the term "advice" with respect to the Investment Advisers Act. *See supra* note 52 (noting the Division of Investment Management: Staff Legal Bulletin No. 11). For purposes of the Commission's interpretation under proposed rule 15Ba1–1(d)(2)(ii), the Commission interprets "advice" to include any activity that constitutes "advice" subject to the Investment Advisers Act.

[117] Similarly, a municipal advisor registered under Section 15B of the Exchange Act may be required to register as an investment adviser if its business includes providing investment advice that is subject to the Investment Advisers Act. Commission staff has provided guidance with respect to circumstances under which a municipal advisor may be required to register as an investment adviser. *See* Staff Legal Bulletin No. 11, *supra* note 52.

[118] The Commission notes that a person that provides advice as to whether and how a municipal entity should issue municipal securities would not have to register with the Commission as an investment adviser. *See id.* (stating "[w]e would not consider a financial advisor to be an investment adviser if it limits its activities to providing advice as to whether and how a municipality should issue debt securities").

[119] 7 U.S.C. 1a(47) and 15 U.S.C. 78c(a)(69). The exclusion would not apply when such persons are providing advice with respect to security-based swaps.

[120] *See* Temporary Registration Rule Release, *supra* note 63, at 54467.

[121] *See* proposed rule 15a1–1(d)(2)(iii).

[122] *See id.*

[123] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[124] *See* Kutak Rock Letter.

[125] In auditing literature, bring down and comfort letters are referred to as "letters for underwriters." *See* AU Sec. 634, Letters for Underwriters. Thus, the Commission is proposing to use the term "letters for underwriters" for this purpose.

[126] *See* Kutak Rock Letter.

[127] *See id. See also* Howard Letter (stating that certified public accountants that provide advice on bond issues "clearly meet the definition of 'Municipal Advisor' under the Act and should be subject to registration").

[128] *See* Kutak Rock Letter. *See also* 15 U.S.C. 78*o*–4(e)(4)(C).

[129] *See supra* note 125.

[130] *See* 15 U.S.C. 78*o*–4(e)(4)(A)(i).

[131] *See* proposed rule 15Ba1–1(d)(2)(vi).

term "municipal advisor" shall not include any attorney unless the attorney engages in municipal advisory activities other than offering legal advice or providing services that are of a traditional legal nature to a client of the attorney that is a municipal entity or obligated person.[132] Generally, the Commission interprets advice provided by a lawyer to its client with respect to the structure, timing, terms and other similar matters concerning municipal financial products or the issuance of municipal securities to be services of a traditional legal nature if such advice is provided within a lawyer-client relationship specifically related to such products in conjunction with related legal advice. Thus, for example, advice comparing the structures, terms, or associated costs of issuance of different types of securities or financial instruments (such as fixed rate bonds or variable rate demand obligations) given by an attorney hired to advise a municipal entity client embarking on a bond offering, would be considered to be services of a traditional legal nature, as would advice concerning the tax consequences of alternative financing structures or advice recommending a particular financing structure due to legal considerations such as the limitations included in existing contracts and indentures to which the issuer is a party. However, advice which is primarily financial in nature, such as advice concerning the financial feasibility of a project or financing, advice estimating or comparing the relative cost to maturity of an issuance depending on various interest rate assumptions or advice recommending a particular structure as being financially advantageous under prevailing market conditions, would be primarily financial advice and not services of a traditional legal nature.

With respect to the exclusion from the definition of "municipal advisor" for engineers providing engineering advice, one commenter requested that the Commission include in this exclusion "activity which is incidental to engineering services."[133] In addition, this commenter urged the Commission to "distinguish purely informational and educational activities which do not rise to the level of advice from individualized advice about the appropriate investment for a particular state or local government entity."[134] Moreover, this commenter stated that "a clean energy services company should not also be required to register as a municipal advisor simply because it provides cash-flow modeling and other similar information that is inextricably linked to the engineering analysis, even if that modeling is individualized to the municipal entity."[135] In addition, the commenter urged the Commission to define "advice" to "exclude feasibility studies that are a necessary part of any engineering projects, including clean energy services projects."[136]

As discussed above and below, the exclusions from the definition of "municipal advisor" included by Congress in Section 15B(e)(4) of the Exchange Act were limited.[137] With respect to engineers, the exclusion applies to engineers providing "engineering advice." For example, costing out engineering alternatives would not subject an engineer to registration as a municipal advisor because such activity would be considered engineering advice. The exclusion does not include circumstances in which the engineer is engaging in municipal advisory activities, including cash-flow modeling or the provision of information and education relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice. In addition, the exclusion does not include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project and, therefore, an engineer preparing such studies would be subject to registration as a municipal advisor.[138]

Employees of a Municipal Entity

Exchange Act Section 15B(e)(4)(A) provides that the term "municipal advisor" excludes employees of a municipal entity.[139] One commenter suggested that the Commission clarify that this exclusion from the definition of "municipal advisor" would include any person serving as an appointed or elected member of the governing body of a municipal entity, such as a board member, county commissioner or city councilman.[140] This commenter stated that because these persons are not technically "employees" of the municipal entity (but rather are "unpaid volunteers"), these persons would not fall within the exclusion from the definition of "municipal advisor" for "employees of a municipal entity" and, therefore, may have to register as municipal advisors.[141]

The Commission believes that the exclusion from the definition of a "municipal advisor" for "employees of a municipal entity" should include any person serving as an elected member of the governing body of the municipal entity to the extent that person is acting within the scope of his or her role as an elected member of the governing body of the municipal entity. "Employees of a municipal entity" should also include appointed members of a governing body to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an elective office.[142] The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a "municipal advisor." The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity.

Banks

Another commenter stated that the Commission should exempt from the definition of a "municipal advisor" banks providing "traditional banking services" and banks and trust companies that provide "investment advisory services."[143] As support, this

[132] See proposed rule 15Ba1–1(d)(2)(iv).

[133] See Bingham Letter.

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] See 15 U.S.C. 78*o*–4(e)(4)(C).

[138] A "feasibility study" is a report detailing the economic practicality of and the need for a proposed capital program. It frequently analyzes demand for the product or service being sold and forecasts financial statements or other operating statistics. The feasibility study may include a user or other rate analysis to provide an estimate of revenues that will be generated for the purpose of substantiating that debt service can be met from pledged revenues. In addition, the feasibility study may provide details of the physical, operating, economic or engineering aspects of the proposed project, including estimates of construction costs, completion dates and drawdown schedules. See MSRB Glossary of Municipal Securities Terms, available at *http://www.msrb.org/msrb1/glossary/glossary_db.asp?sel=f.*

[139] 15 U.S.C. 78*o*–4(e)(4)(A).

[140] See Kutak Rock Letter.

[141] See *id.* See also 15 U.S.C. 78*o*–4(e)(4)(A).

[142] This would include persons appointed to fill the remainder of the term for an elective office.

[143] See ABA Letter. In providing examples of the types of activities in which banks and trust companies engage, this commenter stated that: "[o]n the commercial side of the bank, these services and products include direct loans, checking accounts, and CDs. Banks of all sizes also frequently are asked to respond to RFP requests from municipal entities regarding investment products offered by the banking entity, such as interest-bearing bank

commenter stated that banks are currently well-regulated and banks that offer trustee services are subject to rigorous and frequent examination, as well as extensive regulation by the various Federal or State banking regulators.[144] The Commission notes that Congress included in the statutory definition of "municipal advisor" a limited number of exclusions from the definition, and such exclusions did not include banks in any capacity. As discussed below, under "Request for Comment," among other things, the Commission is seeking comment on whether the definition of a "municipal advisor" should exclude banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(*l*) of the Federal Deposit Insurance Act,[145] at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act.[146] Such an exclusion, if adopted, would result in excluding banks from the definition of a "municipal advisor" to the extent that the bank is providing advice to a municipal entity or obligated person with respect to such traditional banking products as insured checking and savings accounts and certificates of deposit, while not excluding from the definition of a "municipal advisor" a bank that is providing advice to a municipal entity or obligated person concerning other municipal advisory activities. The Commission notes that, similarly, banks are not excluded from the requirement to register as municipal securities dealers.

Request for Comment

The Commission requests comments generally on its proposals discussed above and also requests comment on the following specific issues:

- In light of our understanding of Congressional objectives and intent, are the Commission's interpretations under the definition of "municipal advisor" and related terms, and the exclusions from the definition of "municipal advisor" appropriate? Should any of these interpretations be modified or clarified in any way?
- The Commission notes that the definition of "municipal entity" includes, but is not limited to, public pension funds, local government investment pools and other state and local governmental entities or funds as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans. Is the Commission's interpretation of "municipal entity" for purposes of the proposed definition of "municipal advisor" appropriate? Is additional clarification necessary? If so, how should the Commission further clarify this interpretation?
- In what circumstances with respect to municipal financial products or the issuance of municipal securities should charter schools be considered municipal entities? In what circumstances with respect to municipal financial products or the issuance of municipal securities should charter schools be considered obligated persons? To what extent do state laws vary in their treatment of charter schools in ways that would affect their classification as municipal entities or obligated persons?
- The Commission proposes to exempt from the definition of "obligated person" providers of municipal bond insurance, letters of credit, or other liquidity facilities so that the definition of "obligated person" for purposes of the proposed rules is consistent with the definition of "obligated person" in rule 15c2–12 under the Exchange Act. Should the proposed definition be modified or clarified in any way? Should the term "obligated person" for purposes of municipal advisor registration be consistent with the definition of "obligated person" for purposes of rule 15c2–12? If so, why? If not, why not? Should the Commission include additional exemptions from the definition of "obligated person"? If so, please explain and provide specific examples.
- The Commission proposes to interpret the term "investment strategies" to include plans or programs for the investment of the proceeds of municipal securities (other than municipal derivatives and guaranteed investment contracts), plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity, or the recommendation of or brokerage of municipal escrow investments. Should the Commission modify or clarify this interpretation in any way? If so, why? If not, why not? Please provide any suggested alternative language. Should the Commission exclude plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity that are not proceeds of the issuance of municipal securities from the definition of investment strategies? If so, why? If not, why not? If the Commission were to limit investment strategies to "plans or programs for the investment of the proceeds of municipal securities (other than municipal derivatives and guaranteed investment contracts) or the recommendation of or brokerage of municipal escrow investments," how should the Commission determine when funds should no longer be considered "proceeds of municipal securities?" What obligations should parties other than the municipal entity have in determining whether funds held by or on behalf of a municipal entity are proceeds of municipal securities?
- As noted above, to the extent a person is providing advice to a pooled investment vehicle in which one or more municipal entities are investors along with other investors that are not municipal entities, the pooled investment vehicle would not be considered funds "held by or on behalf of a municipal entity" and, therefore, a person providing advice to the pooled investment vehicle would not be required to register as a municipal advisor. Should the Commission modify or clarify this interpretation in any way? If so, why? If not, why not? Please provide any suggested alternative language. Should the Commission provide that such interpretation should apply only if the investors that are not municipal entities are the primary investors in the pooled investment vehicle? If so, how, and above what level, should the Commission determine that investors that are not municipal entities are the primary investors in the pooled investment vehicle? Should such a determination be based on a dollar amount or a percentage of the pooled investment vehicle's assets? Should the Commission provide that this pooled investment vehicle interpretation would no longer apply if the municipal entity (or municipal entities) investing in the pooled investment vehicle becomes the primary investor in the pooled investment vehicle subsequent to the initial investment? If so, above what level of investment should a municipal entity (or municipal entities) be considered to be the primary investor in the pooled investment vehicle? Should such a determination be based on a dollar amount or a percentage of the pooled investment vehicle's assets?
- As discussed above, the Commission is proposing to interpret the term "investment strategies" to include plans, programs or pools of

deposits, money market mutual funds, or other exempt securities. Banks also are significant investors in the securities issued by municipalities and provide credit or, through their affiliates, underwriting services to municipalities when the city or township wants to buy a fire truck or build a new school or other similar facility. Furthermore, for over one hundred and fifty years, banks and trust companies have provided fiduciary services to municipal entities in the United States. In this capacity banks often manage investment accounts for local towns and act as trustees with respect to bond proceeds, escrow accounts, governmental pension plans and other similar capacities." *Id.*

[144] See *id.*

[145] 12 U.S.C. 1813(*l*).

[146] 12 U.S.C. 1813(c)(2).

assets that invest funds held by or on behalf of a municipal entity. Thus, commingled proceeds, regardless of when they lose their characteristic as proceeds, would still constitute "funds held by or on behalf of a municipal entity" and, therefore, any advice with respect to such funds would be municipal advice, unless subject to an exclusion. Is this interpretation too broad? Please explain and include a discussion of concerns, if any, such an interpretation could raise.

• In interpreting the term "solicitation of a municipal entity or obligated person," the Commission notes that, unless an exclusion applies, any third-party solicitor that seeks business on behalf of an investment adviser from a municipal entity or obligated person, such as a municipal pension fund or a local government investment pool, must register as a municipal advisor. In addition, the Commission notes that the determination regarding whether a solicitation of a municipal entity or obligated person requires a person to register as a municipal advisor is not based on the number, or the size, of investments that are solicited. Thus, the Commission would consider a solicitation of a single investment by a municipal entity or obligated person in any amount to require the person soliciting the municipal entity or obligated person to register as a municipal advisor. Do these interpretations require further clarification? If so, how? Should these interpretations be modified in any way? Please explain and provide suggested alternative language, as appropriate. Is there a *de minimis* number or size of investments that should be allowed to be solicited before a person is required to register as a municipal advisor? If so, what should this *de minimis* amount be? Please explain the rationale for providing for a *de minimis* exception.

• Should the Commission, as proposed, permit the voluntary registration by persons that solicit a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such solicitation? If not, why not? Should the Commission permit voluntary registration by any other group of persons? If so, which persons and why?

• In interpreting the term "solicitation of a municipal entity or obligated person," the Commission also notes that such solicitation must be "for the purpose of obtaining or retaining an engagement * * * in connection with municipal financial products [or] the issuance of municipal securities." Are there types of obligated persons to which this definition should not apply in connection with the issuance of municipal securities? If so, please identify the types of obligated persons to which the definition should not apply and explain why. Are there types of municipal financial products (such as municipal derivatives which include swaps or security-based swaps where an obligated person is the counterparty) to which this definition should not apply? If so, please identify the types of municipal financial products to which the definition should not apply and explain why.

• Proposed rule 15Ba1–1(f) would define the term "municipal derivatives" to mean "any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3a(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which a municipal entity is a counterparty, or to which an obligated person, acting in its capacity as an obligated person, is a counterparty." Should this definition be clarified or modified in any way? If so, how? Should the definition of municipal derivatives specifically include other financial products? For example, should the definition specifically include options, forwards or futures? If so, which products and why? Should this definition include a financial product that is composed of multiple components where one or more of such components is derivative in nature, such as a structured note or convertible bond?[147] Should this definition include financial products, in addition to swaps and security-based swaps, that are based on municipal securities that are exempted securities under the Exchange Act or are exempt from registration under the Securities Act? Should it include an over-the-counter option contract with a municipal entity? If so, which additional financial products should be included in the definition and why?

• Is our interpretation of the exclusion from the definition of a "municipal advisor" for a broker, dealer, or municipal securities dealer serving as an underwriter appropriate? Specifically, the Commission interprets this exclusion to mean that a broker-dealer acting as an underwriter or placement agent that solicits a municipal entity to invest in a security, or a broker-dealer acting as an underwriter that also advises a municipal entity with respect to the investment of proceeds of municipal securities or the advisability of a municipal derivative would be a municipal advisor. Should these interpretations be modified in any way, or further clarified? If so, how?

• Consistent with Congress's definition of the term "municipal advisor," the Commission does not believe that whether a municipal advisor is compensated for providing municipal advice should factor into the determination regarding whether the municipal advisor must register with the Commission. Are there any persons who engage in uncompensated municipal advisory activities, or municipal advisory activities for indirect compensation, that the Commission should exclude from the definition of "municipal advisor"? Please explain.

• The Commission would interpret the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(4)(C) for Commission-registered investment advisers and their associated persons who are providing investment advice, to mean that a Commission-registered investment adviser or an associated person of a Commission-registered investment adviser would not have to register as a "municipal advisor" with respect to the provision of any advice that would subject the adviser (or associated person) to the Investment Advisers Act. Should this interpretation be modified or clarified in any way? If so, how?

• As a result of the changes in the threshold for registration as an investment adviser,[148] fewer entities will be required to register as investment advisers under the Federal securities laws and will instead be subject to state registration requirements. Investment advisers that are not registered with the Commission would not be exempt from registration as municipal advisors to the extent that they are engaging in municipal advisory activities. Should state-registered investment advisers be exempt from the definition of "municipal advisor" to the extent they are providing advice that otherwise would be subject to the Investment Advisers Act, but for the operation of a prohibition to, or exemption from, Commission registration?

[147] *See* SIFMA Letter.

[148] *See* 15 U.S.C. 80b–3a(a).

• Should the Commission's interpretation of the exclusion from the definition of a "municipal advisor" for registered commodity trading advisors and their associated persons providing advice related to swaps be modified in any way, or further clarified? If so, how?

• The Commission proposes to exclude from the definition of a "municipal advisor" persons preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person. Should persons providing these accounting services be excluded from the definition of "municipal advisor"? Are there additional types of services that an accountant provides that should not require the registration of an accountant as a municipal advisor? If so, what additional types of accounting services should qualify an accountant for an exclusion from the definition of "municipal advisor"? Are there activities that are incidental to the provision of accounting services or inextricably linked to accounting services that can only reasonably be performed by an accountant that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products?

• Should the Commission expand the exclusion from the definition of "municipal advisor" beyond engineers providing engineering advice? If so, why and how should such exclusion be expanded? If not, why not? How should the Commission interpret the term "engineering advice"? Are there activities that are "incidental to the provision of engineering advice" or "inextricably linked to engineering advice" that can only reasonably be performed by an engineer that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products? As discussed above, the Commission does not interpret the exclusion of engineers providing engineering advice to include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project and, therefore, an engineer preparing such studies would be subject to registration as a municipal advisor. Is this an appropriate interpretation? Please explain.

• The Commission proposes to exclude from the definition of municipal advisor attorneys offering legal advice or services of a traditional legal nature. As discussed above, the Commission interprets this exclusion to apply only when the legal services are to a client of the attorney that is a municipal entity or obligated person. Is this an appropriate interpretation? Please explain. Should the Commission provide an exclusion for all activities of an attorney as long as that attorney has an attorney-client relationship with the municipal entity or obligated person? Why or why not? Should the scope of the exclusion for attorneys be different for attorneys for obligated persons? Why or why not? Neither the Dodd-Frank Act nor the proposed rule defines the term "services of a traditional legal nature." Is the meaning of the term sufficiently clear? If not, should the Commission provide additional interpretive guidance? How should the Commission interpret the term?

• Are there other types of professional activities that should be excluded from the definition of a "municipal advisor"? Please explain.

• The Commission is proposing to exclude from the definition of "municipal entity" elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity's governing body unless such appointed members are *ex officio* members of the governing body by virtue of holding an elective office. Are these distinctions appropriate? Please explain. Are there other persons associated with a municipal entity who might not be "employees" of a municipal entity that the Commission should exclude from the definition of a "municipal advisor"?

• Should employees of obligated persons be excluded from the definition of "municipal advisor" to the extent they are providing advice to the obligated person, acting in its capacity as an obligated person, in connection with municipal financial products or the issuance of municipal securities? One commenter [149] expressed concern that volunteers at entities such as charter schools could be required to register as municipal advisors. Are there types of persons other than employees of obligated persons that should be excluded from the definition of "municipal advisor?" If yes, please provide examples of the specific types of persons and the specific circumstances under which they should be excluded.

• Should the Commission exclude from the definition of a "municipal advisor" banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the Federal Deposit Insurance Act [150] at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act,[151] such as insured checking and savings accounts and certificates of deposit? Should the Commission exclude from the definition of a "municipal advisor" banks that respond to requests for proposals ("RFPs") from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities? Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiates the terms of an investment with the municipal entity? [152] Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity the terms upon which the bank would purchase for the bank's own account (to be held to maturity) securities issued by the municipal entity, such as bond anticipation notes, tax anticipation notes, or revenue anticipation notes? [153] Should the Commission exclude from the definition of "municipal advisor" a bank that directs or executes purchases and sales of securities or other instruments with respect to funds in a trust account or other fiduciary account in accordance with predetermined investment criteria or guidelines, including on a discretionary basis? [154] Should the Commission exclude from the definition of a "municipal advisor" banks and trust companies that provide other fiduciary services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities? Should banks and trust companies be exempt from the definition of "municipal advisor" to the extent they are providing advice that otherwise would subject them to registration under the Investment Advisers Act, but for the operation of a prohibition to or exemption from registration? Please explain any response to these questions and to the extent that an exemption is recommended, please provide suggested exemptive language.

• Should the Commission exclude from the definition of "municipal advisor" a broker-dealer that provides a municipal entity with price quotations

[149] *See* Jacobsen Letter.

[150] *See supra* note 145.

[151] *See supra* note 146.

[152] *See* SIFMA Letter.

[153] *See id.*

[154] *See id.*

with respect to particular securities (or securities having particular characteristics) which the broker-dealer would be prepared to sell as principal or acquire for the municipal entity?[155] Should the Commission exclude from the definition of "municipal advisor" a broker-dealer that provides to a municipal entity a list of securities meeting specified criteria that are readily available in the marketplace, but without making a recommendation as to the merits of any investment particularized to the municipal entity's specific circumstances or investment objectives?[156]

- Should the Commission exclude from the definition of "municipal advisor" an entity that provides to clients investment advice, such as research information and generic trade ideas or commentary that does not purport to meet the needs or objectives of specific clients, and is provided to a municipal entity as part of its ongoing ordinary communications?[157]
- Should the Commission permit registration of only separately identifiable departments or divisions of a bank ("SIDs")? Please explain. Would the following suggested rule text, based on MSRB rule G–1 relating to SIDs engaged in municipal securities dealer activitites, provide appropriate conditions for determining whether and when a SID engaged in municipal advisory activities may register as a municipal advisor: "(a) A separately identifiable department or division of a bank, as such term is used in Section 3(a)(30) of the Securities Exchange Act of 1934, is that unit of the bank which conducts all of the municipal advisory activities of the bank, *provided that:* (1) Such unit is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, including the supervision of all bank employees engaged in the performance of such activities; and (2) There are separately maintained in or separately extractable from such unit's own facilities or the facilities of the bank, all of the records relating to the bank's municipal advisory activities, and *further provided that* such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Exchange Act, the rules and regulations thereunder and the rules of the MSRB relating to municipal advisors; (b) The fact that directors and senior officers of the bank may from time to time set broad policy guidelines affecting the bank as a whole and which are not directly related to the day-to-day conduct of the bank's municipal advisory activities, shall not disqualify the unit hereinbefore described as a separately identifiable department or division of the bank or require that such directors or officers be considered as part of such unit; and (c) The fact that the bank's municipal advisory activities are conducted in more than one geographic organizational or operational unit of the bank shall not preclude a finding that the bank has a separately identifiable department or division for purposes of this rule, *provided, however,* that all such units are identifiable and that the requirements of paragraphs (1) and (2) of section (a) of this rule are met with respect to each such unit. All such geographic, organizational or operational units of the bank shall be considered in the aggregate as the separately identifiable department or division of the bank for purposes of this rule."? Should this language be clarified or modified in any way? Please provide suggested alternative language, as appropriate. Are there reasons that the language of MSRB rule G–1, as modified, should not be used for SIDs engaging in municipal advisory activities? Please explain.
- Are there other exclusions from the definition of "municipal advisor" that the Commission should consider? Please explain.

2. Proposed Rule 15Ba1–2

a. Application for Municipal Advisor Registration

As discussed above, the registration requirement for municipal advisors under Section 15B of the Exchange Act applies to every person, including every natural person, who provides the types of advice described in the definition of a "municipal advisor"—whether that person is an organized entity, sole proprietor, employee of a municipal advisory firm, or otherwise.[158] The information that is appropriate to seek from a firm before it can be allowed to register may be different from the information that is appropriate to seek from an individual. Thus, as described in detail below, the Commission is proposing the submission of Form MA by municipal advisory firms and the submission of Form MA–I by natural person municipal advisors. A sole proprietor is included in the definition of "municipal advisory firm" and "natural person municipal advisor." As a result, a sole proprietor would have to complete both Form MA and Form MA–I.

The Commission is proposing rule 15Ba1–2, which would establish the procedures by which a municipal advisor may apply to the Commission for registration. The proposed rule provides that an application for the registration of a municipal advisor must be filed electronically with the Commission on proposed new Form MA or Form MA–I, in accordance with the instructions to Forms MA or MA–I, as applicable.[159]

Proposed rule 15Ba1–2(a) would require a municipal advisory firm, including those currently registered on Form MA–T, to apply for registration with the Commission as a municipal advisor by completing Form MA in accordance with the instructions to the form, and filing Form MA electronically with the Commission. Proposed rule 15Ba1–2(b) would require a natural person municipal advisor, which would include an individual employee of a firm who meets the definition of municipal advisor, to apply for registration with the Commission as a municipal advisor by completing Form MA–I in accordance with the instructions to the form and electronically filing the form with the Commission.[160]

Each Form MA and MA–I would be considered filed upon acceptance by the Commission. As noted above, proposed rule 15Ba1–2 would require Forms MA and MA–I to be filed electronically with the Commission.[161] Similarly, the Commission's registration forms for broker-dealers and investment advisers—Forms BD and ADV—are currently filed electronically through

[155] *See id.*

[156] *See id.*

[157] *See id.*

[158] *See supra* Section II.A.1. (discussing the definition of the term "municipal advisor").

[159] If the Commission adopts the registration rule as proposed, municipal advisors may be required to file the forms required by the proposed rule in paper until such time as an electronic filing system is operational and capable of receiving the forms. Municipal advisors would be notified as soon as the electronic system can accept filing of the forms. At such time, the Commission may require each municipal advisor to promptly re-file electronically the applicable forms.

[160] *See infra* note 233.

[161] The Commission is also proposing that Forms MA–W (relating to withdrawals from registration) and MA–NR (relating to appointments of agent for service of process by non-resident municipal advisors and non-resident general partners and managing agents of municipal advisors) be filed electronically. Form MA–W would also constitute a "report" for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act. *See* proposed rule 15Ba1–3(d). As a consequence, it would also be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in Form MA–W.

the Central Registration Depositary ("CRD") system operated by FINRA and the Investment Adviser Registration Depository ("IARD") system operated by FINRA, respectively. The Commission is considering whether forms for the permanent registration as a municipal advisor should be submitted through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"), or otherwise.[162] Filings required to be made on a day that the Commission's electronic filing system is closed would be considered timely filed, if filed electronically no later than the following business day.[163] Information required by the forms would be made publicly available unless otherwise noted below. In addition, Forms MA and MA–I would constitute "reports" for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[164] As a consequence, it would be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in Form MA or Form MA–I.

Request for Comment

The Commission requests comments generally on the proposed registration procedures and also requests comment on the following specific issues:

- Forms MA and MA–I would have to be filed electronically for purposes of registering with the Commission. Should the proposed rule include an option for the forms to be filed in paper rather than electronically? If so, please explain under what circumstances it would be appropriate for allowing paper filings of the forms.
- Are there any other issues concerning the filing of forms electronically about which the Commission should be made aware? If so, what are they?
- Are there specific capabilities that the Commission should consider in developing an electronic registration system? For example, should the system have the capability to cross-check other electronic registration systems, such as IARD and CRD? If so, which systems and why?
- Is EDGAR the best vehicle for filing of the required forms with the Commission? If not, what vehicle would be superior and why? Should the Commission allow the filing of documents in electronic media other than EDGAR? If so, please make specific recommendations.
- Would requiring the filing of the forms on EDGAR be an appropriate way to make the requested information publicly available? Should the Commission require Web site posting of the information instead or in addition? What advantages, if any, would Web site posting have over requiring that the information be filed, and made publicly available, on EDGAR?
- Does the method for submitting documents in electronic format as opposed to paper format create any issues or hardships for any group of potentially affected firms?

b. Instructions and Glossary

The Commission is proposing a set of instructions ("Instructions"), which include general instructions for proper completion and submission of each of the proposed Forms MA, MA–I, MA–W and MA–NR ("General Instructions"), specific instructions for the completion of Form MA and Form MA–I ("Instructions to Form MA" and "Instructions to Form MA–I", respectively), and a glossary of terms ("Glossary") intended to help municipal advisors complete the forms for registration. These Instructions and Glossary are attached to this release, together with proposed Forms MA, MA–I, MA–W and MA–NR.[165] The instructions are intended to answer basic questions concerning completion of the forms. Generally, the definitions in the Glossary are derived from Form ADV,[166] the terms in Exchange Act Section 15B(e),[167] and the definitions in proposed rule 15Ba1–1.[168] For ease of reference, we are proposing one Glossary that would apply to all of the proposed forms. All terms in the forms that appear in italics are defined or described in the Glossary.[169]

General Instruction 1 would direct an applicant looking for more information about the Commission's rules with respect to municipal advisors and the Exchange Act to the Commission's Web site. General Instruction 2 explains who should file Forms MA, MA–I, MA–NR and MA–W, including who may voluntarily register as a municipal advisor. General Instruction 3 would instruct an applicant with respect to the organization of Form MA (for example, that Form MA also includes Schedules A, B, C, and D, as well as Criminal Action, Regulatory Action, and Civil Judicial Action Disclosure Pages, as described further below), and would require that an applicant complete all items in Form MA. General Instruction 4 would provide comparable instructions as to the organization and completion of Form MA–I and the schedules and disclosure pages required by that form. General Instruction 5 would instruct that domestic municipal advisors would be required to execute the Domestic Execution Page to Form MA, while non-resident municipal advisors would be required to execute the Non-Resident Municipal Advisor Execution Page. General Instruction 6 would provide that with respect to Form MA–I, a municipal advisor would sign Item 7 of that form. General Instruction 7 would set forth the applicable person to sign Form MA or MA–I on behalf of the applicant, and that such person would be the sole proprietor (in the case of a sole proprietorship), a general partner (in the case of a partnership), an authorized principal (in the case of a corporation), and for all others, an authorized individual who participates in managing or directing the municipal advisor's affairs, or in the case of a natural person, the natural person filing the form on its own behalf, and that in all cases the signature should be a typed name. General Instructions 8 and 9 discuss when to update Forms MA and MA–I respectively, as discussed further herein.[170] General Instruction 10 would provide that an applicant would complete and file all of the forms electronically, and would provide the Web site for the electronic filing system once the appropriate web address has

[162] If the registration forms are required to be submitted through EDGAR, the electronic filing requirements of Regulation S–T would apply. *See generally* 17 CFR 232 (governing the electronic submission of documents filed with the Commission). In addition, the Commission is considering whether a fee would be charged for filing Forms MA, MA–I, MA–NR or MA–W. For example, the MSRB, in conjunction with or on behalf of the Commission, has the authority to charge reasonable fees for the submission of information to information systems developed for the purpose of serving as a repository of information from municipal market participants. *See* Section 15B(b)(3) of the Exchange Act (15 U.S.C. 78*o*–4(b)(3)).

[163] *See* proposed rule 15Ba1–2(c).

[164] *See* proposed rule 15Ba1–2(d).

[165] Proposed Form MA–W would be used for withdrawal from registration as a municipal advisor, and proposed Form MA–NR would be used for the appointment of an agent for service of process by a non-resident municipal advisor or a non-resident general partner or managing agent of a municipal advisor. *See infra* Sections II.A.3.b. and II.A.5. (discussing Forms MA–W and MA–NR, respectively).

[166] *See* 17 CFR 279.1.

[167] *See* 15 U.S.C. 78*o*–4(e).

[168] *See* proposed rule 15Ba1–1.

[169] There are a number of terms in the Glossary. In addition to those described elsewhere in this release, the Glossary also includes definitions or descriptions of the following terms: charged, Chief Compliance Officer, contingent fees, discretionary authority, enjoined, Federal banking agency, felony, foreign financial regulatory authority, found, investigation, investment-related, involved, minor rule violation, misdemeanor, order, person, proceeding, resign, and supervised person.

[170] *See infra* Section II.A.4.

been confirmed. General Instruction 11 would provide the instructions for electronic filing with the Commission. General Instructions 12 and 13 would provide instructions for how and when an applicant would complete a self-certification as to its qualifications as a municipal advisor and ability to comply with Federal securities laws. General Instruction 14 would discuss the requirement for a non-resident municipal advisor to attach a legal opinion to its Non-Resident Municipal Advisor Execution Page to Form MA.

The General Instructions would also inform an applicant that the Commission collects information for regulatory purposes, that filing the Form MA or MA–I is mandatory for municipal advisors that are required to register with the Commission, that the Commission will not accept forms that do not include the required information, and that the Commission will maintain and make publicly available the information submitted on the forms.

The Instructions also would provide some instructions specific to each of Form MA and Form MA–I. Instruction 1 to Form MA would explain that a municipal advisor that has taken over the business of another municipal advisor or has changed its structure or legal status would be a new organization with registration obligations under the Exchange Act. A municipal advisor that is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered municipal advisor would file a new application for registration on Form MA within 30 calendar days of the succession, and once the new registration is effective, Form MA–W (as described below) must be filed to withdraw the registration of the acquired municipal advisor. If a new municipal advisor is formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in control or management, the applicant may amend the existing registration to reflect the changes by filing an amendment within 30 calendar days after the change or reorganization. Instruction 2 to Form MA would explain that the response to Item 4 of Form MA (described below) should reflect the applicant's current municipal advisory activities, except with respect to its responses regarding the types of compensation the applicant expects to accept, or the types of municipal advisory activities in which the applicant expects to engage, during the next year. Instruction 3 to Form MA would explain that Schedule D is to be completed if any response to Form MA requires further explanation, or if the applicant wishes to provide additional information.

Instruction 1 to Form MA–I would explain that the applicant must enter its CRD number (if assigned), his or her social security number,[171] and the addresses of all offices at which he or she will be physically located or supervised, in Item 1 of the form. Instruction 2 to Form MA–I would clarify that for purposes of completing Item 2 to Form MA–I, the applicant must enter all the other names that the applicant is using, has used, is known, or has been known, other than the applicant's legal name, since the age of 18, which would include nicknames, aliases, and names used before and after marriage. Instruction 3 to Form MA–I would make clear that for purposes of Item 3, with respect to the applicant's residential history for the past 5 years, post office boxes may not be used to complete the response and the applicant may not leave any gaps in residential history greater than 3 months. Instruction 4 to Form MA–I would provide that with respect to Item 4 of Form MA–I, the applicant's employment history for the past 10 years must be provided with no gaps greater than 3 months, and that the history should account for full-time and part-time employment, self-employment, military service and homemaking, and that unemployment, full-time education, extended travel, and other similar statuses should be included. Instruction 5 to Form MA–I for Item 5 of the form would explain that with respect to other businesses in which the applicant is engaged, the following information would be required: the name and address of the other business; nature of the business; position, title, or relationship with the other business, including duties; start date of the relationship with the other business; and the approximate number of hours per month devoted to the other business. Instruction 6 to Form MA–I for Item 6 would also make clear that responses to certain disclosure questions (discussed further below) could make the individual applicant subject to a statutory disqualification. As with Form MA, Instruction 7 to Form MA–I would indicate that the form would be signed (in Item 7 of Form MA–I) by typing a signature in the designated field, and would make clear that by typing a name, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature.

[171] An applicant's social security number would not be made publicly available. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78o–4(c)).

Request for Comment

The Commission requests comment generally on the proposed Instructions and Glossary and also requests comment on the following specific issues:

- Are the proposed General Instructions to Forms MA, MA–I, MA–W and MA–NR, and the specific Instructions to Forms MA and MA–I, sufficiently clear? If not, identify any instructions that should be clarified and, if possible, offer alternatives.
- Are the proposed definitions in the Glossary appropriate and sufficiently clear? If not, why not and how should they be modified or clarified? Please suggest alternate language, as applicable.
- Would it be useful if the Commission were to provide any additional instructions or define any additional terms in the Glossary? If so, what are they?
- Are there alternatives to requiring applicants to provide their social security number that the Commission should consider? If so, what are they?

c. Information Requested in Form MA

Proposed Form MA, which would be the form submitted by municipal advisors that are municipal advisory firms, is modeled primarily on Form ADV (Part 1)[172] used for the registration of investment advisers with the Commission, with appropriate changes made to reflect the differences in the activities of municipal advisors and the markets that they serve. More specifically, applicants would be required to provide the information described below. The items are drafted broadly to apply to the different types of municipal advisors that may register with the Commission. If adopted, the contents of the proposed form (unless otherwise specified) would be publicly available.

Form MA would ask for information about the municipal advisor and persons associated with the advisor. The Commission believes it is necessary to obtain the requested information to decide whether to grant or deny an application for registration, to manage the Commission's regulatory and examination programs, and to make such information available to the MSRB to better inform its regulation of municipal advisors. Specifically, the information would assist the

[172] *See* 17 CFR 279.1.

Commission in identifying municipal advisors, their owners, and their business models, and in determining whether a municipal advisor might present sufficient concerns as to warrant the Commission's further attention in order to protect their clients. In addition, the information would assist the Commission in understanding the kinds of activities in which the applicant participates that form the basis for registration. The information would also be useful to the Commission in tailoring any requests for additional information that the Commission may send to a municipal advisor. Furthermore, the required information would assist the Commission in the preparation of the Commission's inspection and examination of municipal advisors and the MSRB in determining what regulations for municipal advisors may be necessary or appropriate and how such regulations might be best accomplished. In determining what information to propose to be disclosed, the Commission has also considered the broader public interest in the availability of information about municipal advisors to the public (including clients and prospective clients).

Form MA would require the applicant to provide information describing itself and its business through a series of fill-in-the-blank, multiple choice, and check-the-box questions. Form MA would first require a municipal advisor to indicate whether it is submitting the form for initial registration as a municipal advisor, submitting an annual update to a registration as a municipal advisor, or submitting an amendment (other than an annual update) to a registration as a municipal advisor.[173]

Request for Comment

The Commission requests comment generally on proposed Form MA and also requests comment on the following specific issues:

- The Commission requests comment generally on the organization of the form and the clarity of the language it has used.
- Is the use of Form MA for purposes of registration, submitting an annual update, and submitting an amendment (other than an annual update) appropriate? Would the use of the same form for multiple purposes be confusing for applicants? Would it be preferable to have a separate form for each of these purposes? Would these requirements be confusing or otherwise difficult for a municipal advisor to comply with?
- Are there any issues concerning the public availability of information provided on Forms MA and MA–I about which the Commission should be made aware? If so, what are they and how might they be addressed?

Item 1: Identifying Information

Proposed Form MA would require a municipal advisor to indicate the full legal name of the municipal advisor and, if different, the name under which it primarily conducts its municipal advisor-related business; the address of its principal office and place of business;[174] the telephone and fax numbers at that location; and any Web site addresses.[175] In addition, the municipal advisor would be required to supply the name of its Chief Compliance Officer, if any, and title of any other person whom the municipal advisor has authorized to receive information and respond to questions about the registration (the "contact person"), as well as the address, telephone number and fax number, if any, and e-mail address, if any, of the Chief Compliance Officer and any other contact person. Further, Item 1 of Form MA would require an applicant to list on Schedule D any additional names under which it conducts municipal advisor-related business and the offices at which such business is conducted. The Commission is requesting this identifying and contact information to assist the Commission and the staff in evaluating applications for registration and overseeing registered municipal advisors.

Form MA would also require a municipal advisor to provide its Employer Identification Number (used with respect to Internal Revenue Service matters), or, if a sole proprietor, a social security number.[176] If the municipal advisor is also registered with the Commission as an investment adviser, broker, dealer, or municipal securities dealer, or if it has previously registered with the Commission as a municipal advisor on Form MA–T, it would be required to provide its related SEC file number or numbers. In addition, if the municipal advisor has a number (a "CRD Number") assigned to it either under the CRD system or the IARD system, it would be required to provide its CRD Number. If it is otherwise registered with the Commission, it would also be required to disclose its other SEC file numbers.[177]

This information would allow the Commission to more effectively cross-reference those entities applying for registration as municipal advisors to those who are registered as brokers, dealers, municipal securities dealers, investment advisers, or otherwise registered[178] with the Commission. The ability to cross-reference would allow the Commission to assemble more complete information concerning a municipal advisor who is also registered as a broker, dealer, municipal securities dealer, investment adviser, or otherwise registered with the Commission to inform the Commission's decision as to whether to approve an application for registration as a municipal advisor. The ability to cross-reference would also permit the Commission to plan for and carry out efficient and effective examinations of registered municipal advisors that are also otherwise registered.[179] In addition, by obtaining all of an applicant's regulatory file numbers, the Commission would be able to cross-reference disciplinary information that is submitted to the CRD or IARD systems with that submitted on Form MA, and would be able to gain a more complete understanding of a municipal advisor's structure and business.

Item 1 of Form MA would also require the applicant to state whether it maintains, or intends to maintain some or all of its books and records required to be kept under MSRB or Commission rules somewhere other than at its principal office and place of business,

[173] Amendments to Form MA are discussed further below. See *infra* Section II.A.4.

[174] Proposed rule 15Ba1–1(j) would define principal office and place of business to mean: "the executive office of the municipal advisor from which the officers, partners, or managers of the municipal advisor direct, control, and coordinate the activities of the municipal advisor." See *also* Glossary.

In addition, the municipal advisor must supply its mailing address, if it is different from its principal office and place of business.

[175] If the applicant has more than one Web site, it would be required to list all its Web site addresses on Schedule D.

[176] We are proposing to ask for the social security number of sole proprietors to permit the electronic filing system to distinguish between persons who share the same name. This information is necessary in connection with the Commission's enforcement and examinations functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78*o*–4(c)). To protect the privacy of these persons, the social security numbers would not be available on the public disclosure system. Similarly, the public disclosure system would not report the home address of a sole proprietor who reports its home address as its principal office and place of business.

[177] The Commission is also proposing that applicants would be required to disclose any state registration numbers.

[178] For example, the Commission notes that pursuant to Section 764 of the Dodd-Frank Act, security-based swap dealers will be required to register with the Commission. See Section 764(a) of the Dodd-Frank Act; 15 U.S.C. 78*o*F(a).

[179] See 15 U.S.C. 78*o*–4(c)(7) (providing that examinations shall be conducted by the Commission).

and if so to provide (on Schedule D) information about the other location. Form MA would also require an applicant to disclose on Schedule D all of the entities with which it is affiliated, and whether it is affiliated with a business that is registered with a foreign financial regulatory authority, and if so to provide (on Schedule D) the name, in English, of each foreign financial regulatory authority and country with which the affiliated person is registered. This information would help inform the Commission as to the structure of the municipal advisor's business, which would help staff prepare for examinations of the municipal advisor.

Request for Comment

The Commission requests comment generally on Item 1 of proposed Form MA and also requests comment on the following specific issues:

- Is the identifying and contact information requested under Item 1 of Form MA appropriate? Should the Commission request disclosure of additional or different information?
- Would any of the information required to be disclosed under Item 1 be difficult for a municipal advisor to provide?
- Would the use of other identifying numbers be more useful or appropriate? Please explain.
- Is there information requested under Item 1 that should not be publicly disclosed? Please explain.
- Would information as to an applicant's affiliated entities be useful for gaining an understanding of a municipal advisor's relationship with other entities? Would it be useful to prospective municipal advisory clients? Is there different information that would provide a better understanding of a municipal advisor's relationship with other entities? If so, what information? Is providing the information requested overly burdensome? If so, why? Should the disclosure required by Item 1–K be limited to affiliates that engage in financial activities?

Item 2: Form of Organization

Item 2 of proposed Form MA would require a municipal advisor to specify whether it is organized as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, limited partnership, or other; the month of its annual fiscal year end; the date on which it was organized; and state where it was organized (either the U.S. state or the country outside the U.S.). This information would assist the Commission in evaluating the applications for registration and overseeing registered municipal advisors.

Item 2 would also require an applicant to specify whether it is a public reporting company under Section 12 or 15(d) of the Exchange Act, and if so, provide its Commission assigned Central Index Key ("CIK") number. This information would provide a signal that additional public information is available about the municipal advisor and/or its control persons.

Request for Comment

The Commission requests comment generally on Item 2 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 2 be useful in evaluating a municipal advisor? Is there additional information under Item 2 that should be disclosed? Please explain.
- Are the forms of organization listed under Item 2–A appropriate? Are there additional forms of organization that should be listed?
- To what extent would it be beneficial to require disclosure of whether a municipal advisor is a public reporting company? If a municipal advisor is a public reporting company, is there additional information on Form MA that should be disclosed about the advisor?
- In addition to providing a current CIK number, should municipal advisors be required to disclose all previously issued CIK numbers for that municipal advisor? Would such historical CIK numbers be helpful in accessing the information filed with regulators relating to a municipal advisor? Would SEC and CRD numbers be sufficient for tracking all regulatory filings by a municipal advisor? Please explain.

Item 3: Successions

Item 3 of Form MA would require applicants to disclose whether they are succeeding to the business of a registered municipal advisor, the date of succession, and disclose on Schedule D the name of, and registration information for, the firm they are succeeding. As discussed below, depending on whether the succession is a result of a merger or acquisition, or a reorganization, the succeeding firm would be able to register by either submitting a new Form MA or amending the Form MA of its predecessor.[180] This information would assist the Commission, among other things, in overseeing registered municipal advisors and in determining whether there has been a change in control of a municipal advisor.[181]

Request for Comment

The Commission requests comment generally on Item 3 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 3 provide information that would help inform an understanding of the relationship between a municipal advisor and its successor, and whether the succession involves a change of control or a change of corporate form? Is there additional information under Item 3 that should be disclosed? Please explain.
- Is there additional information about a succession that would be useful to have disclosed on the Form MA? For example, should the applicant disclose the reason for the succession?

Item 4: Information About Applicant's Business

Item 4 would require an applicant to provide information regarding the approximate number of employees it has, approximately how many of those employees engage in municipal advisory activities, approximately how many of those employees are registered representatives of a broker-dealer or an investment adviser, approximately how many firms or other persons that are not employees or associated persons of the applicant solicit municipal advisory clients on the applicant's behalf (if the number entered includes firms, the names of such firms would be required to be disclosed on Schedule D), and approximately how many employees also do business independently on the applicant's behalf as affiliates of the applicant (the names of these employees would be required to be disclosed on Schedule D).[182]

Item 4 would also require the applicant to approximate the number of clients with whom it engaged in municipal advisory activities in the past fiscal year, and to specify by checking the appropriate box(es) whether its clients include: Municipal entities, non-profit organizations (*e.g.*, 501(c)(3) organizations) who are obligated persons, corporations or other businesses not listed who are obligated persons, other types of entities, or whether the applicant only engages in solicitation and does not serve clients in the context of its municipal advisory

[180] *See infra* Section II.A.6. (discussing proposed rule 15Ba1–6 regarding registration of a successor to a municipal advisor).

[181] *See id.*

[182] Instruction 2 to Form MA would provide guidance to newly-formed municipal advisors for completing Item 4.

activities. Applicants would also have to specify approximately the number of municipal entities or obligated persons that were solicited by the applicant on behalf of a third-party during its most recently completed fiscal year, including any clients that it both solicits and with which it engages in other municipal advisory activities; and whether it solicits public pension funds, 529 plans, local or state government investment pools, hospitals, colleges, or other types of municipal entities or obligated persons (and which other types of municipal entities or obligated persons), as well as whether the applicant only serves clients and does not engage in solicitation at all in the context of its municipal advisory activities.

Applicants would also be required to disclose whether they are compensated by hourly charges, fixed fees (not contingent on the issuance of municipal securities), contingent fees, subscription fees (for a newsletter or other publications), or otherwise. If the applicant receives compensation from anyone other than clients, the applicant would be required to provide an explanation of such arrangement.

Disclosure of information relating to the number of a municipal advisor's employees and compensation arrangements would provide the Commission with a clearer understanding of the business structure of registered municipal advisors, including the size of the advisors, the number of its employees that engage in municipal advisory activities, and in what capacity these employees engage in such activities. Information about compensation arrangements also would identify possible conflicts of interest that the municipal advisor may have with its clients.

Item 4 would also require the municipal advisor to indicate the general types of municipal advisory activities in which it engages. The following eleven activities are listed: (1) Advice concerning the issuance of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters, such as the preparation of feasibility studies, tax rate studies, appraisals and similar documents, related to an offering of municipal securities), (2) advice concerning the investment of the proceeds of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments), (3) advice concerning municipal escrow investments (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (4) advice concerning the investment of other funds of a municipal entity or obligated person (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments), (5) advice concerning guaranteed investment contracts (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (6) advice concerning the use of municipal derivatives (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (7) solicitation of investment advisory business from a municipal entity or obligated person (including, without limitation, municipal pension plans) on behalf of an unaffiliated person or firm (*e.g.*, third party marketers, placement agents, solicitors and finders), (8) solicitation of business other than investment advisory business from a municipal entity or obligated person on behalf of an unaffiliated broker, dealer, municipal securities dealer, municipal advisor or investment adviser (*e.g.*, third party marketers, placement agents, solicitors and finders), (9) advice or recommendations concerning the selection of other municipal advisors or underwriters with respect to municipal financial products or the issuance of municipal securities, (10) brokerage of municipal escrow investments, or (11) other (specify). Applicants who check "other" activities would be required to provide a narrative description of such activities. The listed activities are those in which the Commission understands that municipal advisors engage, and are derived from the definition of municipal advisor in Exchange Act Section 15B(e)(4).[183] This information would assist the Commission in understanding the scope of activities in which a municipal advisor engages, in identifying possible conflicts of interest, in preparing for on-site inspections and examinations, and would provide the Commission with data useful to making regulatory policy.

Request for Comment

The Commission requests comment generally on Item 4 of proposed Form MA and also requests comment on the following specific issues:

- Is the information requested to be disclosed in Item 4 information that would best help inform an understanding of the scope of a municipal advisor's business? Is there additional information under Item 4 that should be disclosed? Please explain. Is any of the requested information unnecessary or not useful? Please explain..
- Is there other information that would be helpful to request regarding the structure of a municipal advisor, in addition to the number of employees, to help provide a clear understanding of the municipal advisor's business structure?
- Are there other types of compensation arrangements for municipal advisors that should be listed under Item 4?
- Are there additional types of municipal advisory activities that should be included in the list of activities provided to municipal entities and obligated persons under Item 4? Please explain, and provide suggested language, as appropriate.

Item 5: Other Business Activities

Item 5 would require applicants to provide information about their other business activities. Specifically, an applicant would be asked whether it is actively engaged in business as a (1) broker-dealer, municipal securities dealer or government securities broker or dealer, (2) registered representative of a broker-dealer, (3) commodity pool operator (whether registered or exempt from registration), (4) commodity trading advisor (whether registered or exempt from registration), (5) futures commission merchant, (6) major swap participant,[184] (7) major security-based swap participant,[185] (8) swap dealer[186] or security-based swap dealer,[187] (9) trust company, (10) real estate broker, dealer, or agent, (11) insurance company, broker, or agent, (12) banking or thrift institution (including a separately identifiable department or division of a bank), (13) investment adviser (including financial planners), (14) lawyer or law firm,[188] (15)

[183] *See* 15 U.S.C. 78*o*–4(e)(4).

[184] *See* Exchange Act Rule 3(a)(66) (15 U.S.C. 78c(a)(66)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

[185] *See* Exchange Act Rule 3(a)(67) (15 U.S.C. 78c(a)(67)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

[186] *See* Exchange Act Rule 3(a)(76) (15 U.S.C. 78c(a)(76)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

[187] *See* Exchange Act Rule 3(a)(71) (15 U.S.C. 78c(a)(71)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

[188] *See supra* section II.A.1.c. (discussing the definition of "municipal advisor" and under what circumstances attorneys would be excluded from such definition). Lawyer and law firm applicants would also be required to disclose the jurisdictions where licensed.

accountant or accounting firm,[189] (16) engineering firm,[190] or (17) other financial product advisor and if so, to specify. An applicant would also be asked to state whether it is actively engaged in any other business, and if such other business is its primary business. If an applicant's primary business is not one of those enumerated above, it would be required to describe the other business on proposed Schedule D to Form MA. This information would assist the Commission, among other things, in identifying conflicts of interests for municipal advisors, preparing for inspections and examinations of municipal advisors, and would assist the Commission and the MSRB in understanding municipal advisors in the context of their activities for regulatory purposes.

Request for Comment

The Commission requests comment generally on proposed Item 5 of Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 5 help inform an understanding of the other business activities in which a municipal advisor engages? Is there additional information under Item 5 that should be disclosed? Please explain.
- Are there additional categories of other business activities that should be listed under Item 5? Please explain, and provide examples, as appropriate. Is any of the requested information unnecessary or not useful? Please explain.

Item 6: Financial Industry Affiliations of Associated Persons

Item 6 would require an applicant to provide information about its associated persons (*i.e.*, any person associated with a municipal advisor) and the types of activities in which the associated persons are engaged.[191] The proposed list of activities under Item 6 is broader than that in Item 5, which allows the Commission to elicit more complete information about the associated persons of a municipal advisor who are actually providing advice or are controlling the firm, which would inform the Commission's regulatory and examination programs. Specifically, under Item 6, a municipal advisor would have to disclose if an associated person is a (1) broker-dealer, municipal securities dealer, or government securities broker or dealer; (2) investment company (including mutual funds), (3) investment adviser (including financial planners), (4) swap dealer, (5) security-based swap dealer, (6) major swap participant, (7) major security-based swap participant, (8) commodity pool operator (whether registered or exempt from registration), (9) commodity trading advisor (whether registered or exempt from registration), (10) futures commission merchant, (11) banking or thrift institution, (12) trust company, (13) accountant or accounting firm, (14) lawyer or law firm, (15) insurance company or agency, (16) pension consultant, (17) real estate broker or dealer, (18) sponsor or syndicator of limited partnerships, (19) engineer or engineering firm, (20) other municipal advisor. Also, an applicant would need to disclose on Schedule D of proposed Form MA each associated person, including any foreign associated persons, that is a municipal advisor, broker-dealer, municipal securities dealer, government securities broker or dealer, investment adviser, registered swap dealer, banking or thrift institution, or trust company. For each associated person identified on Schedule D, the applicant would be required to provide information regarding the nature of the affiliation between the municipal advisor and the associated person, as well as any foreign registrations of the associated person. The information provided would assist the Commission in having a clearer understanding of the types of business activities in which associated persons are engaged and the possible conflicts of interest those activities may create.

Request for Comment

The Commission requests comment generally on Item 6 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 6 inform a meaningful understanding of the relationship between a municipal advisor and its associated persons and the kinds of activities in which they engage? If not, why not? Is there additional information under Item 6 that should be disclosed, such as additional categories of activities in which an associated person might be engaged? Please explain. Should any of the categories be deleted?

Item 7: Participation or Interest in Municipal Advisory Client Transactions

Item 7 would require applicants to disclose information about participation and interest of the municipal advisor or its associated persons in the transactions of its municipal advisory clients. The purpose of Item 7 is to identify possible conflicts of interest that the municipal advisor and its associated persons may have with the municipal advisor's clients. For example, a municipal advisor that receives commissions or other payments for sales of securities to clients may have a conflict of interest with its clients. This type of practice gives the municipal advisor and its personnel an incentive to base investment recommendations on the amount of compensation they will receive rather than on the client's best interests.

Specifically, Item 7 would require an applicant to disclose whether it, or any of its associated persons, have a proprietary interest in the securities or other investment or derivative product transactions of its clients, such as whether it buys securities or other investment or derivative products from, or sells them to, its clients. An applicant would also be asked to disclose whether it or its associated persons recommend purchases or sales of securities or other investment or derivative products to clients for which the municipal advisor or its associated persons serve as underwriter or purchaser representative, or have any other sales interest; whether it or its associated persons have certain discretionary authority over securities or other investment transactions for its clients; and whether it or its associated persons recommend brokers, dealers, or investment advisers to its clients, and if so, whether those brokers, dealers, or investment advisers are associated persons of the municipal advisor. Item 7 would also require the municipal

[189] *See supra* section II.A.1.c. (discussing the definition of "municipal advisor" and under what circumstances accountants would be excluded from such definition). Accountant and accounting firm applicants would also be required to disclose the jurisdictions where licensed.

[190] *See supra* section II.A.1.c. (discussing the definition of "municipal advisor" and under what circumstances engineers would be excluded from such definition).

[191] Section 15B(e)(7) provides that the term "person associated with a municipal advisor" or "associated person of an advisor" means "(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions); (B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and (C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor." 15 U.S.C. 78*o*–4(e)(7). For purposes of Form MA, the Glossary would define "associated person or associated person of a municipal advisor" to have the same meaning as in Exchange Act Section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)), but would exclude employees that are solely clerical or administrative.

advisor to disclose whether it or its associated persons give or receive compensation for municipal advisory client referrals.

Request for Comment

The Commission requests comment generally on Item 7 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 7 be appropriate for identifying potential conflicts of interest between municipal advisors and/or associated persons and the municipal advisors' clients? Should any be deleted? Why?
- Is there additional information under Item 7 that should be disclosed to provide a clearer understanding of potential conflicts of interest? Please explain.

Item 8: Control Persons

In Item 8, applicants would be asked to identify on Schedules A and B every person that directly or indirectly controls the applicant, or that the applicant directly or indirectly controls.[192] An initial applicant would be required to complete proposed Schedules A and B. Schedule A would require information about the applicant's executive officers and persons that directly own 5% or more of the applicant. Schedule B would request information about persons that indirectly own 25% or more of the applicant. Schedule C would be used to amend information previously reported on Schedules A and B. Applicants would also be asked to identify, on Schedule D, any person that controls the applicant's management or policies if not otherwise identified. Further information would be requested with respect to control persons that are public reporting companies under Sections 12 or 15(d) of the Exchange Act.[193] For control persons that do not have a CRD number, Schedules A, B, and C would require disclosure of their social security number and date of birth, IRS tax number or employer ID number.[194] The proposed information that would be requested and the proposed definition of control are consistent with that requested and used by the Commission in other contexts.[195] This information would help to inform the Commission's understanding of the ownership structure of the municipal advisor and in identifying who ultimately controls the municipal advisor, including its policies and procedures, which would provide useful information in preparing for examinations and also in identifying potential conflicts of interest. The information requested also would inform the Commission about changes in control of the municipal advisor.

Request for Comment

The Commission requests comment generally on Item 8 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 8 be appropriate for understanding the ownership structure of a municipal advisor and identifying possible conflicts of interest? Is there additional information under Item 8 that should be disclosed? Please explain. Should any be deleted? Why?
- Is the proposed definition of "control" broad enough to elicit information that would provide an understanding of a municipal advisor's structure and its control persons? Should additional or different information be requested? If so, what information?

Item 9: Disclosure Information

Section 975(c)(3) of the Dodd-Frank Act amended Section 15B of the Exchange Act to direct the Commission, by order, to censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal advisor, if it finds[196] that such municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A),[197] (D),[198] (E),[199] (G)[200] or (H),[201] of paragraph (4) of Section 15(b) of the Exchange Act; has been convicted of any offense specified in Section 15(b)(4)(B)[202] of the Exchange Act within ten years of the commencement of the proceedings under Section 15B(c); or is enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C)[203] of the Exchange Act.[204] Item 9 of Form MA includes questions intended to solicit information from a municipal advisor concerning certain of its activities or activities of its associated persons that could subject the municipal advisor to disciplinary actions by the Commission under such subparagraphs of Section 15(b)(4) of the Exchange Act.

The information proposed to be required by Item 9 would be used to

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[192] The term "control" is defined in the Glossary to mean "the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise." Further, the Glossary provides that: (a) Each of the municipal advisor's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the municipal advisor; (b) a person is presumed to control a corporation if the person:
(i) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities; (c) a person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership; (d) a person is presumed to control a limited liability company ("LLC") if the person: (i) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC; and (e) a person is presumed to control a trust if the person is a trustee or managing agent of the trust. *See* Glossary.

[193] Section 8–B of proposed Schedule D to Form MA would require the name and CIK number of each control person listed on Schedule A, B, C or Section 8–A of Schedule D.

[194] The Commission would not make this information publicly available.

[195] The proposed requested information and definition of "control" are consistent with the information requested and definition used for investment advisers required to register on Form ADV. *See* 17 CFR 279.1.

[196] Such findings must be on the record after notice and opportunity for hearing and include a finding that the particular disciplinary action is in the public interest. *See* 15 U.S.C. 78o–4(c)(2).

[197] *See* 15 U.S.C. 78o(b)(4)(A) (*e.g.*, making false or misleading statements of a material fact in a report filed with, or preceding before, the Commission).

[198] *See* 15 U.S.C. 78o(b)(4)(D) (*e.g.*, violating or being unable to comply with the Securities Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, the Exchange Act, the rules or regulations under any of such statutes, or the rules of the MSRB).

[199] *See* 15 U.S.C. 78o(b)(4)(E) (*e.g.* aiding and abetting violations of, or failing to supervise to prevent violations of, the Securities Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, the Exchange Act, the rules or regulations under any of such statutes, or the rules of the MSRB).

[200] *See* 15 U.S.C. 78o(b)(4)(G) (*e.g.*, being found by a foreign financial regulatory authority to have made false or misleading statements of material facts; violated or been unable to comply with foreign regulations; or aided and abetted violations of, or failed to supervise to prevent violations of, foreign regulations).

[201] *See* 15 U.S.C. 78o(b)(4)(H) (*e.g.*, being subject to a final order of a State securities commission, an appropriate Federal banking agency, or the National Credit Union Administration that bars such person from associating with an entity regulated by such authority or agency, or prohibits such person from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities).

[202] *See* 15 U.S.C. 78o(b)(4)(B) (*e.g.*, being convicted within the ten years preceding application for registration of certain felonies or misdemeanors, including felonies and misdemeanors involving the purchase and sale of securities or arising out of the conduct of the business of a broker, dealer, municipal securities dealer, or municipal advisor).

[203] *See* 15 U.S.C. 78o(b)(4)(C) (*e.g.* being enjoined by order from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer or municipal advisor).

[204] The Commission has the same authority with respect to municipal securities dealers. *See* 15 U.S.C. 78o–4(c).

determine whether to grant the applicant's application for registration, institute proceedings to determine whether registration should be denied, place limitations on the applicant's activities as a municipal advisor, and to focus on-site examinations.[205] Also, in addition to its value for the Commission's oversight of the municipal securities markets generally, the Commission proposes to seek this information because it may indicate that a municipal advisor could be statutorily disqualified from acting as a municipal advisor.[206] In addition, the Commission would make this information available to municipal entities and obligated persons who engage municipal advisors, to investors who may purchase securities from offerings in which municipal advisors have participated, and to other regulators.

The disciplinary information to be disclosed is substantially similar to the information required to be disclosed in Form BD[207] for broker-dealers and in Form ADV[208] for investment advisers. The requested information is also consistent with the disclosure requirements of Form MA–T.[209] In addition to information with respect to investment-related activities, Form MA would additionally request parallel information for municipal advisory activities. Specifically, as discussed below, Form MA asks questions concerning the disciplinary history of the municipal advisor and of its associated persons.[210]

In Form MA–T, the Commission limited the disciplinary history disclosure requirements to "associated municipal advisor professionals."[211] The Commission limited the disclosure requirements to this subgroup of associated persons to obtain information about those associated persons who are closely associated with an advisor's municipal advisory activities, *i.e.*, those who are primarily engaged in an advisor's municipal advisory activities, have supervisory responsibilities over those primarily engaged in municipal advisory activities, are engaged in day-to-day management of the conduct of an advisor's municipal advisory activities, or are responsible for executive management of the advisor.[212] Due to the short time-frame between the passage of the Dodd-Frank Act and the deadline for registration of municipal advisors on October 1, 2010, the Commission believed it was appropriate to limit the disclosure requirement to this subgroup of associated persons. In connection with the proposed permanent registration regime, however, the Commission believes it is appropriate to propose in Item 9 that a municipal advisor disclose the disciplinary history, as applicable, of all its associated persons, as that term is defined in Exchange Act Section 15B(e)(7).[213] Specifically, Item 9 would require disclosure with respect to any partner, officer, director or branch manager of a municipal advisor, and any other employee who is engaged in the management, direction, supervision, or performance of any municipal advisory activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and any person that directly or indirectly controls, is controlled by, or under common control with the municipal advisor. As a result, Form MA would capture information with respect to employees that engage in municipal advisory activities, even if that is not their primary activity. Form MA also would require disclosure with respect to controlling persons and other affiliates of the municipal advisor.

The Commission believes that "associated person" as defined in Exchange Act Section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)) (and as it is proposed to be defined) is an appropriate definition to use[214] because it would allow the Commission to obtain, and municipal entities, obligated persons, investors and other regulators to have access to, information about the municipal advisor's supervisory and management personnel, employees engaged in the management, direction, supervision, or performance of activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, and control persons. This information would help provide a clear understanding regarding the persons associated with municipal advisors.

In addition, the Commission notes that the time-period limits proposed for disclosure on Form MA are consistent with the disclosure reporting requirements on Form BD, adopted pursuant to Section 15(b)(1) of the Exchange Act. Specifically, with respect to felonies and misdemeanors involving municipal advisor-related business,[215] investments or an investment-related business, Form MA would require disclosures of matters within the last ten years.[216] With respect to all other matters proposed to be identified on Form MA (including Federal, state, and foreign regulatory actions and actions taken by SROs), no time limit is placed on disclosure. For example, a municipal advisor would be required to disclose whether the municipal advisor or any associated person was ever enjoined by any domestic or foreign court in connection with any municipal advisor-related or investment-related activity. Disclosure would also be required concerning any orders entered against the municipal advisor or any associated person of the municipal advisor by any Federal or state regulatory agency other

[205] See *also supra* Section II.B. (discussing approval or denial of registration).

[206] *See id.*

[207] *See* 17 CFR 249.501.

[208] *See* 17 CFR 279.1.

[209] On Form MA–T, the disclosure required with respect to orders entered against the municipal advisor by regulatory authorities, and whether any court has enjoined the municipal advisor or associated person in connection with investment related activities are limited to the past 10 years. On Form MA, the Commission is not proposing any time limitation on this disclosure for the reasons discussed in this Section II.A.2.c.

[210] *See supra* note 191 (discussing the definition of "person associated with a municipal advisor" or "associated person of a municipal advisor").

[211] The Commission defined the term "associated municipal advisor professional" in the glossary section of Form MA–T to mean: (A) Any associated person of a municipal advisor primarily engaged in municipal advisory activities; (B) any associated person of a municipal advisor who is engaged in the solicitation of municipal entities or obligated persons; (C) any associated person who is a supervisor of any persons described in subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, the Chief Executive Officer or similarly situated official designated as responsible for the day-to-day conduct of the municipal advisor's municipal advisory activities; and (E) any associated person who is a member of the executive or management committee of the municipal advisor or a similarly situated official, if any; and excludes any associated person whose functions are solely clerical or ministerial.

[212] *See* Temporary Registration Rule Release, *supra* note 63, at 54469.

[213] *See* 15 U.S.C. 78*o*–4(e)(7).

[214] The definition of "associated person of a municipal advisor" in the Glossary would be consistent with the definition of "associated person" in Exchange Act Section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)). The definition would exclude, however, employees who are solely clerical or administrative. This exclusion would be consistent with the comparable term on Form ADV, which also excludes employees who are solely clerical or administrative.

[215] The Commission proposes that the term "municipal advisor-related" would mean "[c]onduct that pertains to municipal advisory activities (including, but not limited to, acting as, or being an associated person of, a municipal advisor)." Glossary.

[216] As is the case with respect to brokers and dealers pursuant to Section 15(b)(4) of the Exchange Act (15 U.S.C. 78o(b)(4)), Section 15B(c)(2) of the Exchange Act (15 U.S.C. 78*o*–4(c)(2)), as amended by the Dodd-Frank Act, limits the Commission's ability to impose sanctions on municipal advisors for conviction of felonies and misdemeanors to convictions occurring within ten years preceding the filing of any application for registration.

than the SEC and Commodity Futures Trading Commission ("CFTC") or by any foreign financial regulatory authority. The Commission believes that, for purposes of the permanent registration regime, it is important to collect information about matters within these timeframes because, under the Exchange Act, the Commission could use such matters to form the basis for an action to suspend or revoke a municipal advisor's registration.[217]

The questions asked in Item 9 are generally consistent with the disciplinary disclosure questions asked on Form BD. Unlike on Form BD, Item 9 asks for information regarding actions relating to municipal advisor-related business, in addition to investment-related business. Specifically, Item 9 of the proposed form would ask for information regarding convictions, pleading and charges related to felonies and certain misdemeanors. It would ask for information regarding whether the SEC or the CFTC has ever: found the municipal advisor or any associated person to have made a false statement or omission; found the municipal advisor or any associated person to have been involved in a violation of its regulations or statutes; found the municipal advisor or any associated person to have been a cause of a municipal advisor- or investment-related business having its authorization to do business denied, suspended, revoked, or restricted; entered an order against the municipal advisor or any associated person in connection with municipal advisor- or investment-related activity; or, imposed a civil money penalty on the municipal advisor or any associated person, or ordered the municipal advisor or any associated person to cease and desist from any activity. Item 9 of the form would also ask for similar information with respect to other Federal regulatory agencies, any state regulatory agency, or any foreign financial regulatory authority. Item 9 would ask for information regarding whether any SRO or commodity exchange ever found the municipal advisor or any associated person to have made a false statement or omission; found the municipal advisor or any associated person to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the SEC); found the municipal advisor or any associated person to have been the cause of a municipal advisor- or investment-related business having its authorization to do business denied, suspended, revoked, or restricted, or disciplined the municipal advisor or any associated person by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities. It would also ask whether the municipal advisor or its associated persons have had authorization to do business or to act as an advisor, attorney, or Federal contractor revoked or suspended. In addition, Item 9 would ask for information about pending regulatory proceedings; and civil proceedings related to municipal advisor- or investment-related activities, including pending proceedings.

These questions are designed to elicit responses that would enable the Commission to institute proceedings against the municipal advisor, if appropriate, and also to make the information available to the public. Section 15B(c)(2) of the Exchange Act provides that the Commission shall censure, place limitations on the activities, functions and operations of, suspend, or revoke the registration of a municipal securities dealer or municipal advisor if it finds that doing so is in the public interest and that the municipal advisor has committed the kinds of acts, is subject to the kinds of orders or findings, has been convicted of the kinds of offenses, or is enjoined from the kinds of actions, conduct and practices enumerated in Section 15(b)(4) of the Exchange Act.[218] Section 15(b)(4) of the Exchange Act[219] provides that the Commission shall censure, place limitations on the activities, functions and operations of, suspend, or revoke the registration of a broker or dealer if it finds that doing so is in the public interest and that the broker or dealer, or any person associated with the broker or dealer, has made false or misleading statements with respect to material facts in any registration or report filed with the Commission; has been convicted in the ten years preceding any application for registration or any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds involves or arises out of certain activities, including conduct of the business of a municipal advisor; or is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as, among other things, a municipal advisor, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security. If a municipal advisor answers "yes" to any of the disciplinary history questions in Item 9, the municipal advisor would be required to complete a Disclosure Reporting Page ("DRP") to Form MA.

Proposed Form MA includes separate DRPs to report information relating to criminal, regulatory, and civil actions involving the municipal advisor or its associated persons. Each would require detailed information about the action, such as the entities or regulatory authorities involved, where the charges were filed and when, a description of the charge and the circumstances related to it, in the case of municipal advisor- and investment-related charges—the product type, and the status of the charge, including resolution details as appropriate. Consistent with the limitations set forth in Section 15(b)(4)(B)[220] of the Exchange Act, however, information on the criminal DRP would be limited to matters within the last ten years. If a municipal advisor or associated person that is registered through the investment adviser or broker-dealer registration systems (the "IARD" or "CRD", respectively) has submitted a DRP with Forms ADV, BD, or U4 to the IARD or CRD, or a municipal advisor has previously submitted disclosure to the Commission with a prior registration on Form MA–T, for the matter that reports the information required by a DRP to Form MA, information included with respect to Forms MA–T, ADV, BD, or U4 as applicable, could be incorporated by reference (to the extent possible, depending on the technical capabilities of the electronic filing system).

The Commission believes that it is important to collect the information that would be required by the DRPs to assist it in deciding whether to grant or institute proceedings to deny an application for registration, to revoke a registration, to manage the Commission's regulatory and examination programs, and to make such information available to the MSRB to better inform its regulation of municipal advisors and the municipal securities market generally.

Request for Comment

The Commission requests comment generally on Item 9 of proposed Form MA and also requests comment on the following specific issues:

- How might the disclosures regarding associated persons whose actions are covered by Item 9 of Form MA be improved?

[217] *See* Section 15B(c)(2) of the Exchange Act.

[218] *See* 15 U.S.C.78*o*–4(c)(2).

[219] *See* 15 U.S.C. 78*o*(b)(4).

[220] 15 U.S.C. 78*o*(b)(4)(B). *See also* 15 U.S.C. 78*o*–4(c)(2).

• Are the questions in Item 9 sufficient for providing information to investors, municipal entities, obligated persons, and regulators regarding the disciplinary history of municipal advisors and associated persons?

• Should additional or other questions be included? Please provide examples of any additional questions that should be included.

• Would the questions in Item 9 impose an excessive burden on municipal advisors to answer?

• Does expanding the disciplinary history disclosure requirement in Item 9 of Form MA to associated persons of municipal advisors, rather than limiting it to associated municipal advisor professionals (as in Form MA–T), include persons whose disciplinary history is sufficiently relevant to a municipal advisor's activities to warrant disclosure?

• Are the timeframes to the questions in Item 9 appropriate? Would the public and municipal entities find the full history of disciplinary information important and useful rather than putting time limitations on disclosure of criminal information? Are the timeframes too long, such that they would require disclosure of information that is no longer useful or relevant, or such that they would impose an undue burden on applicants for registration?

• Would including the disciplinary questions in Form MA impose undue hardship on, or have other consequences for, small municipal advisors?

• Would the ability to incorporate by reference to disciplinary disclosures on Form BD and Form ADV for registered broker-dealers and investment advisers, respectively, or to disclosures made with a previous registration on Form MA–T, make it more difficult for municipal entities, obligated persons, investors and others to obtain this information than if it were included in Form MA itself?

• Would the ability of municipal advisors to incorporate by reference such disclosures on Forms MA–T, BD, ADV, and U4 significantly reduce the burden on municipal advisors, and particularly small municipal advisors, to complete Form MA?

Item 10: Small Businesses

As described further in Section VII below, the Commission is required by the Regulatory Flexibility Act ("RFA") [221] to consider the effect of its regulations on small entities. The Commission's rules do not define "small business" or "small organization" for purposes of municipal advisors. The Small Business Administration ("SBA") defines small business for purposes of entities that provide financial investment and related activities as a business that had annual receipts of less than $7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.[222] The Commission is using the SBA's definition of small business to define municipal advisors that are small entities for purposes of the RFA.

Item 10 of Form MA would enable the Commission to determine how many applicants meet the SBA's definition of "small business" or "small organization" as applied to municipal advisors, by requiring each applicant to disclose whether it had annual receipts of less than $7 million during its most recent fiscal year (or the time it has been in business, if it has not completed its first fiscal year in business). The applicant would also be required to disclose whether any business or organization with which it is affiliated had annual receipts of more than $7 million in its most recent fiscal year (or the time it has been in business, if it has not completed its first fiscal year in business).

Request for Comment

The Commission requests comment generally on Item 10 of proposed Form MA and also requests comment on the following specific issues: [223]

• Are the questions asked in Item 10 sufficiently clear? If not, please explain.

• Should the Commission request any other information to make its determination?

Execution and Self-Certification

Proposed Form MA would include an execution page that must be signed and attached to any initial application for registration, as well as to any amendments to Form MA. The proposed execution page is similar in purpose to the execution page of Form ADV,[224] but deletes references to state registration, bonding requirements and other inapplicable components, and would require a non-resident municipal advisor to execute a separate form (Form MA–NR) to designate agent for service of process.

Form MA would be electronically "signed" by an authorized person of the advisor before the form could be electronically submitted. The authorized person would sign the form by typing his or her name and submitting the form on behalf of the advisor. An authorized person would sign one of two different execution pages, depending on whether the advisor is resident in the United States or a "non-resident" municipal advisor.[225] By signing the domestic municipal advisor execution page, the authorized person would affirm that the information in Form MA is true and correct, and would appoint certain officials as agents for service of process in states where the advisor maintains its principal office or place of business. Specifically, a domestic municipal advisor would appoint an official in the state where it maintains its principal office and place of business. This appointment would allow private parties and the Commission to bring actions against the municipal advisor by delivering necessary papers to the appointed agent.[226] The agent would be able to receive any process, pleadings, or other papers in any action that arises out of or relates to or concerns municipal advisory activities of the municipal advisor. As proposed, the agent also could receive service for investigation and administrative proceedings.

The execution page for resident and non-resident municipal advisors would require certification that the books and records of the municipal advisor will be preserved and available for inspection and would authorize any person with custody of the books and records to make them available to Federal representatives. With respect to non-resident municipal advisors, the execution page also provides that by signing the Form MA, the non-resident municipal advisor agrees to provide, at its own expense, to the Commission, copies of all books and records that the

[221] 5 U.S.C. 601 *et seq.*

[222] *See* 13 CFR 121.201.

[223] *See also infra* Section VII (discussing the impact of the proposed rules on municipal advisors that are small entities).

[224] *See* 17 CFR 279.1.

[225] Proposed rule 15Ba1–1(h) defines a "non-resident" as: "(1) [I]n the case of an individual, one who resides in or has his principal office and place of business in any place not in the United States; (2) [i]n the case of a corporation, one incorporated in or having its principal office and place of business in any place not in the United States; and (3) [i]n the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not in the United States." This definition is consistent with the definition of "non-resident broker-dealer" in rule 15b1–5 under the Exchange Act. *See* 17 CFR 240.15b1–5. *See also* 17 CFR 275.0–2 (defining the term "non-resident" for purposes of serving non-residents in connection with Form ADV). In addition, non-resident municipal advisors and non-resident general partners and managing agents of municipal advisors would submit Form MA–NR. *See infra* Section II.A.5. (discussing proposed Form MA–NR).

[226] Appointment of agent for service of process for non-resident municipal advisors is discussed further below. *See infra* Section II.A.5. (discussing proposed Form MA–NR).

municipal advisor is required to maintain by law. The Commission believes that before granting registration to a domestic or non-resident municipal advisor, it is appropriate to obtain assurance that such person has taken the necessary steps to be in the position to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission.

The authorized person of a municipal advisor completing the execution pages and the municipal advisor would also be required to certify that the municipal advisor and every natural person associated with it has met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor and natural persons associated with it, required by the Commission, the MSRB, or any other relevant SRO. The authorized person and municipal advisor would also be required to certify that the municipal advisor has conducted an initial or annual review, as applicable, of the municipal advisor's business and has reasonably determined that the municipal advisor: (1) Can carry out the activities described in the items that are checked in Item 4.K (Applicant's Business Relating to Municipal Securities) of Form MA;[227] (2) can comply with all applicable regulatory obligations; and (3) has met such regulatory obligations during the last year (or such shorter period if the application is an initial application for registration). For these purposes, such applicable regulatory obligations are obligations under the Federal securities laws and rules promulgated thereunder and applicable rules promulgated by the MSRB, or any other relevant SRO. The authorized person and the municipal advisor would also be required to certify that the municipal advisor has documented this review process and will maintain all documents relating to such review in accordance with proposed rule 15Ba1–7 under the Exchange Act.[228] Proposed rule 15Ba1–4(e) would require such certification in conjunction with filing of an initial application for registration as a municipal advisor and annually thereafter.[229]

Failure to make the certifications required by the execution pages would be a basis for the Commission to commence proceedings to deny an application for registration.[230] In addition, if an applicant becomes unable to comply with the certifications, this would be a basis for the Commission to commence proceedings to revoke a municipal advisor's registration.[231]

Additionally, proposed rule 15Ba1–5 would require a non-resident municipal advisor, other than a natural person, including non-resident sole proprietors (*i.e.*, non-resident municipal advisory firms) to provide an opinion of counsel that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of the municipal advisor, as required by law, and that the municipal advisor can, as a matter of law, submit to onsite inspection and examination by the Commission. General Instruction 14 would provide that a non-resident municipal advisor filing Form MA must attach the opinion as an Exhibit to its execution page. Each jurisdiction may have a different legal framework with respect to its laws (*e.g.*, privacy laws) that may limit or restrict the Commission's ability to receive information from a municipal advisor. Providing an opinion of counsel that a municipal advisor can provide access to its books and records and can be subject to onsite inspection and examination would allow the Commission to better evaluate a municipal advisor's ability to meet the requirements of registration and ongoing supervision. Failure to provide an opinion of counsel may be a basis for the Commission to deny an application for registration.

Request for Comment

The Commission requests comment generally on the execution pages of proposed Form MA and also requests comment on the following specific issues:

- Are the instructions relating to execution sufficiently clear? If not, please explain and suggest additional or alternative language.
- Should there be additional or alternative representations required of a person who executes Form MA?
- Are there alternative methods to obtain consent to service of process?
- Are the requirements for domestic municipal advisors, as set forth on the execution page for domestic municipal advisors appropriate? Should these requirements be changed in any way? Please explain.
- Are the requirements for non-resident municipal advisors, as set forth on the execution page for non-resident municipal advisors appropriate? Should these requirements be changed in any way? Please explain.
- Should the Commission's definition of "non-resident" be modified in any way?
- Does requiring a non-resident municipal advisor to certify that it will provide the Commission with access to the municipal advisor's books and records and submit to onsite inspection and examination by the Commission, ensure that the Commission can legally, under applicable foreign law, obtain prompt access to a non-resident municipal advisor's books and records and examine a non-resident municipal advisor onsite? Are there other factors or alternatives that are relevant to ensure that the Commission can legally, under applicable foreign law, obtain prompt access and examine a non-resident municipal advisor onsite?
- Are there any factors that the Commission should take into consideration to ensure that a non-resident municipal advisor seeking to register as a municipal advisor can, in compliance with applicable foreign laws, provide the Commission with access to its books and records and can submit to inspection and examination by the Commission?
- Should the Commission require non-resident municipal advisors seeking to register as municipal advisors to certify to anything else on the execution page for non-resident municipal advisors?
- Should non-resident municipal advisors be required to provide any additional information or documents?
- Is the proposed self-certification broad enough in scope or too broad? If

[227] Factors that should be considered in determining whether a municipal advisor can carry out the described activities would include, but not be limited to, whether the municipal advisor has, with respect to the described activities: The appropriate technology systems and equipment; the appropriate financial resources; adequate staffing with appropriate skill sets, training, and expertise; and adequate facilities, such as office space, as appropriate.

[228] Proposed rule 15Ba1–7(a)(8) would require a municipal advisory firm to make and keep true, accurate, and current, a record of the initial or annual review, as applicable, conducted by the municipal advisor of such municipal advisor's business in connection with its self-certification on Form MA.

[229] *See* proposed rule 15Ba1–4(e). The proposed rule would require the annual self-certification to be filed by municipal advisory firms within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for municipal advisors that are sole proprietors.

[230] *See infra* Section II.B. (discussing grounds for denial of registration of a municipal advisor's registration). The Commission also notes that if the execution page to Form MA is not completed, the Form MA would be incomplete and the electronic filing system would not permit the Form MA to be filed.

[231] *See supra* notes 218 and 219, and accompanying text (discussing grounds for revocation of registration of a municipal advisor's registration and other sanctions).

not, what additional factors should be included or excluded and why? Should the self-certification be required more or less frequently? If so, how often and why? Are there other alternatives the Commission should consider? If so, what alternatives and why?

- In connection with the proposed initial and annual review requirement for the self-certification, would municipal advisors undertake a meaningful review absent a minimum review standard?
- Should the Commission instead mandate a minimum level of review that must be performed of a municipal advisor's business? If so, what level of review would be appropriate?
- Is there a minimum level of review that would be appropriate without imposing impracticable burdens or costs on municipal advisors?
- Should the self-certification requirement further specify the types of business activities that should be covered by the initial and annual review?
- Should a municipal advisor be required to disclose publicly, such as on Form MA, the nature of its review and its findings and conclusions?
- Should the Commission specify the types of review that should be performed? If so, what types of review would be appropriate for municipal advisors? Should the type of review differ depending on the type of municipal advisory activities in which the advisor engages and/or the size of the advisor? Please explain.
- As an alternative to the proposed self-certification requirement, should the Commission require an independent third party review of the municipal advisor as part of, or prior to, the advisor's application for registration and then annually thereafter? Should the Commission require that the municipal advisor name any such third party reviewer on the Form MA? Should the findings and conclusions of the third party reviewer be made publicly available?
- Is there any other party that a municipal advisor should be allowed to rely upon in order to satisfy an initial and annual review requirement? Please explain. Would an accountant or attorney be an appropriate third party reviewer?
- If the Commission were to permit or require third party reviews, how would the Commission encourage the quality of third party reviews? Should a third party be required to be independent? If so, should the Commission define "independence" for this purpose? If so, how should "independence" be defined? Should the Commission require disclosure of affiliates related to third parties?
- Should the Commission undertake a review of all municipal advisors as part of the registration and examination process? If so, what should be the scope and frequency of the examination process? Should the Commission provide municipal advisors a choice between independent third party review and Commission review, or a combination thereof? In order to make the most efficient use of the Commission's resources, should the Commission rely on an SRO or other third party to undertake such review?
- Are there other factors that the Commission should consider, in addition to an opinion of counsel, that address whether the Commission can legally, under applicable foreign law, obtain the required access to a municipal advisor's books and records and conduct onsite inspection or examination of the municipal advisor?

d. Information Requested in Form MA–I

The Commission is proposing to require natural person municipal advisors, which would include sole proprietors and certain individual employees of municipal advisory firms, to register on proposed Form MA–I. As a result, individual employees who meet the definition of a "municipal advisor" would be required to register independently, apart from the firm at which they are employed, on proposed Form MA–I.[232] Requirements for registration on proposed Form MA–I of individuals who are sole proprietors that meet the definition of "municipal advisor" are also discussed below.

The Commission believes that the registration of natural person municipal advisors, including employees separately from their firms, would help the Commission better manage its regulatory and examination programs by assisting the Commission in identifying municipal advisors and better understanding their business structures. The required information also would assist the Commission in the preparation of its inspection and examination of municipal advisors, and in overseeing the municipal securities market and investigating instances of possible wrongdoing. In determining what information to propose to be disclosed, the Commission has also considered the broader public interest in availability of information about employees of municipal advisors to the public. The Commission believes that the required disclosures would provide municipal entities, obligated persons, investors, and other regulators with information that would inform them as to the relevant municipal advisory experience and history of such natural person municipal advisors. Moreover, a separate registration application form for natural person municipal advisors could enable municipal entities, investors, obligated persons, and regulators to obtain certain additional information regarding a natural person municipal advisor (as detailed below) directly from that individual, including the kind of information that would not be realistic or desirable to obtain through the firm's Form MA.[233]

For these reasons, the Commission is proposing to require natural person municipal advisors, including individual employees of firms, to register separately with the Commission, and is proposing new Form MA–I as the application form for such registration. As discussed above, a municipal advisory firm that registers by filing proposed Form MA must already provide information on that form concerning the disciplinary history (over specified time spans) for each of its associated persons—a term that includes employees who are "engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities."[234] Thus, some information that could be valuable to municipal entities, obligated persons, investors, and regulators regarding individual employees who provide advice on behalf of a firm (and are natural person municipal advisors) would already be available through the municipal advisory firm's Form MA. As detailed below, Form MA–I would, however, elicit additional information

[232] To date, in somewhat analogous registration contexts, the Commission has not required associated persons to register with the Commission. In the broker-dealer context, associated persons must register with FINRA. In the investment adviser context, associated persons of investment advisers generally must register with the states. For the reasons set forth below, in the context of municipal advisors, the Commission believes that registration of each natural person municipal advisor separately is the appropriate approach.

[233] Section 975(c)(5) of the Dodd-Frank Act provides the Commission with authority to censure or place limitations on the activities or functions of any person associated with a municipal advisor or to suspend or bar any such person from being associated with a municipal advisor, but it appears Congress made a technical error in drafting this provision. To address any ambiguity in Section 975(c), the Commission intends to recommend a technical amendment to Section 975(c)(5) of the Dodd-Frank Act.

[234] *See* Section 15B(e)(7) of the Exchange Act. 15 U.S.C. 78*o*–4(e)(7).

that would not be provided by the firm with which the natural person municipal advisor is employed.[235] In addition, to obtain the same additional information from sole proprietors as obtained from natural person municipal advisors who are employees of firms, the Commission is proposing that sole proprietors, since they are also natural persons, be required to complete both Forms MA and MA–I. However, some information that a sole proprietor has already provided in his or her Form MA would not need to be provided a second time. Form MA–I would permit information required by a DRP to the form to be incorporated by reference, if the information has been previously disclosed on a DRP to his or her Form MA, ADV, BD, or U4, as applicable, or has been previously disclosed on his or her Form MA–T.[236] Thus, the information required by Form MA–I, as proposed, would supplement, rather than duplicate, the information provided by a sole proprietor on Form MA.

The Commission notes that the information requested on proposed Form MA–I is similar to information requested on FINRA's Form U4.[237] Form U4 is used, among other things, to register associated persons of broker-dealers with FINRA, and associated persons of state-registered investment advisers with the states. Some questions on Form U4, however, have been adapted for purposes of proposed Form MA–I to relate specifically to municipal advisors, or have been omitted as not necessary or appropriate in the municipal advisor context.

[235] Under the proposal, however, to the extent that the required information regarding an employee's disciplinary history has already been provided on Forms MA, MA–T, BD, ADV, or U4, the employee would be permitted to incorporate such information by reference in completing Form MA–I.

[236] If the sole proprietor is also registered through the IARD system or CRD system, registered with the SEC as a municipal advisor on Form MA, or previously registered with the SEC on Form MA–T, or is an associated person of a municipal advisor that is registered with the SEC on Form MA or that previously registered with the SEC on Form MA–T, and the applicant or municipal advisor with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the IARD or CRD, or submitted to the SEC disclosure on Form MA–T or a DRP with Form MA, for the event that contains the information required by the comparable DRP to Form MA–I, such information may be incorporated by reference, to the extent applicable.

[237] *See* Form U4, Uniform Application for Securities Industry Registration or Transfer, available at: *http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf.*

Request for Comment

The Commission requests comment generally on proposed Form MA–I and also requests comment on the following specific issues:

- What effects would a separate registration requirement have on natural persons and on firms from the standpoint of compliance? What would be the relative advantages and disadvantages for firms, municipal advisor employees, municipal entities, obligated persons, investors, and regulators, of requiring separate registration for natural person municipal advisors? How, if at all, does the moving of an employee from one firm to another bear on the issue of separate registration?
- Would the existence of a separate registration requirement and registration form for natural person municipal advisors cause confusion among municipal advisors such as to outweigh its benefits? If the Commission were to only require registration of municipal advisory firms, would inclusion of information regarding the firm's employees on the firm's Form MA cause confusion for municipal entities, obligated persons, and investors?
- What, if any, legal ramifications may result for firms and/or for natural persons based on a registration regime that allows natural person municipal advisors that are employees of a municipal advisory firm to be registered by their firms as opposed to separate registration? What, if any, interpretive issues are raised with respect to the application of the statutory registration requirements?
- What would be the advantages and/or disadvantages of requiring a sole proprietor to complete two separate registration forms, and to keep both updated and to amend each form as the occasion arises? Should a separate form be adopted for the registration of sole proprietors?

Items 1 and 2: Identifying Information and Other Names

In addition to requesting basic identifying information about a natural person municipal advisor, and in the case of a natural person municipal advisor that is an employee[238] and the firm with which he or she currently is associated,[239] Item 1 of Form MA–I, as proposed, would require each such individual to disclose additional identifying information that would not be contained in his or her firm's Form MA, including:

- The individual's CRD number, if he or she has one;
- The individual's social security number;[240]
- The date of the individual's employment or contract with the firm;
- Whether the individual has an independent contractor relationship with the firm;
- The firm's registration status;
- All the offices of the firm where the individual may be physically located and all the offices from which the individual will be supervised; and
- Whether any of these offices are located in a private residence.

Item 2 would require a natural person municipal advisor to disclose all other names that he or she is using or has been known by since the age of 18, such as nicknames, aliases, and names before and after marriage.

The Commission believes that the information above would be useful to municipal entities and obligated persons in exploring the background, credentials, reliability, and trustworthiness of an individual in the course of making a decision whether to engage that natural person or his or her firm as a municipal advisor. The same information would be valuable to regulators in overseeing the market and investigating possible instances of wrongdoing.

Request for Comment

The Commission requests comment generally on Items 1 and 2 of proposed Form MA–I and also requests comment on the following specific issues:

- Do all these data elements serve the purposes of registration? Are all these facts helpful to municipal entities, obligated persons, and regulators in searching for information about municipal advisors? If not, which should be eliminated and why?
- Is the additional identification information required of individuals registered as representatives of investment advisers and/or broker-dealers on FINRA's Form U4 a useful model for the disclosures that should be required of municipal advisors—*i.e.*, are natural person municipal advisors

[238] This would include, for example, the individual's full legal name.

[239] Such identifying information would include, if any, the CRD number assigned to the firm and any file number assigned to the firm by the Commission. The Commission believes that requiring individuals to provide these numbers would make it easier for municipal entities and investors to gather the information they need, would facilitate regulatory oversight and surveillance of municipal advisory activities, and would be valuable for investigative purposes.

[240] This information would not be made publicly available. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78*o*–4(c)).

distinguishable from representatives of investment advisers and/or broker-dealers in this regard? If so, how?

- Are there any additional data elements that would be useful to municipal entities, obligated persons, and regulators that should be required to be provided? If so, what are they?
- Are there other data elements that should not be made available to the public? If so, which should not be made available?
- Would a requirement to provide any of the information described raise any privacy issues, even if not made available to the public?

Item 3: Residential History

Form MA–I, as proposed, also would require a natural person municipal advisor to disclose each location where he or she has resided for the past five years, including the time period at each residence. Natural person municipal advisors would be required to report changes in residence (via an amendment) as they occur. In addition, the applicant must not leave any gaps greater than three months between addresses.

The Commission believes that a natural person municipal advisor's residential history, like the additional identifying information the proposed Form MA–I would seek, would be useful for interested parties in exploring the background, credentials, reliability, and trustworthiness of an individual and be valuable to regulators in overseeing the market and investigating possible instances of wrongdoing. The Commission notes that the information proposed to be required regarding residential history is similar to the information requested on Form U4.[241]

Request for Comments

The Commission requests comment generally on Item 3 of proposed Form MA–I and also requests comment on the following specific issues:

- Would a list of all the locations at which a natural person municipal advisor has resided for the past five years be necessary or useful in searching for information about municipal advisors to the extent that municipal advisors must be required to reveal them? If not, which should be eliminated?
- Are the disclosures concerning residential history required on FINRA's Form U4 a useful model for the disclosures that should be required of municipal advisors—*i.e.*, are natural person municipal advisors distinguishable from individuals that are representatives of investment advisers and/or broker-dealers in this regard? If so, how?
- Would five years be an appropriate time span for which to require residential history? If not, what time span, if any, would be appropriate?

Item 4: Employment History

Form MA–I, as proposed, would require natural person municipal advisors to provide their complete employment history for the past ten years, including full and part-time employment, self-employment, military service, and homemaking. All statuses during the ten-year period, such as unemployed, full-time education, extended travel, and other similar circumstances would be required to be included. In addition, the applicant must not leave a gap longer than three months between entries. The information that the Commission proposes to be required is similar to the information requested on Form U4,[242] and would help inform an understanding of an employee's business experience and provide useful information in preparing for regulatory examinations.

Request for Comments

The Commission requests comment generally on Item 4 of proposed Form MA–I and also requests comment on the following specific issues:

- Would requiring a natural person to provide his or her employment history serve a purpose essential enough to be included in the disclosures required of a natural person in registering as a municipal advisor?
- Is a list of all the places of employment and all the gaps in employment of a natural person municipal advisor over the past ten years necessary or useful for municipal entities, obligated persons, and regulators in searching for information about municipal advisors to the extent that municipal advisors must be required to reveal them? If not, should a less comprehensive employment history be required to be disclosed?
- Would ten years be an appropriate time span for which to require employment history? If not, what time span, if any, would be appropriate?
- If the employment history of a natural person municipal advisor is required for purposes of registration, should it be made available to the public? If so, why? If not, why not?
- To the extent that the employment history of a natural person municipal advisor must be disclosed on Form MA–I, should it be limited to employment relating to securities, or, more narrowly, to municipal securities or investment advice?

Item 5: Other Business

Form MA–I, as proposed, also would require a natural person municipal advisor to provide information about other business activities, if any, in which he or she is currently engaged—either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. The form would ask for the name of the other business, its address, whether it is municipal advisor-related, and, if not, the nature of the business in which it is engaged.

The natural person filing Form MA–I would be required to provide his or her position, title, or relationship with the other business, the start date of the relationship, the approximate number of hours per month the applicant devotes to the other business, and a brief description of his or her duties relating to the other business. The information sought in this section of the form is similar to the information sought by the equivalent section in Form U4, and would help the Commission understand a natural person municipal advisor's business activities and would help staff prepare for examinations.

Request for Comments

The Commission requests comment generally on Item 5 of proposed Form MA–I and also requests comment on the following specific issues:

- Does extensive information about a natural person municipal advisor's other current business activities, or any information at all, serve a purpose essential enough to be included in the disclosures required of a natural person in registering as a municipal advisor?
- Is information about a municipal advisor's other current business necessary or useful for municipal entities, obligated persons, and regulators searching for information about municipal advisors to the extent that municipal advisors must be required to reveal them?
- Are any additional points of information about a natural person municipal advisor's other business activities relevant and, therefore, appropriate to require a natural person municipal advisor to disclose?
- Should required information about other business activities be limited to current activities? If not, over how long a time span should other business activities be reported?

[241] The Commission does not intend to make the information required by Item 3 publicly available.

[242] The Commission intends to make this information publicly available.

• If the history of other business activities of a natural person municipal advisor is required for purposes of registration, should it be made available to the public?

• To the extent that the history of other business activities of a natural person municipal advisor must be disclosed, should it be limited to other business activities relating to securities, or, more narrowly, to municipal securities or investment advice?

Item 6: Criminal Action, Regulatory Action, and Civil Judicial History, Customer Complaint/Arbitration/Civil Litigation, Termination, and Financial Disclosure

Proposed Form MA–I would include sections that require a natural person municipal advisor to provide the same general types of information regarding his or her criminal, regulatory, and civil judicial history, if any, as provided by municipal advisory firms, including sole proprietors, in corresponding sections in Form MA.[243] As in Form MA, certain responses would require disclosure of complete details of all events or proceedings on the DRPs attached to the form. However, a natural person completing Form MA–I would need to make certain additional disclosures, as specified below, and the DRPs would require details relating to these additional disclosures of the natural person's history.

The Commission believes that these additional disclosures, which are also required of individuals associated with broker-dealers and investment advisers on Form U4, would be appropriate to require of municipal advisors, both to aid municipal entities, obligated persons, and other members of the public in researching the background of municipal advisors, and to aid regulators in enhancing their oversight of municipal advisors.

Criminal Action Disclosure

With respect to felonies, Form MA–I, in contrast to the disclosures required by Item 9A of Form MA, would require disclosure of:

• Any past conviction of, or plea of guilty or nolo contendere to, a felony by the natural person municipal advisor, rather than limiting the disclosure to the past ten years, as in a firm's or solo practitioner's Form MA.

• Any charges of felony against the natural person municipal advisor in the past, rather than limiting disclosure to currently pending charges, as in a firm's or solo practitioner's Form MA.

• Any convictions of, or plea of guilty or nolo contendere to, a felony by an organization based on activities that occurred when the natural person municipal advisor exercised control over the organization—a disclosure not required in Form MA.

Similarly, with respect to misdemeanors, in instances where Form MA would require only disclosures of convictions and pleas concerning a natural person municipal advisor looking back ten years, and require only disclosures of charges against the natural person that are currently pending, Form MA–I would require disclosure of such convictions, pleas, and charges that occurred at anytime in the individual's past. Misdemeanors, convictions, pleas, and charges of misdemeanor against an organization based on activities while the individual exercised control over it would also be required to be disclosed.

These additional disclosures would be consistent with the disclosure requirements on Form U4. In addition, these disclosures would provide additional information with respect to natural person municipal advisors that would be useful to the Commission's regulatory and examination programs, and may be useful to municipal entities and obligated persons who are clients or prospective clients of the municipal advisor.

As would be required for firms with respect to proposed Form MA, the DRP for criminal disclosure on Form MA–I, as proposed, would similarly require a natural person municipal advisor to include certain details regarding events noted in the first section of the form. These additional disclosure details would include, among others: Status of the event; details of its disposition; and the date of amended charges, if any. The DRP for Form MA–I would also provide an option and space for the individual to comment with a brief summary of the circumstances leading to the charge(s) as well as the current status or final disposition of the charge(s).

Request for Comment

The Commission requests comment generally on the criminal action disclosure requirements of proposed Form MA–I and also requests comment generally on the following specific issues:

• In addition to the questions posed above regarding the appropriateness of the criminal history disclosures proposed in Form MA,[244] the Commission seeks comment on whether the broadened scope of these disclosures required of natural person municipal advisors in proposed Form MA–I would be warranted. If so, why? If not, why not? Would additional disclosure to those outlined above be appropriate? To the extent that additional disclosure regarding the criminal action history for a natural person municipal advisor would be appropriate, please provide details regarding what those disclosures should require.

Regulatory Actions Relating to the Individual

With respect to regulatory actions, in addition to the disclosures required in Form MA, Form MA–I, similar to Form U4, would require a natural person municipal advisor to disclose whether the Commission or the CFTC has ever found the natural person to have:

• Willfully violated, or been unable to comply with, any provision of the Federal securities laws, the Commodity Exchange Act, and the rules thereunder, and any rule of the MSRB;

• Willfully aided, abetted, commanded, induced, or procured the violation by any other person of these laws and rules; and

• Failed reasonably to supervise another person subject to his or her supervision with a view to preventing violation of these laws and rules.

The disclosures that would be required by proposed Form MA–I with respect to findings and actions relating to the natural person municipal advisor by other Federal regulatory agencies, state regulatory agencies, and foreign financial regulatory authorities, would be the same as disclosures required on Form MA. Proposed Form MA–I would also require a natural person municipal advisor to disclose whether he or she has ever been subject to a final order of a state securities commission or similar agency or office; state authority that supervises or examines banks, savings associations, or credit unions; state insurance commission; an appropriate Federal banking agency; or the National Credit Union Administration that: Bars the natural person municipal advisor from association with an entity regulated by such commission, agency, authority or office, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or constitutes

[243] *See supra* Section II.A.2.c. As previously discussed, a sole proprietor who has already filed a Form MA, and an employee whose employer has already filed a Form MA including information relating to that employee, would be permitted to incorporate by reference certain information in the Form MA into his or her Form MA–I, to the extent that providing the information in Form MA–I would duplicate the information already provided in the Form MA. *See supra* notes 235 and 236 and accompanying text.

[244] *See supra* Section II.A.2.c.

a final order based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

With respect to SRO actions, in addition to the disclosures required of a municipal advisory firm, including sole proprietors, regarding its individual associated persons on Form MA, Form MA–I would require a natural person municipal advisor to disclose any finding by an SRO that the natural person municipal advisor:

- Willfully violated, or is unable to comply with, any provision of the Federal securities laws, the Commodity Exchange Act and the rules thereunder, or the rules of the MSRB;
- Willfully aided, abetted, counseled, commanded, induced, or procured the violation of any of these laws or rules; or
- Failed reasonably to supervise another person subject to his or her supervision, with a view to preventing such violations.

Like Form MA, Form MA–I would require a natural person municipal advisor to disclose whether he or she has ever had an authorization to act as an attorney, accountant or Federal contractor that was revoked or suspended. Also, as on Form MA, Form MA–I would also require a natural person municipal advisor to disclose whether he or she ever was notified, in writing, that he or she is currently the subject of any regulatory complaint or proceeding by a regulatory body relating to any occurrence of the kind that could trigger a disclosure requirement relating to regulatory history of the natural person municipal advisor with the Commission, the CFTC, other governmental regulators, or SROs as described above. Form MA–I would also require disclosure of whether the natural person municipal advisor was ever notified, in writing, that he or she is currently the subject of an investigation that could result in any occurrence of the kind that could trigger a disclosure requirement relating to the criminal or regulatory history of the natural person municipal advisor as described above.[245] Form MA would not require such disclosure.

The Commission believes that the additional disclosure items described above would be helpful to municipal entities and obligated persons as clients or prospective clients of municipal advisors. The information could also serve as the basis for granting or instituting proceedings to deny a registration, or for revoking a registration or imposing other sanctions by the Commission with respect to a natural person municipal advisor.[246]

The DRP for regulatory action disclosure in Form MA–I, as proposed, would require a natural person municipal advisor to include certain details regarding events noted in the main body of the form that are similar to the information that would be required in the corresponding DRP in a firm's Form MA, including: If requalification was a condition of any sanction reported, whether it was by exam, retraining, or other process; the length of time given to requalify; and whether the requalification condition was satisfied.

The additional disclosures required by the DRP would also include details of any monetary sanction imposed, including amount; portion levied against the natural person municipal advisor; payment plan; whether such plan was current; date paid; and whether the sanction was a civil or administrative penalty or fine, a monetary penalty other than a fine, disgorgement, or restitution.

Consistent with Form MA, Form MA–I would also include a DRP requiring a natural person municipal advisor to provide details of any investigation reported in the main body of the form, including the date the investigation was initiated, and indicate whether it was initiated by an SRO, a foreign financial regulatory authority (giving the specific jurisdiction), the Commission, or other Federal agency. Space would be provided for the natural person municipal advisor to briefly describe the nature of the investigation, if known; whether it was pending or resolved; and details of any resolution. A space for optional comment would also be provided for the natural person municipal advisor to present a brief summary of the circumstances leading to the investigation, and its current status or final disposition and/or findings.

Request for Comment

The Commission requests comment generally on the regulatory action disclosure requirements of proposed Form MA–I, and also requests comment on the following specific issues:

- In addition to the questions posed above regarding the disclosures with respect to regulatory history proposed in Form MA,[247] the Commission seeks comment on whether the broadened scope of the disclosures required of natural person municipal advisors in proposed Form MA–I would elicit information that would be valuable to the public, and in particular municipal entities or obligated persons. If so, in what way? Is there information proposed to be requested that would not be useful? If so, why? Is there additional information that should be requested with respect to regulatory actions relating to natural person municipal advisors? If so, what information and why?

Civil Judicial Action Disclosure

The disclosures that would be required by proposed Form MA–I with respect to certain matters relating to a natural person municipal advisor's civil judicial history would be the same as disclosures required on Form MA. Thus, a natural person municipal advisor would be required to disclose on Form MA–I whether he or she was ever:

- Enjoined by a domestic or foreign court in connection with any investment-related or municipal advisor-related activity;
- Found by a domestic or foreign court to be involved in a violation of any investment-related or municipal advisor-related statute or regulation; or
- Had an investment-related or municipal advisor-related civil action brought against him or her dismissed, pursuant to a settlement agreement, by a state or foreign financial regulatory authority; or
- Named in any such pending action.

A DRP would be required for affirmative responses to questions under this item. Specifically, the DRP would require, among other things, information regarding by whom the court action was initiated; the name of the party initiating the proceeding; information about the relief sought; the date on which the action was filed and notice or process was served; the types of financial products involved; a description of the allegations relating to the civil action; the current status, including whether the action is on appeal and details relating to any such appeal; sanction details; and if the disposition resulted in a fine, disgorgement, restitution or monetary compensation, or information relating thereto. The DRP would also provide the opportunity for an applicant to provide additional comment, including a summary of the circumstances leading to the action and current status. The Commission believes that it is appropriate to seek information from natural person municipal advisors regarding investment-related activities as well as municipal advisor-related activities due to the significant similarities that exist between the two

[245] A related DRP would be required to disclose details of any pending investigation.

[246] *See supra* note 218 (discussing grounds for revocation of a municipal advisor's registration).

[247] *See supra* Section II.A.2.c.

advisory functions, and because such information could serve as a basis to institute proceedings to deny registration of a municipal advisor or to impose other sanctions on the municipal advisor's activities.

Request for Comment

The Commission requests comment generally on the civil action disclosure requirements of proposed Form MA–I and also requests comment on the following specific issues:

- Are these additional disclosure requirements for natural person municipal advisors regarding civil judicial history warranted?
- Would it be useful to municipal entities and obligated persons to require natural persons registering as municipal advisors to provide information regarding past investment-related activities as well as past municipal advisor-related activities? If so, why? If not, why not?

Customer Complaints/Arbitration/Civil Litigation

Form MA does not require a municipal advisory firm or a sole proprietor to disclose any customer complaints, arbitration matters, and civil litigation concerning natural person municipal advisors. Form MA–I, however, would require a natural person municipal advisor to disclose whether he or she has ever been:

- The subject of a complaint initiated by a consumer, whether written or oral, regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices; or
- The subject of an arbitration or civil litigation initiated by a consumer regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices.

In the case of a complaint, the natural person municipal advisor would be required to indicate whether the complaint is still pending or was settled. In the case of arbitration or civil litigation, the natural person municipal advisor would be required to indicate whether the arbitration or litigation is still pending; resulted in an arbitration award or civil judgment against the natural person municipal advisor in any amount; or was settled.

A DRP would be required for affirmative responses to questions under this item. Specifically, the related DRP would require the municipal advisor to disclose the customer's name; the customer's state of residence and other states of residence; the employing firm of the municipal advisor when the activities occurred that led to the complaint, arbitration, CFTC reparation or civil litigation; and the allegations and brief summary of events related to the allegations, including the dates when they occurred; the product type; and the alleged compensatory damage amount. For customer complaints, arbitration, CFTC reparation, or civil litigation in which the municipal advisor is not a named party, the DRP would require disclosure of whether the complaint is oral or written, or whether it is an arbitration, CFTC reparation or civil litigation (and the arbitration or reparation forum, docket or case number, and the filing date); whether the complaint, arbitration, CFTC reparation or civil litigations is pending, and if not, the status. The DRP would require disclosure of the status date, and the settlement award amount, including the municipal advisor's contribution amount. If the matter involves an arbitration or CFTC reparation in which the municipal advisor is a named respondent, the DRP would require disclosure of the entity with which the claim was filed; the docket or case number; the date process was served; whether the arbitration of CFTC reparation is pending, and if not pending the form of disposition; the disposition date; and the amount of the monetary award, settlement or reparation (including the municipal advisor's contribution). If the matter involves a civil litigation, the DRP would require disclosure of the court in which the case was filed; the location of the court; the docket or case number; the date the complaint was served on or received by the municipal advisor; whether the litigation is still pending; if not still pending the form of its disposition; the disposition date; the judgment, restitution or settlement amount, including the municipal advisor's contribution amount; whether the action is currently on appeal, and if so, the date the appeal was filed, the court in which the appeal was filed, the location of the court, and the docket or case number for the appeal. The DRP would also provide for optional additional comment, such as a summary of the circumstances leading to the complaint.

These disclosures, too, would mirror similar disclosures in Form U4, and would provide additional information about natural person municipal advisors that may be useful to municipal entities or obligated persons as clients or prospective clients. The information would also help the Commission prepare for and plan examinations.

Request for Comment

The Commission requests comment generally on the customer complaint/arbitration/civil litigation disclosure requirements of proposed Form MA–I and also requests comment on the following specific issues:

- Would these additional disclosure requirements for natural person municipal advisors provide information that would be useful in the context of natural person municipal advisors but that would not be useful in the context of firms? If so, to whom would the information be useful, and why?
- Would municipal entities and obligated persons find it useful for Form MA–I to require municipal advisors to disclose customer complaints, arbitration, and civil litigation with respect to investment-related matters, in addition to complaints, arbitration, and civil litigation with respect to municipal advisor-related matters? Is this information they would access and use if available? If so, how?
- Should Form MA also require similar disclosure with respect to associated persons of municipal advisory firms? If so, which additional information would be useful and why?

Termination Disclosure

Unlike in Form MA, Form MA–I would require disclosure regarding the termination of a natural person municipal advisor's employment. Specifically, consistent with Form U4, Form MA–I would ask the natural person municipal advisor to indicate whether he or she ever voluntarily resigned, or was discharged or permitted to resign after allegations were made that accused him or her of:

- Violating investment-related or municipal advisor-related statutes, regulations, rules, or industry standards of conduct;
- Fraud or the wrongful taking of property; or
- Failure to supervise in connection with investment-related or municipal advisor-related statutes, regulations, rules or industry standards of conduct.

An affirmative response to the disclosures described above would require the municipal advisor to disclose additional information on a related DRP. Specifically, the DRP

would require the municipal advisor to disclose the name of the firm, the type of termination (whether discharged, permitted to resign, or voluntary resignation), the termination date, the allegations, and the product types. The DRP would also provide for optional additional comment, such as a summary of the circumstances leading to the termination. This disclosure would provide information that would be useful to the Commission in planning and preparing for inspections and examinations, and would be useful to the public generally (including municipal entities and obligated persons, as clients or prospective clients).

Request for Comment

The Commission requests comment generally on the termination disclosure requirements of proposed Form MA–I and also requests comment on the following specific issues:

- Would the requirement for the above-listed additional disclosures by natural person municipal advisors regarding their municipal advisory activities elicit information that would be useful to the public (including municipal entities and obligated persons, as clients or prospective clients) and that would be relevant in the context of natural person municipal advisors that is not relevant in the context of firms? If not, what additional information should be requested and why?
- Would requiring municipal advisors to disclose violations of investment-related statutes, regulations, rules, and industry standards, in addition to violations of municipal advisor-related statutes, regulations, rules, and industry standards on Form MA–I elicit information that would be useful to the public (including municipal entities and obligated persons, as clients or prospective clients)?

Financial Disclosures

Form MA–I also would require natural persons who are municipal advisors to make financial disclosures that are not required to be made by municipal advisory firms regarding their associated persons or by sole proprietors regarding themselves on Form MA. Specifically, the form would ask a natural person municipal advisor whether, within the past ten years:

- He or she has made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition;
- An organization controlled by the natural person municipal advisor has made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition based upon events that occurred while he or she exercised control over it; or
- A broker or dealer controlled by the natural person municipal advisor has been the subject of an involuntary bankruptcy petition, had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act based upon events that occurred while he or she exercised control over it.

In addition, a natural person who is a municipal advisor would be required to disclose whether:

- A bonding company ever denied, paid out on, or revoked a bond for him or her; or
- The natural person municipal advisor has any unsatisfied judgments or liens against him or her.

An affirmative response to the disclosure items described above would require the municipal advisor to provide additional disclosure on a DRP. Specifically, the municipal advisor would be required to disclose the judgment or lien amount, the judgment or lien holder, the judgment or lien type (whether civil or tax), the date filed, the court in which the action was brought, the name of the court, the location of the court, the docket or case number (and whether the docket or case number is the municipal advisor's social security number, bank card number, or personal identification number), whether the judgment or lien is outstanding, and if the judgment or lien is not outstanding, the status date and how the matter was resolved. The DRP would also provide for optional comment, such as a brief summary of the circumstances leading to the action.

The Commission believes that the information that would be required, which is consistent with that required by Form U4, would be useful for its regulatory purposes, including planning and preparing for inspections and examinations, and to the public generally (including municipal entities and obligated persons, as clients or prospective clients).

Request for Comment

The Commission requests comment generally on the financial disclosure requirements of proposed Form MA–I and also requests comment on the following specific issues:

- Would financial disclosure requirements be necessary, useful, or relevant in connection with natural person municipal advisors in a way that it would not be useful with respect to municipal advisors that are firms? If so, how? If not, why not?

Item 7: Execution and Self-Certification

With respect to execution of Form MA–I, the natural person municipal advisor who signs the form would be required to represent that the information and statements made in Form MA–I are true and correct. The municipal advisor also would be required to consent to service of any civil action or notice of any proceeding before the Commission or an SRO regarding its municipal advisory activities via registered or certified mail. The proposed requirements for execution of Form MA–I would be consistent with and serve the same purposes as the execution provisions of proposed Form MA, with modifications to reflect that Form MA–I would apply to municipal advisors that are natural persons rather than firms and that, unlike municipal advisory firms, natural person municipal advisors would not be subject to the books and records requirements of proposed rule 15Ba1–7.

A natural person municipal advisor would also be required to certify that he or she has: (1) Sufficient qualifications, training, experience, and competence to effectively carry out his or her designated functions; (2) met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor, required by the Commission, the MSRB or any other relevant SRO; and (3) the necessary understanding of and ability to comply with, all applicable regulatory obligations. For these purposes, such applicable regulatory obligations are obligations under the Federal securities laws and rules promulgated thereunder and applicable rules promulgated by the MSRB, or any other relevant SRO. Proposed rule 15Ba1–4(e) would require such certification at the time an initial application for registration as a municipal advisor is filed and annually thereafter.[248]

Request for Comment

The Commission requests comment generally on the execution requirements of proposed Form MA–I and also requests comment on the following specific issues:

[248] *See* proposed rule 15Ba1–4(e). The proposed rule would require the annual self-certification to be filed by natural person municipal advisors, including sole proprietors, within 90 days of the end of the calendar year. General Instruction 13 would require that a natural person municipal advisor filing an annual self-certification on Form MA–I check the appropriate box to indicate as such and complete the certification included in Item 7.

• Should there be additional or alternative representations to those proposed for Item 7 of Form MA–I? If so, what representations and why?

• Would there be alternative methods to obtain consent to service of process or should such consent not be obtained?

• Is the proposed self-certification broad enough in scope or too broad? If not, what additional factors should be included or excluded and why? Should the self-certification be required more or less frequently? If so, how often and why? Are there other alternatives the Commission should consider? If so, what alternatives and why?

• Should the self-certification required of natural person municipal advisors include additional factors? If so, what would they be and why? Should the Commission require an independent third party review of the municipal advisor? What are examples of such a review? Should the Commission undertake a review of all municipal advisors as part of the registration and examination process? If so, what should be the scope and frequency of the examination process? Should the Commission provide municipal advisors a choice between independent third party review and Commission review, or a combination thereof?

3. Proposed Rule 15Ba1–3

a. Withdrawal From Municipal Advisor Registration

Pursuant to proposed rule 15Ba1–3, all municipal advisors, whether registered on Form MA or MA–I, would be required to file Form MA–W to withdraw from registration with the Commission as a municipal advisor.[249] As would be the case with Forms MA and MA–I, Form MA–W would be required to be filed electronically with the Commission.[250]

A notice of withdrawal from registration would become effective on the 60th day after electronically filing the Form MA–W with the Commission, or within a longer time period if the municipal advisor consents, or the Commission by order determines as necessary or appropriate in the public interest, for the protection of investors, or within such shorter time as the Commission may determine.[251] Under the proposed rule, if a municipal advisor electronically filed a notice of withdrawal from registration with the Commission at any time subsequent to the date of issuance of a Commission order instituting proceedings pursuant to Section 15B(c) of the Exchange Act[252] to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the municipal advisor, or if the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon the withdrawal, the notice of withdrawal would not become effective except at the time and upon the terms and conditions as deemed by the Commission as necessary or appropriate in the public interest or for the protection of investors.

b. Form MA–W

Consistent with the requirements of withdrawal of a registration on Form ADV, Form MA–W would require a municipal advisor, whether a firm, sole proprietor, or associated person of a municipal advisor (that falls within the definition of a "municipal advisor") to provide identifying information keyed to the identifying information on, and the file number of, the municipal advisor's Form MA or Form MA–I. In the case of a firm, the municipal advisor would be required to provide on the form the name of an employee (or principal) of the firm who is authorized to receive information and respond to questions about the Form MA–W. Contact information for outside counsel for the firm would not suffice.

A municipal advisor filing to withdraw registration would be required to indicate on Form MA–W whether it has received any pre-paid fees for municipal advisory services that have not been delivered, including subscription fees for publications, and to specify the amount. In addition, the withdrawing registrant would be required to indicate how much money, if any, it has borrowed from clients that it has not repaid. The municipal advisor that is filing to withdraw its registration also would be required to indicate whether there were any unsatisfied liens or judgments against it. If the filer responded affirmatively that it owed money or had any liens or judgments against it, it would be required to disclose on a schedule attached to Form MA–W, Schedule W2, the nature and amount of its assets and liabilities and its net worth on the last day of the month prior to the filing of the form.

The Commission believes that requiring such information from a municipal advisor that is withdrawing its registration is appropriate for the protection of investors and of those who do business with municipal advisors because it would put them on notice that the municipal advisor would no longer be registered and, therefore, would not be able to engage in municipal advisory activities without violating Federal securities laws. Such information would also alert clients and prospective clients as to the financial stability of the municipal advisor. In addition, the information would help investigative and enforcement efforts on the part of regulators. The Commission notes that an investment adviser that withdraws from registration must supply similar information on its Form ADV–W.[253]

Because proposed rule 15Ba1–7(b) under the Exchange Act requires a municipal advisor withdrawing from registration to nonetheless preserve its books and records, a filer of Form MA–W would be required to list the name and address of each person who has, or will have, custody or possession of its books and records and the location at which such books and records will be kept. A withdrawing municipal advisor would be required to identify, in an additional schedule attached to Form MA–W, Schedule W1, each person to which it has assigned any of its contracts. The Commission believes that such a requirement—which also exists for investment advisers—is important for the protection of participants in the municipal securities markets.

The signatory to the Form MA–W would be required to certify, under penalty of perjury, that the information and statements made in the form, including any exhibits or other information provided, are true. If the form is being filed on behalf of a municipal advisory firm,[254] the signature would constitute such certification by both the firm and the signatory. Similarly, the signatory (and the municipal advisory firm, if the municipal advisor is a firm) would be required to certify that the advisor's books and records will be preserved and available for inspection as required by law, and to authorize any person having custody or possession of these books and records to make them available to authorized regulatory representatives.

The certification would include a statement that all information previously submitted on the municipal advisor's most recent Form MA, Form MA–I, or both, as applicable, was accurate and complete as of the date of the signing of the Form MA–W. It would also include an understanding by the

[249] *See* proposed rule 15Ba1–3(a).

[250] *See* proposed rule 15Ba1–3(b).

[251] *See* proposed rule 15Ba1–3(c).

[252] 15 U.S.C. 78*o*–4(c).

[253] *See* 17 CFR 279.2.

[254] In the case of a firm, the signatory's certification includes a statement that he or she has signed on behalf of the firm and that he or she has the authority to do so.

signatory that if any information contained in items on the Form MA–W is different from the information contained on the most recent Form MA, MA–I, or both, as applicable, the information on the Form MA–W would replace the corresponding entry on the municipal advisor's Form MA or MA–I available through the Commission's electronic system.

The Commission believes that the certification requirement should serve as an effective means to assure that the information supplied in Form MA–W is correct.

Request for Comment

The Commission requests comment generally on proposed Form MA–W and also requests comment on the following specific issues:

- Form MA–W would have to be filed electronically for purposes of withdrawing from registration with the Commission. Should the proposed rule include an option for the form to be filed in paper rather than electronically? If so, please explain under what circumstances it would be appropriate to allow paper filings of the form.
- How much identifying information should be required of the municipal advisor filing to withdraw its registration? Is the information required in the proposed form too much or too little?
- What are the relative benefits and disadvantages of requiring the contact person for a withdrawal of registration to be an employee or principal of the firm that is withdrawing? Considering these factors, should a firm be permitted to name outside counsel as the contact?
- Do the proposed disclosures require more, or less, information than necessary from municipal advisors that are withdrawing from registration? To the extent additional disclosures should be required, please provide specific examples of the types of additional disclosures that would be valuable, to whom they would be valuable, and why.

4. Proposed Rule 15Ba1–4: Amendment to Application for Registration and Self-Certification

Proposed rule 15Ba1–4 sets forth the timeframes within which a municipal advisor must amend its Forms MA and MA–I. Proposed rule 15Ba1–4(a)(1) would require that a municipal advisor amend its Form MA at least annually, within 90 days of the end of the applicant's fiscal year in the case of applicants that are firms, or within 90 days of the end of the calendar year in the case of sole proprietors. In addition, proposed rule 15Ba1–4(a)(2) would require that a municipal advisor amend its Form MA more frequently than annually if required by the instructions to Form MA.[255]

Consistent with the requirement of Form ADV, proposed rule 15Ba1–4(a) would require a firm to amend its Form MA promptly if information provided in response to Item 1 (Identifying Information), 2 (Form of Organization), or 9 (Disclosure Information) becomes inaccurate in any way; or if information provided in response to Items 3 (Succession), 7 (Participation or Interest of Applicant, or of Associated Persons of Applicant, in Municipal Advisory Client Transactions), or 8 (Control Persons) becomes materially inaccurate.[256] Proposed rule 15Ba1–4(b) would require that a natural person municipal advisor promptly amend its Form MA–I if any information provided previously becomes inaccurate.[257] This requirement for natural person municipal advisors would be consistent with the requirement for updating Form U4.

A non-resident municipal advisory firm would be required to file an amendment to Form MA promptly after any changes in the legal or regulatory framework that would impact its ability or the manner in which it provides the Commission with the required access to its books and records or impacts the Commission's ability to inspect to examine the municipal advisor onsite.[258] The amendment should include a revised opinion of counsel describing how, as a matter of law, the municipal advisor will continue to meet its obligations to provide the Commission with the required access to the municipal advisor's books and records and to be subject to the Commission's onsite inspection and examination under the new regulatory regime. As noted in Section II.a.2.c. above, if a registered non-resident municipal advisory firm becomes unable to comply with this requirement, because of legal or regulatory changes, or otherwise, then this may be a basis for the Commission to revoke the municipal advisor's registration.

The Commission is not proposing to require natural person municipal advisors to annually update their Forms MA–I, as it is proposing to require municipal advisors registered on Form MA to do. In the case of firms, changes commonly occur over the course of a year, and a wide range of changes is possible—*e.g.*, changes in control persons and personnel, number of employees, nature of services provided, types of clients, and compensation arrangements, among others, as well as new disclosures that may be necessary for all of the firm's associated persons, rather than just one natural person. Accordingly, the Commission believes it is appropriate to require a firm to confirm through an annual update that its registration is up-to-date. With respect to natural person municipal advisors, however, because an amendment to Form MA–I would be promptly required whenever information previously provided becomes inaccurate, the Commission believes that the gains to be had by requiring the extra confirmation of an annual update are outweighed by the burden such a requirement would impose on natural person municipal advisors that are employees of municipal advisory firms.

All amendments to Form MA and Form MA–I would be required to be filed electronically with the Commission.[259] In addition, amendments to Form MA and Form MA–I would be "reports" for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*F(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[260]

These proposed rules are consistent with the Commission's requirements for other registrants (*e.g.*, national securities exchanges, SIPs, broker-dealers) to file updated and annual amendments with the Commission.[261] The Commission believes that such amendments are important for obtaining updated information on each municipal advisor so that the Commission would be able to assess whether each municipal advisor continues to be in compliance with the Federal securities laws and the rules and regulations thereunder. Obtaining updated information would also assist the Commission in its inspection and examination of a municipal advisor, and better inform the MSRB's regulation of municipal advisors. In addition, the Commission believes it is important for municipal entities and obligated persons, as well

[255] *See* proposed rule 15Ba1–4(a)(2). *See also* General Instruction 8.

[256] *See* proposed rule 15Ba1–4(a). *See also* General Instruction 8.

[257] *See* proposed rule 15Ba1–4(b). *See also* General Instruction 9.

[258] *See* General Instruction 8.

[259] *See* proposed rule 15Ba1–4(c).

[260] *See* proposed rule 15Ba1–4(d). As a consequence, it would be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in an amendment to Form MA or Form MA–I.

[261] *See e.g.*, rules 6a–2 and 15b3–1 under the Exchange Act. 17 CFR 240.6a–2 and 240.15b3–1. *See also* 17 CFR 249.1001 (Form SIP, application for registration as a securities information processor or to amend such an application or registration).

as the public generally, to have access to current information regarding advisors registered with the Commission.

Request for Comment

The Commission requests comment generally on the proposed requirement for amendments to Forms MA and MA–I, and also requests comment on the following specific issues:

- Should the events triggering amendment of Form MA be reduced or expanded? If so, which events should be added or removed and why?
- Is there any information that would be required by Form MA–I that should not trigger an amendment if it becomes inaccurate? If so, which information and why? Should the deadline by which a natural person municipal advisor must file an amendment to Form MA–I upon the occurrence of a material change be different from the deadline by which a firm must file an amendment to a Form MA? If so, what should be the deadline, and why?
- Should the requirements for amending or updating Forms MA and MA–I be the same? If so, why? If not, why not?

5. Proposed Rule 15Ba1–5: General Procedures for Serving Non-Residents and Form MA–NR

The Commission is proposing rule 15Ba1–5 to set forth the general procedures for serving non-residents under Form MA–NR. Proposed rule 15Ba1–5 would require that non-resident municipal advisors and non-resident general partners and managing agents [262] of municipal advisors must furnish the Commission with a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, general partner or managing agent that arises out of or relates to or concerns the municipal advisory activities of the municipal advisor.

This proposed requirement is designed to allow the Commission and others to provide service of process to a non-resident municipal advisor, general partner or managing agent to enforce the provisions of new Exchange Act Section 15B. Proposed rule 15Ba1–5 also would require that non-resident municipal advisors, general partners and managing agents update the information on the Form MA–NR if it becomes inaccurate. Further, the proposed rule would require that the non-resident municipal advisor, general partner or managing agent appoint a successor agent and file an updated Form MA–NR if the non-resident municipal advisor, general partner or managing agent discharges its agent or if the agent becomes unwilling or unable to accept service on behalf of the municipal advisor, general partner or managing agent. Finally, proposed rule 15Ba1–1(h) would define the term "non-resident," to mean: "(i) [i]n the case of an individual, one who resides in or has his principal office and place of business in any place not in the United States; (ii) [i]n the case of a corporation, one incorporated in or having its principal office and place of business in any place not in the United States; (iii) [i]n the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not in the United States."Pursuant to proposed General Instruction 2, and consistent with the proposed rule, every non-resident municipal advisor and every non-resident general partner and managing agent of a municipal advisor, whether or not the municipal advisor is resident in the United States, must file Form MA–NR in connection with the municipal advisor's initial application.[263]

Request for Comments

The Commission requests comment generally on the proposed general procedures for serving non-residents and proposed Form MA–NR, and also requests comment on the following specific issues:

- Is the Commission's proposed rule regarding service of process on non-residents appropriate and sufficiently clear? If not, why not and what would be a better alternative?
- Are there any factors that the Commission should take into consideration to ensure effective service of process on a non-resident municipal advisor or a non-resident general partner or managing agent?
- Should the Commission require non-resident municipal advisors and non-resident managing agents and general partners to certify to anything else on Form MA–NR?

6. Proposed Rule 15Ba1–6: Registration of Successor to Municipal Advisor

Proposed rule 15Ba1–6 would govern the registration of a successor to a registered municipal advisor. This proposed rule is substantially similar to rule 15b1–3 under the Exchange Act, which governs the registration of a successor to a registered broker-dealer.[264]

Succession by Application

Specifically, proposed rule 15Ba1–6(a) provides that in the event that a municipal advisor succeeds to and continues the business of a municipal advisor registered pursuant to Exchange Act Section 15B(a), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MA, and the predecessor files a notice of withdrawal from registration with the Commission on Form MA–W.

This proposed rule further provides that the registration of the predecessor municipal advisor shall cease to be effective 45 days after the application for registration on Form MA is filed by the successor municipal advisor.[265] In other words, the 45-day period would not begin to run until a complete Form MA has been filed by the successor with the Commission. This 45-day period is consistent with Exchange Act Section 15B(a)(2), pursuant to which the Commission has 45 days to grant a registration or institute proceedings to determine if a registration should be denied.[266]

Succession by Amendment

Proposed rule 15Ba1–6(b) further provides that notwithstanding rule 15Ba1–6(a), if a municipal advisor

[262] Proposed rule 15Ba1–1(c) defines a "managing agent" as "any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership." This definition is consistent with the definition of a "managing agent" as used in rule 15b1–5 under the Exchange Act relating to consent to service of process to be furnished by non-resident brokers or dealers and by non-resident general partners or managing agents of brokers or dealers. *See* 17 CFR 240.15b1–5. *See also* 17 CFR 275.0–2 (discussing general procedures for serving non-resident investment advisers in connection with Form ADV).

[263] *See* General Instruction 2. Failure to file Form MA–NR promptly may delay SEC consideration of the initial application. Additionally, a municipal advisor or general partner or managing agent of an SEC-registered municipal advisor who becomes a non-resident after the initial application has been submitted must file Form MA–NR within 30 days. *Id.*

[264] *See* 17 CFR 240.15b1–3. *See also* Registration of Successors to Broker-Dealers and Investment Advisers, Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993) (providing interpretive guidance regarding amendments to rule 15b1–3).

[265] *See* proposed rule 15Ba1–6(a).

[266] *See* 15 U.S.C. 78o–4(a)(2).

succeeds to and continues the business of a registered predecessor municipal advisor, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor municipal advisor on Form MA to reflect these changes. Such amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor. In all three types of successions that are specified in proposed rule 15Ba1–6(b) (change in the date or state of incorporation, change in form of organization, and change in composition of a partnership), the predecessor must cease operating as a municipal advisor. The Commission believes that it is appropriate to allow a successor to file an amendment to the predecessor's Form MA in these types of successions because such successions do not typically result in a change of control of the municipal advisor.

Scope and Applicability of Proposed Rule 15Ba1–6

The purpose of proposed rule 15Ba1–6 is to enable a successor municipal advisor to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor municipal advisor until the successor's own registration becomes effective. The proposed rule is intended to facilitate the legitimate transfer of business between two or more municipal advisors and to be used only where there is a direct and substantial business nexus between the predecessor and the successor municipal advisor. The proposed rule is not designed to allow a registered municipal advisor to sell its registration, eliminate substantial liabilities, spin off personnel, or facilitate the transfer of the registration of a "shell" organization that does not conduct any business. No entity would be permitted to rely on proposed rule 15Ba1–6 unless it is acquiring or assuming substantially all of the assets and liabilities of the predecessor's municipal advisor business, or there has been no practical change of control.[267]

The Commission would not apply proposed rule 15Ba1–6 to a reorganization that involves only registered municipal advisors. In those situations, the registered municipal advisors need not rely on the proposed rule because they can continue to rely on their existing registrations. The proposed rule would also not apply to situations in which the predecessor intends to continue to engage in municipal advisory activities. Otherwise, confusion may result as to the identities and registration statuses of the parties.

Request for Comments

The Commission requests comment generally on the proposed requirement for registration of a successor to a municipal advisor and also requests comment on the following specific issues:

- Is the Commission's proposed successor rule sufficiently clear? If not, why not and what would be a better alternative?
- Are the 30-day and 45-day timeframes in the proposed successor rule too short or too long? If so, what would be more appropriate timeframes and why?
- Are there any other instances not specified in the proposed rule in which a successor should be permitted to file an amendment to the predecessor's Form MA for registration?
- Are there any downsides to allowing a successor to rely on its predecessor's registration by filing an amendment to the predecessor's Form MA?

B. Approval or Denial of Registration

Exchange Act Section 15B(a)(2) provides that within forty-five days of the filing of an application to register as a municipal advisor,[268] the Commission must either: (a) By order grant registration, or (b) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

In accordance with Exchange Act Section 15B(a)(2), the Commission shall grant the registration of a municipal advisor if the Commission finds that the requirements of Section 15B of the Exchange Act are satisfied.[269] The Commission shall deny the registration of a municipal advisor if the Commission does not make any such finding, or if it finds that if the applicant were registered, its registration would be subject to suspension or revocation under Section 15B(c) of the Exchange Act.[270]

The information currently required by temporary Form MA–T is not reviewed by the Commission prior to registration, although the Commission retains full authority to review such information and examine any registered municipal advisor at any time. The Commission intends that the permanent registration process would entail a review of each Form MA and Form MA–I filed. In approving or denying an application for registration as a municipal advisor, the Commission would review the information provided on Form MA or Form MA–I as applicable. For example, the Commission may perform cross checks of applicants through the use of the applicant's other registration numbers, such as its CRD or other SEC registration numbers, to the extent available. Also, the Commission may review the disclosures required by Item 9 of Form MA and Item 6 of Form MA–I discussed above, including the disciplinary history of an applicant. In order to form a more complete and informed basis on which to determine whether to grant, institute proceedings to deny, or revoke a municipal advisor's registration, the Commission is also proposing to adopt a requirement that a municipal advisor file with the Commission an annual self-certification relating to its ability to meet its regulatory obligations.

The benefit of the proposed municipal advisor registration process is that it would allow the Commission and staff to ask questions and, as needed, to require amendments, before approving an application for registration. The procedural process for reviewing applications for registration as a municipal advisor would be substantially similar to the procedural process for reviewing applications of other registrants with the Commission (*e.g.*, SIPs, broker-dealers, national securities exchanges, registered securities associations, clearing agencies, and investment advisers).[271]

C. Proposed Rule 15Ba1–7: Books and Records To Be Made and Maintained by Municipal Advisors

Section 17(a)(1) under the Exchange Act provides, in pertinent part, that all registered municipal advisors other than

[267] *See* Instruction 1 to Form MA.

[268] The statute allows for a longer period if the applicant consents. *See* 15 U.S.C. 78*o*–4(a)(2).

[269] *See* 15 U.S.C. 78*o*–4(a)(2).

[270] *See id.*

[271] *See* 15 U.S.C. 78k–1(b)(3), 78*o*(b), 78s(a), and 80b–3(c).

natural persons (*i.e.*, municipal advisory firms, including sole proprietors) shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[272] The Commission is proposing rule 15Ba1–7 under the Exchange Act to specify books and records requirements applicable to municipal advisors.[273] Proposed rule 15Ba1–7's requirements are discussed below.

Records to be Made by Municipal Advisors

Proposed rule 15Ba1–7(a) would require municipal advisory firms to make and keep true, accurate, and current, certain books and records relating to its municipal advisory activities. These proposed books and records requirements are based generally on Exchange Act rules 17a–3 and 17a–4, and Investment Advisers Act rule 204–2, which set forth books and records requirements with respect to broker-dealers and investment advisers, respectively, with appropriate revisions to reflect the activities of municipal advisors.[274]

Proposed rule 15Ba1–7(a) would require municipal advisory firms to make and keep current originals or copies of all communications received, and originals or copies of all communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of the communications.[275] Municipal advisory firms would also have to keep all check books, bank statements, cancelled checks and cash reconciliations; a copy of each version of the municipal advisor's policies and procedures, if any, in effect at any time within the last five years; and a copy of any document created by the municipal advisor that was material to making a recommendation to a municipal advisory client or that memorializes the basis for that recommendation. A municipal advisory firm would also be required to keep copies of all written agreements entered into by the municipal advisor with any municipal entity, employee of a municipal entity or an obligated person or otherwise relating to the business of the municipal advisor. A municipal advisory firm would also be required to keep a record of the names of persons who are, or have been in the past five years, associated persons of the municipal advisor; names, titles and addresses of persons associated with the municipal advisor; municipal entities or obligated persons with whom the municipal advisor has engaged in municipal advisory activities in the past five years; the names and business addresses of persons to whom the municipal advisor agrees to provide payment to solicit municipal entities on its behalf; and the names and business addresses of persons that agree to provide payment to the municipal advisor to make solicitations on their behalf. The purpose of these rules is to assist the Commission in its inspection and examination function. Based on the Commission's experience in conducting examinations of broker-dealers and investment advisers, the Commission believes that requiring municipal advisory firms to comply with these rules would facilitate the Commission's inspections and examinations of municipal advisors.

Proposed rule 15Ba1–7(b)(1) would require municipal advisory firms to maintain and preserve all books and records required to be made under this proposed rule for a period of not less than five years, the first two years in an easily accessible place. Corporate governance documents, such as articles of incorporation and stock certificate books of the municipal advisor and including those of any predecessor, would be required to be maintained in the principal office of the municipal advisor and preserved for three years after termination of the business or withdrawal from registration as a municipal advisor.

Proposed rule 15Ba1–7(d) is modeled on rule 204–2 under the Investment Advisers Act,[276] and permits, and sets forth the requirements for, electronic storage of the records required to be maintained by this proposed rule. Also, proposed rule 15Ba1–7(e) provides that any book or record made, kept, maintained and preserved in compliance with rules 17a- 3 and 17a–4 of the Exchange Act, rules of the MSRB, or rule 204–2 under the Investment Advisers Act, which is substantially the same as a book or record required to be made, kept, maintained and preserved under rule 15Ba1–7, would satisfy these proposed record-keeping requirements.[277] Subparagraph (e) of proposed rule 15Ba1–7 is designed to minimize the record-keeping burden for municipal advisory firms that are otherwise subject to similar record-keeping requirements.

Record-keeping After a Municipal Advisor Ceases To Do Business

Proposed rule 15Ba1–7(c) would require a municipal advisory firm, if it ceases doing business as a municipal advisor, to arrange for and be responsible for the continued preservation of the books and records required by the rule for the remainder of the period required by the rule, and would require the municipal advisor to notify the Commission of where such books and records will be maintained. This proposed requirement is necessary for the Commission to perform effective inspections and examinations of municipal advisory firms.

Requirements for Non-Residents

Proposed rule 15Ba1–7(f), which is modeled on rule 204–2(j) under the Investment Advisers Act,[278] sets forth the books and records requirements for non-resident municipal advisory firms, including requirements for making, keeping current, maintaining, and preserving copies of books and records required to be made, kept current, maintained, and preserved under any rule or regulation adopted under the Exchange Act, as well as the requirements for providing notice to the Commission regarding the location of such books and records.[279] Specifically, proposed rule 15Ba1–7(f) would require non-resident municipal advisors, other than natural persons, including non-resident sole proprietors (*i.e.*, non-resident municipal advisor firms) to maintain all such books and records in the United States,[280] and provide notice to the Commission of such location within 30 days after the proposed rule becomes effective (in the case of municipal advisory firms that are already registered or in the process of applying for registration when, and if, the rule becomes effective), or when filing an application for registration (in the case of municipal advisory firms that have not yet applied for registration when, and if, the rule becomes

[272] *See* Exchange Act Section 17(a)(1). 15 U.S.C. 78q(a)(1).

[273] In addition, Section 15B(b)(2)(G) provides that the rules of the MSRB shall "prescribe records to be made and kept by * * * municipal advisors and the periods for which such records shall be preserved." 15 U.S.C. 78o–4(b)(2)(G).

[274] *See* 17 CFR 240.17a–3 and 17a–4, and 17 CFR 275.204–2.

[275] Materials posted on a municipal advisor's Web site relating to municipal advisory activities would be written communications sent by the municipal advisor for purposes of this provision.

[276] *See* 17 CFR 275.204–2.

[277] *See* proposed rule 15Ba1–7(e).

[278] 17 CFR 275.204–2(j).

[279] *See* proposed rule 15Ba1–7(f).

[280] *See* proposed rule 15Ba1–7(f)(2).

effective).[281] A non-resident municipal advisory firm would not be required to keep such books and records in the United States if the municipal advisor files with the Commission an undertaking to furnish the Commission, upon demand, copies of any or all of such books and records at the municipal advisor's expense to the Commission's principal or regional office (as specified by the Commission),[282] provided the municipal advisor furnishes the requested books and records within 14 days of the Commission's written demand to the offices of the Commission specified in the written demand.[283]

The proposed requirements for non-resident municipal advisory firms are designed to ensure that the Commission has access to the books and records of municipal advisors located outside of the United States to enable it to perform effective examinations and inspections. The proposed requirements would also serve to mitigate the time and cost burdens the Commission may otherwise face in attempting to gain access to books and records located outside of the United States, for example in the case of any jurisdictional dispute relating to such access.

Request for Comments

The Commission requests comment generally on the proposed books and records requirements and also requests comment on the following specific issues:

- What types of documents and data should be retained by municipal advisory firms pursuant to the proposed rules? What burdens or costs would the retention of such information entail?
- Is it appropriate to base the books and records requirements for municipal advisory firms on the books and records requirements for broker-dealers and investment advisers? Are there books and records requirements for broker-dealers and investment advisers not included in proposed rule 15Ba1–7 that should be included? Please provide examples of any such requirements.
- Should the proposed periods for maintaining and preserving books and records for municipal advisory firms be lengthened or shortened? If so, by how much and why?
- Should the Commission impose other requirements that might be necessary or useful in protecting the records of a municipal advisory firm upon the failure of such entity?
- What documents and data typically are kept by municipal advisory firms? In what format? How long are such records currently maintained by municipal advisors?
- What are the technological or administrative burdens of maintaining the information specified in the proposed rules?
- Is there an industry standard format for information and records regarding municipal advisory firms? Are there different standard formats depending on the type of municipal advisor? Please answer with specificity.
- Should the Commission require records retained under this section to be retained electronically or furnished to the Commission electronically? If so, should any particular electronic format be mandated?
- Are the proposed requirements for non-resident municipal advisory firms overly burdensome? Are they sufficient to ensure that the Commission would have adequate access to the municipal advisor's books and records in a timely manner?
- Should the proposed books and records requirements include a requirement that municipal advisory firms must keep all bills or statements (or copies thereof), paid or unpaid, relating to the business of the municipal advisor? Would such a requirement be overly burdensome? If so, how should such a requirement be modified to make the information provided useful for examination, enforcement, or any other purpose? Please provide suggested alternatives for any such books and records requirement.

III. General Request for Comment

The Commission is requesting comments from all members of the public. The Commission particularly requests comment from the point of view of persons who must register as municipal advisors, municipal entities, obligated persons, investors, and other regulators. The Commission seeks comments on all aspects of the proposed rules and forms. The Commission will carefully consider the comments that it receives. In addition, the Commission seeks comment on the following:

- Should the Commission clarify or modify any of the definitions included in the proposed rules? If so, which definitions and what specific modifications would be appropriate or necessary?
- Are the proposed rules sufficiently clear? Is additional guidance from the Commission necessary?
- Are there additional disclosures that would be useful to require on Forms MA and MA–I?
- Are the burdens of any of the requirements in the proposed rule greater than the benefits that would be attained by such requirement?
- Exchange Act rule 15b1–4 provides that the registration of a broker or dealer shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such broker or dealer, provided that the fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the information required by Form BD.[284] Should rules relating to the registration of municipal advisors similarly include a process through which an executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction could continue the business of a municipal advisor?
- Form ADV[285] and related rules under the Investment Advisers Act require investment advisers registered with the Commission to provide new and prospective clients with a brochure and brochure supplements written in plain English and to send an updated brochure or a summary of material changes to existing clients at least annually. These brochures are intended to provide advisory clients with clearly written, meaningful, current disclosure of the business practices, conflicts of interest and background of the investment adviser and its advisory personnel.[286] Would such a brochure delivery requirement be necessary or useful to municipal entities and obligated persons? If so, what information would it be helpful to include in such brochures? If the Commission were to adopt a brochure delivery requirement, should it be in substantially the same form as the brochure delivery requirement relating

[281] *See id.*

[282] *See* proposed rule 15Ba1–7(f)(3)(i). The proposed rule sets forth the form of undertaking the municipal advisor would be required to file. *See id.*

[283] *See* proposed Rule 15Ba1–7(f)(3)(ii). The rule would require that any written demand would be forwarded by the Commission to the municipal advisor by registered mail at the municipal advisor's last address of record filed with the Commission. *See id.*

[284] *See* 15 U.S.C. 240.15b1–4.

[285] *See* 17 CFR 279.1.

[286] *See* Investment Advisers Act Release No. IA–3060 (July 28, 2010), 75 FR 49234 (August 12, 2010).

to investment advisers, including with respect to content, amendments to the content, and time periods for delivery? What aspects of the brochure delivery requirement for investment advisers would it be appropriate to apply to municipal advisors and what aspects of the brochure delivery requirement for investments advisers would it not be appropriate to apply to municipal advisors? Is there a category of municipal advisors that should be excluded from any such brochure delivery requirement, if the Commission were to adopt such a requirement? If so, how should such a category be described and what would be the reason for the exclusion? If such an exclusion were created, how would the Commission ensure that the clients of excluded advisors received adequate disclosures and protection? Is there a category of clients as to whom the brochure delivery requirement should not, or need not, apply? If so, how should such a category be described and what would be the reason for the exclusion? What would be the costs and benefits of any such brochure delivery requirement to municipal advisors? What would be the costs and benefits of any such brochure delivery requirement to the clients of municipal advisors?

The Commission seeks comments generally concerning the requirement for a municipal advisor to supply information in Forms MA and MA–I concerning the general types of municipal advisory activities in which it engages. In particular, would it be confusing or otherwise difficult for a municipal advisor to provide this information? Are there considerations relating to the business of municipal advisors, or of some types of municipal advisors, that the Commission may not have taken into account in connection with the proposed information disclosure requirements of Forms MA and MA–I?

In addition, the Commission seeks comments on the proposals as a whole, including their interaction with the other provisions of the Dodd-Frank Act. The Commission seeks comments on whether the proposals would help achieve the broader goals of increasing transparency and accountability in the municipal securities markets.

The Commission requests comment generally on whether its proposed actions to govern the municipal advisor registration process are necessary or appropriate. If commenters do not believe one or all such actions are necessary and appropriate, why not? What would be the preferred action?

Commenters should, when possible, provide the Commission with empirical data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations that they believe should apply, the reasons for their suggested approaches, and their analysis regarding why their suggested approaches would satisfy the statutory mandate contained in Section 975 of the Dodd-Frank Act governing municipal advisors.

IV. Paperwork Reduction Act

Certain provisions of the Dodd-Frank Act and the rules and forms the Commission is proposing thereunder relating to the permanent registration of municipal advisors would impose new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act" or "PRA").[287]

The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The proposed titles for these collections of information are "Form MA: Application for Municipal Advisor Registration"; "Form MA–I: Application for Municipal Advisor Registration for Natural Persons"; "Rule 15Ba1–4: Amendments to Application for Registration and Self-Certification"; "Form MA–W: Notice of Withdrawal from Registration as a Municipal Advisor"; "Form MA–NR: Designation of U.S. Agent for Service of Process"; and "Rule 15Ba1–7: Books and Records to be Maintained by Municipal Advisors."

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. Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, requires municipal advisors (as defined in Section 15B(e)(4) of the Exchange Act[288]) to register with the Commission.[289] As a transitional step to the implementation of a permanent registration program, the Commission adopted, on an interim final basis, Rule 15Ba2–6T, which permitted municipal advisors to temporarily satisfy the registration requirement by filing Form MA–T, effective October 1, 2010. The interim final temporary rule provides that, unless rescinded, a municipal advisor's temporary registration by means of Form MA–T will expire on the earlier of (1) the date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule establishing a permanent registration regime; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) December 31, 2011.[290] Pursuant to the Dodd-Frank Act, the Commission is proposing new rules that would establish a permanent municipal advisor registration regime and would impose certain record-keeping requirements on municipal advisors.

A. Summary of Collection of Information

Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any persons associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[291]

Under the proposed rules, the permanent registration regime for municipal advisors would be more comprehensive than the temporary one. The proposed regime would require more detailed disclosures, and entail a review of a respondent's registration form. Under proposed rule 15Ba1–2(a), a municipal advisory firm would be required to apply for registration with the Commission by completing and electronically filing Form MA. Under proposed rule 15Ba1–2(b), a natural person municipal advisor would be required to apply for registration with the Commission by completing and electronically filing Form MA–I. A sole proprietor would have to complete both Form MA and Form MA–I. The Commission anticipates developing an online filing system, where a municipal advisor would be able to file a completed Form MA and/or MA–I and the information filed would be publicly available. In addition, under proposed rule 15Ba1–7, registered municipal advisors other than natural persons (*i.e.*, municipal advisory firms, including sole proprietors) would be required to maintain books and records relating to their municipal advisory activities.

Under the proposed permanent registration regime, municipal advisors

[287] 44 U.S.C. 3501 *et seq.*

[288] *See* 15 U.S.C. 78*o*–4(e)(4). *See also supra* Section II.A.1.

[289] *See* 15 U.S.C. 78*o*–4(a).

[290] *See* 17 CFR 240.15Ba2–6T(e). The OMB approved the collection of information for Form MA–T and Rule 15Ba2–6T ("Temporary Registration of Municipal Advisors—Form MA–T") (OMB Control No. 3235–0659) on an emergency basis for six months.

[291] *See* 15 U.S.C. 78*o*–4(a)(2).

would include sole proprietorships, individual employees of municipal advisors, and firms of varying sizes. In addition, municipal advisors would include firms that engage in municipal advisory activities as part of a broader array of financial services serving many types of clients, and may have many associated persons. Thus, the paperwork burden would reflect these differences in size and types of other financial services in which the municipal advisors engage.

Pursuant to proposed rule 15Ba1–4(a)(1), a municipal advisory firm that registers on Form MA would have to amend its Form MA at least annually, within 90 days of the end of the applicant's fiscal year in the case of applicants that are firms, or within 90 days of the end of the calendar year in the case of sole proprietors. Proposed rule 15Ba1–4(a)(2) would require a municipal advisory firm to amend its Form MA more frequently than annually as required by the General Instructions. Pursuant to proposed rule 15Ba1–4(b), a natural person municipal advisor who registers on Form MA–I would have to amend his or her Form MA–I whenever any information previously provided in Form MA–I becomes inaccurate. Pursuant to proposed rule 15Ba1–4(e), a registered municipal advisor would have to complete the self-certification on Form MA or Form MA–I, as applicable, both at the time the municipal advisor initially files its application for registration, and also on an ongoing annual basis. Municipal advisors registered on Form MA would have to complete the Form MA self-certification within 90 days of the end of a municipal advisor's fiscal year, or for municipal advisors that are sole proprietors, within 90 days of the end of the calendar year. Municipal advisors registered on Form MA–I would have to complete the Form MA–I self-certification within 90 days of the end of the calendar year.

Pursuant to proposed rule 15Ba1–3, all municipal advisors, whether registered on Form MA or MA–I, would be required to file Form MA–W to withdraw from registration with the Commission as a municipal advisor. As would be the case with Form MA and MA–I, Form MA–W would be required to be filed electronically with the Commission.

Proposed rule 15Ba1–5 sets forth the general procedures for serving non-residents on Form MA–NR. Pursuant to the instructions to Form MA–NR, and consistent with proposed rule 15Ba1–5, non-resident municipal advisors other than natural persons, but including sole proprietors ("non-resident municipal advisory firms"), and non-resident general partners and non-resident managing agents of municipal advisors must file Form MA–NR to furnish the Commission with a written irrevocable consent and power of attorney to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisory firm, non-resident general partner or non-resident managing agent that arises out of or relates to the municipal advisory activities of the municipal advisor. In addition, proposed rule 15Ba1–5(d) would require each non-resident municipal advisory firm to provide an opinion of counsel that the advisory firm can, as a matter of law, provide the Commission with prompt access to the advisory firm's books and records and that the advisory firm can, as a matter of law, submit to onsite inspection and examination by the Commission.

Proposed rule 15Ba1–7 would require all registered municipal advisors other than natural persons (*i.e.*, municipal advisory firms, including sole proprietors) to maintain books and records relating to their municipal advisory activities. Generally, proposed rule 15Ba1–7 would require such books and records to be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place.

B. Proposed Use of Information

The proposed requirement that a municipal advisor must register with the Commission on Forms MA and MA–I to continue to engage in municipal advisory activities would help ensure that the Commission has information to effectively oversee respondents and their activities in the municipal securities market. In particular, the information provided in Forms MA and MA–I would be used to determine whether to grant the applicant's application for registration, institute proceedings to determine whether registration should be denied, and place limitations on the applicant's activities as a municipal advisor. The information would also be used to focus on-site examinations and aid in risk-based examination targeting. It would enable the Commission to obtain an accurate estimate of the number of municipal advisors, by size and by municipal advisory activity; analyze data regarding the various types of municipal advisory activities in which advisors engage; and evaluate the disciplinary history of all advisors and associated persons, including all regulatory, civil, and criminal proceedings. The proposed registration requirement would also help to ensure that the Commission can make such information transparent and easily accessible to the investing public, including municipal entities and obligated persons who engage municipal advisors, investors who may purchase securities from offerings in which municipal advisors participated, and other regulators.

The proposed requirement that a municipal advisory firm must make and keep books and records, including written communications and records of associated persons, would help to ensure that records exist of the respondent's primary municipal advisory activities and of its associated persons, and could potentially be requested by Commission staff during an examination to evaluate the municipal advisory firm's compliance with the proposed rules. In particular, the proposed requirement that a municipal advisory firm must keep a record of the initial or annual review, as applicable, conducted by the municipal advisory firm of such municipal advisory firm's business in connection with its self-certification on Form MA, would help ensure, among other things, that the municipal advisory firm and every natural person associated with it has met certain standards of training, experience, and competence required by the Commission, the MSRB, or any other relevant SROs.

The proposed requirement that a non-resident municipal advisor, or a non-resident general partner or non-resident managing agent of a municipal advisor, file Form MA–NR in connection with the municipal advisor's initial application would help minimize legal or logistical obstacles that the Commission may encounter when attempting to effect service, to conserve Commission resources, and to avoid potential conflicts of law. The proposed requirement that a non-resident municipal advisory firm provide an opinion of counsel on Form MA would help ensure that such non-resident municipal advisory firm could provide access to its books and records and submit to onsite inspection and examination by the Commission.

C. Respondents

The Commission estimates that the proposed "collections of information" would initially apply to approximately 1,000 municipal advisory firms, including sole proprietors. This estimate is based partly on the number of municipal advisors that have registered with the Commission under rule 15Ba2–

6T. As of October 2010, there were approximately 800 total unique electronic registrations where Form MA–T was completed and not withdrawn. The Commission believes that this number of Form MA–T registrants would likely increase, because numerous applicants that would be required to register may have missed the October 1, 2010 deadline for a variety of reasons, such as concluding, based on their interpretation of the Dodd-Frank Act, that they were not required to register as municipal advisors. For the PRA analysis of the interim final temporary rule, Commission staff estimated that approximately 1,000 applicants would be required to complete Form MA–T.[292] Commission staff believes that this remains an appropriate estimate for the total number of municipal advisory firms that would be required to register on Form MA under the proposed permanent registration regime.[293]

The proposed "collections of information" would also apply to natural person municipal advisors. For purposes of estimating the paperwork burden, the Commission notes that the number of Form MA–I applicants may be divided into three main categories: (1) Individuals who are currently also registered as investment advisers, broker-dealers, or both, and who are employed at investment advisory firms, broker-dealer firms, or banks; (2) individuals who are employed at financial advisor firms that are not registered as broker-dealers or investment advisers; and (3) individual solicitors who are employed at third-party marketing and solicitor firms. To calculate the total number of likely Form MA–I applicants, the Commission estimates the number of respondents in each of these categories.

First, the Commission estimates the number of individuals who are currently registered as investment advisers, broker-dealers, or both, and would register on Form MA–I. To calculate this estimate, the Commission compares the proportion of FINRA Form U4 filers (*i.e.*, individuals who are registered representatives of investment advisers and/or broker-dealers) to the sum of all investment advisers registered on Form ADV and all broker-dealers registered on Form BD. FINRA estimates that as of October 2010, 637,000 individuals had registered as representatives of broker-dealers and/or investment advisers on Form U4.[294] The Commission estimates that as of October 2010, 11,888 investment advisers had registered on Form ADV, while as of March 2010, 5,163 broker-dealers had registered on Form BD. The proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants is approximately 37.36 to 1.[295] According to Form MA–T data collected to date, the Commission estimates that approximately 450 of 1,000 MA–T registrants would be investment adviser and/or broker-dealer firms. Thus, the Commission estimates that approximately 16,800 individuals who are registered as investment advisers, broker-dealers, or both, would be required to register on Form MA–I.[296]

Second, the Commission estimates the number of individuals who are employed at financial advisor firms and would register on Form MA–I. Commission staff understands from discussions with industry and market participants that it is reasonable to estimate that there is an average of approximately 10 professional employees per financial advisor firm. According to Form MA–T data collected to date, the Commission estimates that approximately 450 of 1,000 MA–T registrants would be financial advisor firms. Thus, the Commission estimates that approximately 4,500 individuals who are employed at financial advisor firms would be required to register on Form MA–I.[297]

Third, the Commission estimates the number of individual solicitors who would register on Form MA–I. Commission staff examined the data of all MA–T registrants as of October 2010, and estimates that approximately 100 out of 1,000 registrants are exclusively focused on third-party marketing and solicitation. For purposes of this PRA, the Commission assumes that there are five individual solicitors who would register on Form MA–I for every solicitor firm that would register on Form MA.[298] Thus, the Commission estimates that approximately 500 individual solicitors would be required to register on Form MA–I.[299]

The Commission estimates that the total number of Form MA–I applicants would be approximately 21,800 natural persons.[300] The Commission recognizes that, based on a number of factors, the actual total number of respondents may differ from this estimate. For example, the current estimate does not include Form MA–I applicants who might be employed at banks, but are not registered as either investment advisers or broker-dealers. Thus, the actual total number of respondents could be higher. Under the proposed rules, sole proprietors would be required to complete both Form MA and Form MA–I. The respondent estimates presented here likely include some overlap, but the actual total number of respondents could be slightly lower depending on

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[292] *See* Temporary Registration Rule Release, *supra* note 63, at 54473.

[293] The Commission notes that a person that solicits a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such solicitation, may voluntarily apply to register as a municipal advisor. *See supra* Section II.A.2.a. Based on investment adviser registration data, Commission staff estimates that out of approximately 12,000 investment advisers currently registered with the Commission, only 385, or approximately 3%, (1) have municipal clients; (2) use firms or persons to solicit advisory clients on the adviser's behalf; and (3) compensate persons for client referrals. The Commission expects that of these 385 investment advisers, a significantly smaller subset would have the specific circumstances where voluntary municipal advisor registration would be applicable, *i.e.*, they use affiliates that exclusively solicit municipal entities for them (or other affiliates), and not for third parties. For purposes of this analysis, the Commission's estimate of the number of potential voluntary municipal advisor applicants is included as part of the total estimate of 1,000 applicants noted above.

[294] *See* October 2010 "Registered Reps" in "FINRA Statistics," available at *http://www.finra.org/Newsroom/Statistics*.

[295] 637,000 (estimated number of Form U4 registrants)/(11,888 (estimated number of Form ADV registrants) + 5,163 (estimated number of Form BD registrants)) = 37.36.

[296] 450 (total number of investment adviser and broker-dealer firms registered as municipal advisors) × 37.36 (proportion of Form U4 registrants to all Form ADV and Form BD registrants) = 16,812.

[297] 450 (total number of independent financial advisor firms registered as municipal advisors) × 10 (estimated average number of professional employees per independent financial advisor firm) = 4,500.

[298] *See* Letter from Donna DiMaria, President, Third Party Marketers Association, dated August 27, 2009, available at *http://www.sec.gov/comments/s7-18-09/s71809-36.pdf* (commenting on the Commission's proposal to adopt a rule addressing "pay to play" practices by investment advisers and estimating that the typical solicitor firm consists of 2 to 5 professionals).

[299] 100 (estimated number of solicitor firms) × 5 (estimated number of Form MA–I applicants per solicitor firm) = 500. The Commission notes that a person that solicits a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such solicitation, may voluntarily apply to register as a municipal advisor. *See supra* Section II.A.2.a. Based on investment adviser registration data, Commission staff expects that only a small number of registered investment advisers that are natural persons would have the specific circumstances where voluntary municipal advisor registration would be applicable. *See supra* note 293. For purposes of this analysis, the Commission's estimate of the number of potential voluntary natural person municipal advisor applicants is included as part of the total estimate of 500 individual solicitors noted above.

[300] 16,800 (estimated number of individual investment advisers and/or broker-dealers) + 4,500 (estimated number of individuals who are employed at financial advisor firms) + 500 (estimated number of individuals who are employed at solicitation firms) = 21,800.

the overall percentage of sole proprietors among all municipal advisory firms.

To estimate the average annual number of new Form MA applicants, the Commission relies on investment adviser registration data, which indicates that new investment adviser applicants comprise, on average, approximately 10.4% of the total number of registered investment advisers.[301] The Commission expects the proportion of new municipal advisory firm applicants to all municipal advisory firm applicants may be similar. Accordingly, the Commission estimates that the average number of new Form MA applicants per year would be 100.[302] To estimate the average annual number of new Form MA–I applicants, the Commission relies on FINRA registration data, which indicates that new Form U4 applicants that are new to the industry comprise, on average, approximately 8.39% of the total number of Form U4 applicants.[303] The Commission expects the proportion of new natural person municipal advisor registrants to all natural person municipal advisor registrants may be similar. Accordingly, the Commission estimates that the average number of new Form MA–I applicants per year would be 1,800.[304]

D. Total Initial and Annual Reporting and Record-Keeping Burdens

The estimated burdens on respondents to complete and submit Forms MA, MA–I, MA–W, and MA–NR,[305] amend Forms MA and MA–I, consult with outside counsel, and maintain books and records related to municipal advisory activities, are described below.

1. Form MA

Form MA, which is to be completed by municipal advisory firms (including sole proprietors) registering under the proposed permanent registration regime, would require more comprehensive disclosure in addition to the information already collected and submitted on Form MA–T. As discussed in detail above, municipal advisory firms that would be required to register with the Commission by filing Form MA would have to provide, among other things:

1. Identifying information;
2. Information regarding the municipal advisor's form of organization;
3. Whether the advisor is succeeding to the business of a registered municipal advisor;
4. Information about the municipal advisor's business and business structure;
5. Information regarding the municipal advisor's other business activities;
6. Financial industry affiliations of associated persons of the municipal advisor;
7. The municipal advisor's interest in municipal advisory client transactions;
8. Information related to control persons of the municipal advisor;
9. Disclosures relating to regulatory, civil, and criminal disciplinary history;[306]
10. Information regarding whether the municipal advisor is a "small business;" and
11. A self-certification, filed on an initial and annual basis, regarding the municipal advisor's qualifications as a municipal advisor and its ability to comply with its obligations under the Federal securities laws.

The Commission has previously estimated that, in the case of Form ADV—a similar form to Form MA, which must be completed for the registration of investment advisers with the Commission—the average time necessary to complete the form is approximately 36.24 hours.[307] Form ADV, however, is significantly longer than Form MA and contains sections that are not required for Form MA registration, such as Part 2A, which requires the applicant to create narrative brochures containing information about the advisory firm. Thus, the Commission expects the hourly burden for Form MA to be considerably less than 36.24 hours.

In contrast, the Commission previously estimated that the average amount of time for a municipal advisor to complete Form MA–T, regardless of advisor size, is approximately 2.5 hours.[308] This estimate for completion of Form MA–T includes all of the time necessary to research, evaluate, and gather all of the information that is requested in the form and all of the time necessary to complete and submit the form.[309]

The Commission believes that the paperwork burden of completing Form MA would be greater than the amount of time required to complete Form MA–T, because Form MA is longer and more comprehensive than Form MA–T. Nevertheless, the Commission believes that the estimated time to complete Form MA–T, rather than Form ADV, is the more appropriate basis to estimate the time to complete Form MA. Accordingly, the Commission estimates that the average amount of time for a municipal advisory firm to complete Form MA would be 3.5 hours. This estimate would apply to all municipal advisory firms, because even those that had already completed Form MA–T under the temporary registration regime must register anew.

In addition, pursuant to proposed rule 15Ba1–4(e)(1), a municipal advisory firm would be required at the time it initially files Form MA to conduct an initial review of its business and certify that, among other things, it and every natural person associated with the municipal advisory firm meet standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. To estimate the initial burden for this self-certification, the Commission examined burden estimates for Form N–CSR ("Certified Shareholder Report of Registered Management Investment Companies") and Form N–Q ("Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company"), which include similar self-certification requirements.[310] Based on its prior burden estimates, Commission staff estimates that the initial burden to

[301] According to the Commission's Division of Investment Management, as of October 2010, there were 11,888 investment advisers registered with the Commission. From 2002 to 2009, there was an average of 1,237 new investment adviser registrations per year. (1,237/11,888) = 10.4%.

[302] 1,000 (all Form MA applicants) × 10.4% = 104 new Form MA applicants per year.

[303] According to FINRA, as of October 2010, there were approximately 637,000 individuals registered on Form U4. *See supra* note 295. FINRA has notified the Commission that from October 2008 to the present, there was an average of 53,474 Form U4 registrants that were new to the industry per year. (53,474/637,000) = 8.39%.

[304] 21,800 (all Form MA–I applicants) × 8.39% = 1,829 new Form MA–I applicants per year.

[305] *See infra* Sections IV.D.4 and IV.D.5 (discussing the number of respondents relating to filing Form MA–W and Form MA–NR, respectively).

[306] *See supra* Section II.A.2.c.

[307] *See* Release No. IA–3060, *supra* note 286, at 49256. Additionally, the Commission notes that the average time necessary to complete Part IA of Form ADV is approximately 4.32 hours. *See* Form ADV, Part 1A (Paper Version), at 1 (under "OMB Approval," estimated average burden hours per response is 4.32 hours).

[308] *See* Temporary Registration Rule Release, *supra* note 63, at 54473.

[309] The Commission notes that some municipal advisors that would be required to register under the proposed permanent registration regime would also be registered with the Commission as broker-dealers and/or investment advisers. The Commission believes that these persons could require less time to research and complete the proposed permanent registration forms to the extent information contained in those other registration(s) could be incorporated by reference, avoiding the need to repeat the information on Form MA. *See supra* note 220, and accompanying text.

[310] *See* Exchange Act Release No. 34–47262 (January 27, 2003), 68 FR 5348 (February 3, 2003); Exchange Act Release No. 34–49333 (February 27, 2004), 69 FR 11244 (March 9, 2004).

comply with the Form MA self-certification requirement would be, on average, approximately 3.0 hours per applicant. Thus, the total average initial burden for Form MA would be 6.5 hours per applicant.[311]

The Commission recognizes that depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA may vary from respondent to respondent. For example, as discussed above, a non-resident municipal advisor would be required to attach a legal opinion to its Non-Resident Municipal Advisor Execution Page to Form MA.[312]

As discussed above, Commission staff estimates that approximately 1,000 municipal advisory firms would be required to fill out Form MA. Thus, the Commission estimates that the total initial paperwork burden for completion and submission of Form MA would be 6,500 hours.[313] The Commission notes that respondents may have potential one-time burdens associated with Form MA. For example, respondents may need to develop internal controls associated with procedures for obtaining the information required by Form MA, and they would need to familiarize themselves with the proposed rules and the form. For purposes of this analysis, these potential one-time burdens are included in the estimates noted above.

The Commission estimates that the average number of new Form MA applicants per year would be 100,[314] and the annual paperwork burden for new completions and submissions of Form MA would be 650 hours.[315] The Commission notes that respondents may have potential recurring burdens associated with Form MA, such as systemic ongoing monitoring and maintenance of the information required by the form. For the purposes of this analysis, these potential recurring burdens are included in the estimates with respect to amendments to Form MA.[316]

The collection of information made pursuant to Form MA would not be confidential and would be made publicly available. Some information, such as social security numbers, would be kept confidential to the extent permitted by law.

2. Form MA–I

Form MA–I, which is to be completed by natural persons (including sole proprietors) registering under the proposed permanent registration regime, would require more comprehensive disclosure compared to the information already collected and submitted on Form MA–T. As discussed above, natural person municipal advisors required to register with the Commission by filing Form MA–I would be required to provide, among other things:

1. Identifying information;
2. Residential history for the five years preceding filing of the application;
3. Employment history for the ten years preceding filing of the application;
4. Any other businesses in which the advisor is currently engaged;
5. Disclosures relating to regulatory, civil, and criminal disciplinary history; and
6. A self-certification, filed on an initial and annual basis, indicating, among other things, that the municipal advisor has met or will meet qualification standards required by the Commission, the MSRB, or any other relevant SRO for municipal advisors.

Moreover, Form MA–I would require disclosure forms for reporting disciplinary proceedings, including criminal, regulatory, and civil judicial actions.

To estimate the average amount of time required to complete Form MA–I, the Commission compares the average amount of time required for an applicant to complete Form MA–T. As described above, the Commission previously estimated that the average amount of time for a municipal advisor to complete Form MA–T would be approximately 2.5 hours.[317] This estimate includes all of the time necessary to research, evaluate, and gather all of the information that is requested in Form MA–T and all of the time necessary to complete and submit the form. The Commission believes that the paperwork burden of completing Form MA–I would not be significantly greater than the amount of time required to complete Form MA–T, because some of the information required for Form MA–I would have already been gathered for completing Form MA–T. The Commission anticipates that the most burdensome portion of the form would be the disclosure of the advisor's disciplinary history, but the Commission believes that this burden should only be substantial for a small number of applicants. Overall, the Commission estimates that the average amount of time for a natural person municipal advisor to complete Form MA–I would be 3.0 hours.[318] This estimate would apply to all natural person municipal advisors, because even those who had already completed Form MA–T under the temporary registration regime must register anew.

The Commission estimates that approximately 21,800 natural person municipal advisors would be required to register on Form MA–I.[319] Thus, the Commission estimates that the total paperwork burden for completion and submission of Form MA–I would be 65,400 hours.[320] The Commission notes that respondents may have potential one-time burdens associated with Form MA–I. For example, respondents may need to locate information not previously required for other registrations, but required by Form MA–I, and they would need to familiarize themselves with the proposed rules and the form. For purposes of this analysis, these potential one-time burdens are included in the estimates noted above.

The Commission estimates that the average number of new Form MA–I applicants per year would be 1,800,[321] and the annual paperwork burden for new completions and submissions of Form MA–I would be 5,400 hours.[322] The Commission notes that respondents may have potential recurring burdens associated with Form MA–I, such as tracking ongoing updates to the information required by the form. For

[311] 3.5 hours (average time required to complete Form MA) + 3.0 hours (average time required to complete self-certification) = 6.5 hours per applicant.

[312] *See supra* Section II.A.2.b. For a discussion of the estimated burden for a non-resident municipal advisor to provide opinion of counsel, *see infra* Section IV.D.5.

[313] 1,000 (persons required to submit Form MA) × 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 6,500 hours.

[314] *See supra* Section IV.C.

[315] 100 (new Form MA applicants per year) × 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 650 hours.

[316] *See infra* Section IV.D.3.

[317] *See supra* note 308, and accompanying text.

[318] The Commission notes that pursuant to proposed rule 15Ba1–4(e)(1), a natural person municipal advisor would also be required at the time he or she initially files Form MA–I to certify that, among other things, he or she meets standards required by the Commission, the MSRB, or any other self-regulatory organization to engage in municipal advisory activities. For purposes of this analysis, the Commission believes that the initial burden for a natural person to complete Form MA–I self-certification would be minimal, because it would not require the more burdensome initial review of a municipal advisory firm. Thus, the Commission includes the average amount of time for initial self-certification as part of its estimate of the average amount of time for a natural person municipal advisor to initially complete Form MA–I.

[319] *See supra* Section IV.C.

[320] 21,800 (persons required to submit Form MA–I) × 3.0 hours (average estimated time required to complete Form MA–I and initial self-certification) = 65,400 hours.

[321] *See supra* Section IV.C.

[322] 1,800 (new Form MA–I registrants per year) × 3.0 hours (average estimated time required to complete Form MA–I and initial self-certification) = 5,400 hours.

the purposes of this analysis, these potential recurring burdens are included in the estimates with respect to amendments to Form MA–I.[323]

The collection of information made pursuant to Form MA–I would not be confidential and would be made publicly available. Some information, such as social security numbers, would be kept confidential to the extent permitted by law.

3. Amendments to Form MA and Form MA–I

Under proposed rule 15Ba1–4, once a municipal advisor is registered on Form MA, the municipal advisor would be required to electronically amend Form MA at least annually, within 90 days of the end of the advisor's fiscal year, if a firm, or within 90 days of the end of the calendar year, if a sole proprietor; and more frequently, as set forth in the General Instructions to Form MA, as applicable. A natural person municipal advisor registered on Form MA–I would be required to electronically amend Form MA–I whenever the information previously provided in Form MA–I becomes inaccurate.

The Commission notes that in addition to preparing amendments for Form MA and/or Form MA–I as described above, a respondent would also be required to certify annually that, among other things, it meets qualification standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. For purposes of this analysis, the Commission includes the annual self-certification as part of the amendment requirements, and the Commission addresses their associated burdens together below.

The Commission estimates that the average time necessary to prepare an annual amendment for Form MA would be approximately 1.5 hours because only certain parts of Form MA would need to be completed for amendments. The Commission recognizes that depending on the extent of the amendments, the burden to complete the annual amendment may vary greatly from respondent to respondent, and that some would require significantly more time than 1.5 hours to submit annual amendments while others would require significantly less time than 1.5 hours. For example, as discussed above, a non-resident municipal advisory firm would be required to file an amendment to Form MA promptly and include a revised opinion of counsel after any changes in the legal or regulatory framework that would impact its ability or the manner in which it provides the Commission with the required access to its books and records or impacts the Commission's ability to inspect to examine the municipal advisory firm onsite.[324]

In addition, pursuant to proposed rule 15Ba1–4(e)(2), a municipal advisory firm would be required to conduct an annual review of its business and certify that, among other things, it and every natural person associated with the municipal advisory firm has met, or will meet, qualification standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. To estimate the annual burden, the Commission examined burden estimates for Form N–CSR and Form N–Q.[325] Based on its prior burden estimates, Commission staff estimates that the annual burden to comply with the Form MA self-certification requirement would be, on average, approximately one hour per respondent. Therefore, the total average annual burden for Form MA amendments would be 2.5 hours per respondent.[326]

To estimate the average amount of time necessary to prepare an additional updating amendment for Form MA (*i.e.*, any additional amendment other than the required annual amendment), the Commission relies on its estimate for the amount of time required to prepare an interim updating amendment for Form ADV. The Commission estimated that an updating amendment for Form ADV would require 0.5 hours per amendment, because interim amendments typically only amend one or two items in Form ADV and thus should not require as much time to prepare as an annual amendment.[327] For the purposes of this PRA analysis, the Commission believes that the amount of time to complete an updating amendment for Form MA would also be 0.5 hours.

Under proposed rule 15Ba1–4(a)(1), all 1,000 municipal advisory firms registered on Form MA would be required to amend their Form MA once every fiscal or calendar year, as applicable. It is also possible that some of these 1,000 municipal advisory firms would have to submit more than one amendment. To estimate the average number of amendments in addition to the annual amendment, the Commission relies on its prior estimate for the average number of additional amendments for Form ADV. The Commission estimated that, on average, each adviser filing Form ADV would likely amend its form two times during the year—one annual amendment, and one interim updating amendment.[328] For the purposes of this PRA analysis, the Commission believes that the same estimate of two Form MA amendments per year on average—one annual amendment and one interim updating amendment—would be appropriate, although the Commission recognizes that the actual number of amendments per advisor might be higher or lower, depending on how frequently respondents must amend Form MA for material changes. The total estimated burden for updates to Form MA per year, including compliance with the annual self-certification requirement, would be 3,000 hours.[329]

To estimate the average amount of time necessary to prepare an updating amendment for Form MA–I (*i.e.*, a required amendment whenever any information previously provided becomes inaccurate), the Commission relies on its estimate for the amount of time required to prepare an interim updating amendment for Form ADV. As noted above, the Commission estimated that an updating amendment for Form ADV would require 0.5 hours per amendment, because interim amendments typically only amend one or two items in Form ADV and thus should not require as much time to prepare as an annual amendment.[330] For the purposes of this PRA analysis, the Commission believes that the amount of time to complete an updating amendment for Form MA–I would also be 0.5 hours.

The Commission estimates that the time required to complete the Form MA–I annual self-certification requirement would be approximately five minutes, or 0.1 hours. The Commission believes that, given the short time required to read and review the self-certification statement and sign the section, this estimate is appropriate.

[323] *See infra* Section IV.D.3.

[324] *See supra* Section II.A.4. For a discussion of the estimated burden for a non-resident municipal advisor to provide opinion of counsel, *see infra* Section IV.D.5.

[325] *See supra* note 310.

[326] 1.5 hours (average time required to amend Form MA) + 1.0 hour (average time required to complete annual self-certification) = 2.5 hours per respondent.

[327] *See* Release No. IA–3060, *supra* note 286, at 49257.

[328] *Id.*

[329] 1,000 (persons required to amend Form MA) × 2.5 (average estimated time to amend Form MA and complete self-certification annually) × 1.0 (number of annual amendments per year) + 1,000 (persons required to amend Form MA) × 0.5 (average estimated time to prepare an interim updating amendment for Form MA) × 1.0 (number of interim updating amendments per year) = 3,000 hours per year.

[330] *See supra* note 327.

To estimate the average number of Form MA–I amendments per respondent per year, the Commission relies on FINRA Form U4 registration data. FINRA estimates that from October 2008 to the present, there was an average of 1,088,637 Form U4 amendment filings per year, regardless of the information updated. For purposes of estimating the paperwork burden, the Commission believes that the proportion of Form U4 amendment filings compared to all Form U4 registrants may be similar to the proportion of Form MA–I amendments compared to all Form MA–I respondents. Thus, the Commission estimates that the average number of amendments that a Form MA–I respondent would submit would be 1.7 per year.[331] The Commission recognizes, however, that because Form U4 is significantly longer than Form MA–I and contains sections that are not required for Form MA–I registration, the actual number of Form MA–I amendments per applicant may be less than 1.7 per year.[332] The total burden for these Form MA–I amendments per year would be 18,500 hours.[333]

The Commission estimates that the annual burden attributable to the requirement to certify on Form MA–I would equal approximately 2,200 hours.[334] The total burden associated with updates to Form MA–I, including compliance with the annual self-certification requirement, would be approximately 20,700 hours.[335]

The collection of information made pursuant to amendments to Forms MA and MA–I would not be confidential and would be made publicly available. Some information, such as social security numbers, would be kept confidential to the extent permitted by law.

4. Withdrawal From Municipal Advisor Registration

Pursuant to proposed rule 15Ba1–3, municipal advisors that withdraw from municipal advisor registration with the Commission would be required to electronically file Form MA–W. The Commission has previously estimated that, in the case of Form ADV–W—a similar form to Form MA–W—the average time necessary to complete the form is approximately 0.5 hours.[336] Based on this prior estimate, the Commission estimates that the average time necessary to complete Form MA–W would be approximately 0.5 hours.

To estimate the annual number of withdrawals for Form MA registrants, the Commission relies on investment adviser registration data, which indicates that annually, investment adviser withdrawals comprise, on average, approximately 6.4% of the total number of registered investment advisers.[337] The Commission expects the proportion of Form MA withdrawals compared to all Form MA registrants would be similar. Thus, the average number of withdrawals from Form MA registration per year would be 60,[338] and the total burden would be approximately 30 hours.[339]

Meanwhile, to estimate the number of Form MA–I withdrawals per year, the Commission relies on FINRA Form U4 registration data. FINRA estimates that from October 2008 to the present, there was an average of 79,722 individuals per year who fully terminated FINRA registration and had not returned to the industry. For purposes of establishing the paperwork burden, the Commission believes that the proportion of individuals who fully terminated FINRA registration compared to all Form U4 registrants may be similar to the proportion of Form MA–I withdrawals compared to all Form MA–I registrants. Thus, the average number of withdrawals from Form MA–I registration per year would be 2,700,[340] and the total burden would be 1,350 hours.[341]

The collection of information made pursuant to Form MA–W would not be confidential and would be made publicly available.

5. Non-Resident Municipal Advisors

As discussed above, proposed rule 15Ba1–5 sets forth the general procedures for serving non-resident municipal advisors, non-resident general partners and non-resident managing agents. A non-resident municipal advisor, or a non-resident general partner or non-resident managing agent of a municipal advisor must, among other things, furnish to the Commission a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, non-resident general partner, or non-resident managing agent.[342] In addition, proposed rule 15Ba1–5(d) would require each non-resident municipal advisory firm to provide an opinion of counsel that the non-resident municipal advisory firm can, as a matter of law, provide the Commission with access to the advisory firm's books and records and that the advisory firm can, as a matter of law, submit to onsite inspection and examination by the Commission.

The Commission has previously estimated that, in the case of Form ADV–NR—a form with a similar purpose to Form MA–NR—the average time necessary to complete the form is approximately one hour.[343] The Commission estimates that, because of the additional time required to find and designate an agent, the process to complete Form MA–NR would take longer, or approximately 1.5 hours on average. The burden associated with this process would primarily involve the designation and authorization of a

[331] (1,088,637/637,000) (proportion of Form U4 amendment filings to all Form U4 registrants) = 1.7.

[332] Information requested in Form U4 that is not requested in Form MA–I include fingerprint information, SRO registration requests, jurisdictions for broker-dealer agent and/or investment adviser representative registration requests, and FINRA examination requests.

[333] 21,800 (persons required to amend Form MA–I during any given year) × 0.5 (average estimated time to prepare any updating amendment for Form MA–I) × 1.7 (average number of amendments per year) = 18,530 hours per year.

[334] 21,800 (persons required to complete annual self-certification on Form MA–I) × 0.1 (average estimated time to complete self-certification) = 2,180 hours per year.

[335] 18,530 + 2,180 = 20,710 hours per year.

[336] *See* Form ADV–W (Paper Version), at 1 (under "OMB Approval," estimated average burden hours per response is 0.5 hours).

[337] As of October 2010, there were 11,888 investment advisers registered with the Commission. From 2002 to 2009, there was an average of 760 investment adviser withdrawals per year. (760/11,888) = 6.4%.

[338] 1,000 (all Form MA applicants) × 6.4% = 64 Form MA withdrawals per year.

[339] 60 (estimated number of persons withdrawing from Form MA registration each year) × 0.5 hours (average estimated time to complete Form MA–W) = 30 hours per year.

[340] 21,800 (all Form MA–I applicants) × (79,722/637,000) (proportion of individuals who fully terminated FINRA registration to all Form U4 registrants) = 2,728.

[341] 2,700 (estimated number of persons withdrawing from Form MA–I registration each year) × 0.5 hours (average estimated time to complete Form MA–W) = 1,350 hours per year.

[342] *See supra* Section II.A.5, and accompanying text (discussing proposed rule 15Ba1–5 and Form MA–NR).

[343] *See* Form ADV–NR (Paper Version), at 1 (under "OMB Approval," estimated average burden hours per response is 1 hour). The Commission notes that for Form ADV–NR, the non-resident general partner or non-resident managing agent must appoint each of the Secretary of the Commission, and the Secretary of State, or equivalent officer, of the state in which the investment adviser maintains its principal office and place of business, if applicable, and any other state in which the adviser is applying for registration, amending its registration, or submitting a notice filing, as agents to receive service. In contrast, Form MA–NR would require the respondent to find and designate a United States person (and not currently the Secretary of the Commission) to be an agent, which the Commission expects would require additional time.

United States person as agent for service of process.

To estimate the average time necessary to provide an opinion of counsel, Commission staff relies on its burden estimates for Form 20–F, a form submitted by certain foreign private issuers, which has a similar opinion of counsel requirement to proposed rule 15Ba1–5(d). The Commission estimates that this additional burden would add approximately three hours and $900 in outside legal costs per respondent.[344]

The Commission notes that proposed Form MA–NR would have one additional type of respondent (*i.e.*, non-resident municipal advisory firms) compared to the types of respondents that must file Form ADV–NR. Thus, to estimate the total number of Form MA–NR respondents, Commission staff has combined two different estimates—one for the number of non-resident general partners or non-resident managing agents, and another for the number of non-resident municipal advisory firms. To estimate the number of non-resident general partners or non-resident managing agents that would have to file Form MA–NR, the Commission relies on investment adviser registration data, which indicates that the percentage of Form MA–NR filings to total number of investment adviser applicants is 1.64%.[345] The Commission expects the proportion of non-resident general partners or non-resident managing agents compared to all Form MA applicants would be similar. Based on this estimate, the Commission anticipates that there would be 16 non-resident general partner or non-resident managing agent applicants on Form MA–NR.[346]

To estimate the number of non-resident municipal advisory firms that would have to file Form MA–NR, the Commission relies on Form MA–T registrant data, which indicate that as of October 2010, two of 800 Form MA–T registrants had non-U.S.-based addresses. The Commission expects that the proportion of non-resident municipal advisory firms compared to all Form MA applicants would be similar. Based on this estimate, the Commission anticipates that three respondents would be non-resident municipal advisory firms that would be required to complete Form MA–NR.[347] Thus, the total number of Form MA–NR filers would be approximately 20, and the total initial burden for completion of Form MA–NR would be 30 hours.[348]

The three non-resident municipal advisory firms that would be required to complete Form MA–NR would be the respondents required to provide an opinion of counsel. The total initial burden for providing an opinion of counsel would be approximately 9 hours.[349] Thus, the total initial burden for non-resident municipal advisors to complete Form MA–NR and provide an opinion of counsel would be 39 hours. The Commission estimates that the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel would be approximately $2,700.[350]

The Commission notes that filers may have potential one-time burdens associated with Form MA–NR. For example, filers may need to locate information required by Form MA–NR, or they may need to familiarize themselves with the proposed rules and the form. For purposes of this analysis, these potential one-time burdens are included in the estimates noted above.

To estimate the ongoing annual number of new Form MA–NR filers that are non-resident general partners or non-resident managing agents, the Commission relies on investment adviser registration data, which indicate that yearly filings of Form ADV–NR comprise, on average, approximately 0.09% of the total number of registered investment advisers.[351] The Commission expects the proportion of Form MA–NR filers that are non-resident general partners or non-resident managing agents compared to all Form MA applicants would be similar. Based on the above estimate, the Commission anticipates that only one municipal advisor respondent per year would have a non-resident general partner or non-resident managing agent that would be required to complete Form MA–NR.[352] This estimate includes the ongoing annual number of new Form MA–NR filers that are non-resident municipal advisors, because the small initial number of non-resident municipal advisors suggests that, at most, there would be only one new non-resident municipal advisor every several years. Thus, the total burden per year for completion of Form MA–NR would be approximately two hours.[353] For the purposes of this analysis, the Commission assumes that the one new non-resident municipal advisor per year would not be a natural person, and would thus be required to provide opinion of counsel. The total burden per year for providing opinion of counsel would be approximately three hours.[354] The Commission estimates that the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel would be approximately $900.[355]

The Commission notes that filers may have potential recurring burdens associated with Form MA–NR, such as monitoring and maintaining the information required by the form. For the purposes of this analysis, these potential recurring burdens are included in the estimates noted above.

Proposed rule 15Ba1–5 also would require that non-resident municipal advisors, general partners and managing agents update the information on Form MA–NR if it becomes inaccurate. Commission staff believes that the burdens associated with these updates are accounted for in the above estimates because, given the small number of Form MA–NR filers, the burden for Form MA–NR updates would likely be negligible.

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[344] See Exchange Act Release No. 49616 (April 26, 2004); 69 FR 24016 (April 30, 2004). The $900 figure is based on an hourly cost estimate of $400 on average for an outside attorney, which is based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters. Based on previous burden estimates, the Commission estimates that outside counsel would take, on average, 2.25 hours to assist in preparation of the opinion of counsel, for an average cost of $900 per respondent.

[345] The Commission's Division of Investment Management indicates that 195 Form ADV–NRs have been filed since January 1, 2003. The proportion of filed forms to the total number of investment adviser registrants is 195/11,888 = 1.64%.

[346] 1,000 (all Form MA applicants) × 1.64% = 16 Form MA–NR filers that are non-resident general partners or non-resident managing agents.

[347] 1,000 (all Form MA applicants) × (2/800) (proportion of non-U.S.-based Form MA–T registrants compared to all Form MA–T registrants) = 2.5 Form MA–NR filers that are non-resident municipal advisors.

[348] 20 (persons expected to file Form MA–NR for the first time) × 1.5 hours (average estimated time to complete Form MA–NR) = 30 hours.

[349] 3 (non-resident municipal advisory firms expected to provide opinion of counsel) × 3.0 hours (average estimated time to provide an opinion of counsel) = 9 hours.

[350] 3 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel) = $2,700.

[351] As of October 2010, there were 11,888 investment advisers registered with the Commission. For the years 2003–2004 and 2007–2010, there was an average of 11 new Form ADV–NR filings per year. (11/11,888) = 0.09%.

[352] 1,000 (all Form MA applicants) × 0.09% = 0.9 Form MA–NR filers per year; this number was rounded up to 1.

[353] 1 (persons expected to file Form MA–NR each year) × 1.5 (average estimated time to complete Form MA–NR) = 1.5 hours per year.

[354] 1 (municipal advisory firms expected to provide an opinion of counsel) × 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours per year.

[355] 1 (persons expected to file Form MA–NR each year) × $900 (average estimated cost to hire outside counsel for providing opinion of counsel) = $900.

The collection of information made pursuant to Form MA–NR would not be confidential and would be made publicly available.

6. Outside Counsel

The Commission believes that some municipal advisory firms would seek outside counsel to help them comply with the requirements of the proposed rules, and complete Form MA.[356] The Commission believes that it is unlikely that natural person municipal advisors would obtain and consult counsel for purposes of completing Form MA–I. For PRA purposes, the Commission assumes that all 1,000 municipal advisory firms registering on Form MA would, on average, consult outside counsel for one hour to help them comply with the requirements. The Commission believes that the estimate of the number of municipal advisory firms that would consult outside counsel is likely to be lower than 1,000 because some municipal advisory firms, especially those that are sole proprietors, would choose not to seek outside counsel. The Commission also recognizes that some municipal advisory firms would hire outside counsel for more than one hour and others may hire outside counsel for less than one hour. On balance, the Commission believes that its estimate that, on average, each municipal advisory firm would hire outside counsel for one hour is appropriate. The Commission estimates that the total cost for all municipal advisory firms to hire outside counsel to review their compliance with the requirements of the proposed rules and forms would be approximately $400,000.[357]

7. Maintenance of Books and Records

As described in detail above, all municipal advisory firms would be required to maintain books and records relating to their municipal advisory activities.[358] These proposed books and records requirements are based generally on Exchange Act rules 17a–3 and 17a–4, and Investment Advisers Act rule 204–2, which set forth books and records requirements with respect to broker-dealers and investment advisers, respectively.[359] In addition, proposed rule 15Ba1–7 would require all municipal advisory firms to keep a record of the initial and annual review, as applicable, conducted by the municipal advisory firm of such municipal advisory firm's business in connection with its self-certification on Form MA.[360]

To estimate the annual books and records burden for municipal advisory firms, the Commission examined the current annual burdens and number of respondents to rules 17a–3 and 17a–4 of the Exchange Act ("Rule 17a–3: Records to be Made by Certain Exchange Members, Brokers and Dealers" and "Rule 17a–4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers"),[361] and rule 204–2 of the Investment Advisers Act ("Books and Records To Be Maintained by Investment Advisers").[362] The most recently approved annual aggregate burden for broker-dealer compliance with rule 17a–3 is currently 2,835 hours based on an estimate of 105 respondents, or 27 hours per respondent,[363] while the most recently approved annual aggregate burden for broker-dealer compliance with rule 17a–4 is currently 1,752,600 hours based on an estimate of 6,900 respondents, or 254 hours per respondent.[364] The most recently approved annual aggregate burden for rule 204–2 is currently 2,106,046 hours based on an estimate of 11,607 registered advisers, or 181 hours per registered adviser.[365]

The Commission anticipates that, given the relatively smaller size of municipal advisory firms compared to investment adviser and broker-dealer firms and the fewer books and records requirements imposed by proposed rule 15Ba1–7 than by rules 17a–3 or 17a–4, or by rule 204–2, the hourly burden per registered municipal advisory firm would likely be lower than the hourly burden estimates per broker-dealer and per investment adviser. For the purposes of this analysis, the Commission estimates that the annual books and records burden on average for a municipal advisory firm to comply with the proposed books and records requirements would be similar to that of an investment adviser, or 181 hours. The Commission staff recognizes that the proposed books and records requirements would likely impose initial burdens on respondents in connection with necessary updates to their record-keeping systems, such as systems development or modifications. For the purposes of this analysis, these initial burdens are included in the estimate of 181 burden hours per respondent per year. Thus, the total compliance burden is about 181,000 hours per year.[366]

Based on discussions with industry participants and the Commission's prior experience with broker-dealers and investment advisers, the Commission believes that the ongoing books and records obligations under the proposed rule would be handled internally because compliance with these obligations is consistent with the type of work that a market participant would typically handle internally. The Commission does not believe that a municipal advisory firm would have any recurring external costs associated with books and records obligations.

The Commission staff would use the collection of information for maintenance of books and records in its examinations and oversight program, and the information would be generally kept confidential to the extent permitted by law.

8. Total Burden

Under the proposed rules and forms, the total initial one-time burden for all respondents would be approximately 71,939 hours,[367] while the total ongoing annual burden for all respondents would be approximately 212,135 hours.[368] The total initial outside cost

[356] The collection of information relating to outside counsel will be included as part of the collection of information "Form MA: Application for Municipal Advisor Registration."

[357] 1,000 (estimated number of municipal advisory firms that would hire outside counsel) × 1 hour (average estimated time spent by outside counsel to help municipal advisory firms comply with the rule) × $400 (hourly rate for an attorney, outside counsel) = $400,000. The hourly cost estimate of $400 on average for an attorney is based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters.

[358] *See supra* Section II.C. (discussing the books and records requirements under proposed rule 15Ba1–7).

[359] *See* 17 CFR 240.17a–3 and 17a–4, and 17 CFR 275.204–2.

[360] *See supra* Section II.C. (discussing the books and records requirements under proposed rule 15Ba1–7).

[361] *See* Collections of Information for Rules 17a–3 and 17a–4 (OMB Control Nos. 3235–0508 and 3235–0279), Office of Information and Regulatory Affairs, Office of Management and Budget, available at *http://www.reginfo.gov/public/do/PRAMain.*

[362] *See* Collection of Information for Rule 204–2 of the Investment Advisers Act (OMB Control No. 3235–0278), Office of Information and Regulatory Affairs, Office of Management and Budget, available at *http://www.reginfo.gov/public/do/PRAMain.*

[363] 2,835 hours/105 respondents = 27 hours per respondent.

[364] 1,752,600 hours/6,900 respondents = 254 per respondent.

[365] 2,106,046 hours/11,607 registered advisers = 181 hours per adviser.

[366] 1,000 (estimated number municipal advisors) × 181 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 181,000 hours.

[367] 6,500 hours (initial burden for Form MA applicants) + 65,400 hours (initial burden for Form MA–I applicants) + 39 hours (initial burden for Form MA–NR filers) = 71,939 hours.

[368] 650 hours (annual burden for new Form MA applicants) + 5,400 hours (annual burden for new Form MA–I applicants) + 3,000 hours (annual burden for Form MA amendments) + 20,700 hours (annual burden for Form MA–I amendments) + 30 hours (annual burden for Form MA withdrawal) + 1,350 hours (annual burden for Form MA–I withdrawal) + 5 hours (annual burden for Form

Continued

for all respondents would be $402,700,[369] while the total ongoing outside cost for all respondents would be $900 per year.[370]

The Commission seeks comment on the reporting and record-keeping collection of information burdens associated with the proposed rules and forms. In particular:

- How many municipal advisors would incur collection of information burdens if the proposed rules and forms were adopted by the Commission?
- Would there be additional or alternative burdens associated with the collection of information under the proposed rules and forms?
- How much work would it take for municipal advisory firms with existing books and records to comply with the books and records requirements of the proposed rules?
- Would municipal advisory firms generally perform the work internally or outsource the work?

E. Collections of Information Are Mandatory

The collections of information would be mandatory.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, *Attention:* Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503; and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–45–10. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this release. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–45–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Economic Analysis

As discussed above, the Dodd-Frank Act added provisions to the Exchange Act that, among other things, require municipal advisors to register with the Commission and authorize the Commission to impose certain record-keeping requirements on municipal advisors.[371] In enacting Section 975 of the Dodd-Frank Act, Congress established a mandatory registration regime for municipal advisors but left the form and content of such registration within the discretion of the Commission.[372] In determining the form and content of such registration, the Commission may require "such information and documents" as it considers "necessary or appropriate in the public interest or for the protection of investors."[373] Congress also granted the Commission exemptive authority to exclude certain persons from the definition of municipal advisor.[374]

The Commission is proposing new rules and forms that, if adopted, would provide for a permanent registration regime for municipal advisors. The proposed rules and forms would include the submission of Form MA by municipal advisory firms (including sole proprietors) seeking registration, the submission of Form MA–I by natural person municipal advisors (including sole proprietors) seeking registration, the completion of a self-certification as to the municipal advisors' qualifications and ability to comply with applicable regulatory obligations, and the submission of Form MA–W by municipal advisors seeking to withdraw from registration. The Commission is also proposing rule 15Ba1–5, which would require certain non-resident persons to submit Form MA–NR in certain circumstances, relating to consent to service of process, and would require non-resident municipal advisory firms to provide an opinion of counsel that the non-resident municipal advisory firms can provide the Commission with access to their books and records and submit to onsite inspection and examination by the Commission. In addition, proposed rule 15Ba1–7 would require certain books and records to be maintained by municipal advisory firms in connection with their municipal advisory activities.[375]

The Commission is sensitive to the costs and benefits imposed by its rules. The discussion below focuses on the costs and benefits of the decisions made by the Commission to fulfill the mandates of the Dodd-Frank Act within its permitted discretion, rather than the costs and benefits of the mandates of the Dodd-Frank Act itself. However, to the extent that the Commission's discretion is exercised to realize the benefits intended by the Dodd-Frank Act or to impose the costs associated with the Dodd-Frank Act, the two types of benefits and costs are not entirely separable. Accordingly, the PRA hourly burden estimates made in accordance with the requirements of the PRA, and their corresponding dollar cost estimates, are included in full below, although a portion of the cost to register is attributable to the requirements of the Dodd-Frank Act and not to the specific rules proposed by the Commission.

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation.[376] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[377] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[378] The Commission's consideration of these matters is set forth below. In

MA–NR filers) + 181,000 hours (annual burden for books and records requirement) = 212,135 hours.

[369] $2,700 (estimated initial cost to hire outside counsel for providing opinion of counsel) + $400,000 (initial cost for review by outside counsel) = $402,700.

[370] $900 = estimated ongoing cost to hire outside counsel for providing opinion of counsel.

[371] *See* 15 U.S.C. 78*o*–4.

[372] *See* 15 U.S.C. 78*o*–4(a)(2).

[373] *See id.*

[374] *See* 15 U.S.C. 78*o*–4(a)(4).

[375] *See supra* Section II.C (discussing the books and records requirements under proposed rule 15Ba1–7).

[376] *See* 15 U.S.C. 78c(f).

[377] *See* 15 U.S.C. 78w(a)(2).

[378] *See id.*

considering these matters, the Commission is mindful of the industry background described above in Sections I.A.1.a and I.A.1.b. The Commission requests comment on those Sections I.A.1.a and I.A.1.b in connection with comments requested below.

A. Proposed Rule 15Ba1–1: Definition of "Municipal Advisor" and Related Terms

Proposed rule 15Ba1–1(d) would clarify that the exclusion from the definition of "municipal advisor" for a broker, dealer or municipal securities dealer serving as an underwriter shall not apply when such persons are acting in a capacity other than as underwriters on behalf of a municipal entity or obligated person.[379] The proposed rule also would clarify that the exclusion from the definition of "municipal advisor" for a Commission-registered investment adviser and its associated persons applies only to advice that "would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940."[380] The proposed rule also would interpret the exclusion from the definition of "municipal advisor" for any registered commodity trading advisors and their associated persons to apply only to such persons when they are providing advice related to swaps on behalf of a municipal entity or obligated person.[381] In addition, the proposed rule provides that the definition of "municipal advisor" shall not include attorneys offering legal advice or providing services that are of a traditional legal nature,[382] or engineers providing engineering advice.[383]

As discussed above, the Commission is proposing to exclude from the definition of "municipal advisor" accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[384] The Commission is also proposing to exclude "providers of municipal bond insurance, letters of credit, or other liquidity facilities" from the definition of "obligated persons."[385] Excluding such persons from the definition of "obligated persons" would, among other things, help reduce market confusion because the exclusion would further uniformity among rules relating to the definition of "obligated person" in the municipal securities market.[386]

These proposed interpretations and exclusions would mean that certain persons who are currently regulated (such as broker-dealers serving as underwriters or investment advisers providing advice which would subject them to the Investment Advisers Act) or that are governed by other professional codes of conduct (such as attorneys providing traditional legal services) would not be required to register as municipal advisors.

The Dodd-Frank Act includes distinct groups of professionals within its definition of "municipal advisor" that offer different services and compete in distinct markets. The three principal types of municipal advisors are: (1) Financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products ("financial advisors" or "municipal financial advisors"); (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "municipal advisor") ("municipal investment advisers"); and (3) third-party marketers and solicitors ("solicitors"). As discussed above in Sections I.A.1.a and I.A.1.b, these different types of municipal advisors operate in different markets. These markets have distinct competitive structures. Within each of these markets, different participants are subject to different regulatory regimes. For purposes of this Economic Analysis, the Commission uses the above-defined terms to describe these distinct types of professionals separately, while using the term "municipal advisors" to describe all municipal advisors generally.

The Commission believes that the proposed interpretations and exemptions contained in proposed rule 15Ba1–1(d) would not impose a burden on competition and would have minimal, if any, impact on the promotion of efficiency and capital formation except to the extent that they reduce market confusion with respect to which persons would be required to register as municipal advisors under the proposed permanent registration regime. Finally, the Commission believes that the direct costs for respondents to read and apply the definitions in proposed rule 15Ba1–1(d) would be minimal.

B. Registration System

The Commission is proposing rules to create a permanent registration regime that would consist of the following forms: Form MA, Form MA–I, and Form MA–W. Municipal advisors would complete these forms to register with the Commission, to amend information previously reported to the Commission, to report the succession of registration of a municipal advisor, and to withdraw from registration. Under proposed rule 15Ba1–4, amendments to Form MA must be filed annually and in the event of certain material changes to the information previously provided, and to Form MA–I whenever the information previously provided becomes inaccurate. Municipal advisors would also be required to provide, on both an initial and annual basis, a self-certification as to their qualifications as municipal advisors and ability to comply with applicable regulatory obligations.

1. Benefits

The proposed permanent registration regime is designed to allow the Commission and other regulators to oversee the conduct of municipal financial advisors, municipal investment advisers, and solicitors in the municipal securities market, as contemplated by the Dodd-Frank Act. Forms MA and MA–I have been designed to provide information that the Commission believes would be helpful for municipal entities to have in a standard format, because it would lower the costs of information gathering for municipal entities[387] in comparing municipal advisors. The Commission believes that a municipal advisor's knowledge of the Commission's authority to examine the municipal advisor and its authority to sanction the municipal advisor for false and misleading statements is likely to result in increased reliability of the information submitted by municipal advisors under the proposed permanent registration regime.

The proposed forms would require municipal advisors to provide information about their disciplinary histories and potential conflicts of interest (and information that may be useful in assessing potential conflicts of

[379] *See* proposed rule 15Ba1–1(d)(2)(i). *See also supra* notes 105–106, and accompanying text.

[380] *See* proposed rule 15Ba1–1(d)(2)(ii). *See also supra* notes 114–117, and accompanying text.

[381] *See* proposed rule 15Ba1–1(d)(2)(iii). *See also supra* notes 121–122, and accompanying text.

[382] *See* proposed rule 15Ba1–1(d)(2)(iv). *See also supra* note 132, and accompanying text.

[383] *See* proposed rule 15Ba1–1(d)(2)(v). *See also supra* note 133–138, and accompanying text.

[384] *See* proposed rule 15Ba1–1(d)(2)(vi). *See also supra* note 124–131, and accompanying text.

[385] *See* proposed rule 15Ba1–1(i). *See also supra* note 90, and accompanying text.

[386] *See supra* note 88, and accompanying text.

[387] For the purposes of this Economic Analysis, references to municipal entities include obligated persons where the context requires.

interest).[388] Municipal entities and obligated persons would have ready access to this information and thus would be in a position to become more fully informed about more municipal financial advisor candidates at lower cost when choosing those who would provide advice to them. Research has shown that most municipal entities do not utilize a formalized selection process when they choose their municipal financial advisors[389] and, therefore, might not have disciplinary information about the advisors they hire. To the extent that municipal entities or obligated persons consider such information important in the selection of municipal advisors, the proposed permanent registration regime may reduce municipal entities' or obligated persons' reliance on municipal advisors that have been the subject of disciplinary actions, or whose activities or affiliations create or have the potential to create conflicts of interest. In addition, municipal advisors, knowing that conflicts of interest must be disclosed, may be more likely to avoid associations that could be perceived as creating conflicts of interest, or would more likely avoid recommending financial intermediaries or investments for which conflicts of interest might be present.

While much of this information is already publicly available with respect to municipal financial advisors that are already registered with the Commission as broker-dealers, disclosure of potential conflicts of interest specific to their municipal financial advisory role could be valuable to potential municipal clients. Many municipal financial advisors that are not registered as broker-dealers would make this sort of information publicly available for the first time.

Similar benefits would be expected to accrue from the public disclosure of the disciplinary history and potential conflicts of interest of municipal investment advisers not registered with the Commission. Congress determined that investment advisers to municipal entities that are already registered with the Commission as investment advisers would not be required to register again as municipal advisors, to the extent the advice provided would subject the investment adviser to the Investment Advisers Act. Many, if not most, of the investment advisers that would be required to register as municipal advisors may be registered as investment advisers under state laws, and any incremental benefit in requiring disciplinary and conflict disclosure would vary from state to state, depending on how that disciplinary and conflict disclosure is required by or applied to different state legal regimes. Nevertheless, the availability of important information in a uniform, standardized format may prove beneficial by reducing the cost of collecting information and comparing it across municipal investment advisers.[390]

Solicitors are a group of municipal advisors about whom relatively little is known, and the benefits of registering this group may prove to be substantial, to the extent that disciplinary records and conflicts of interest are revealed.[391]

Public disclosure of the disciplinary history of municipal advisors, and their associated persons, would make this information available not only to regulators, but also to all interested persons.[392] This disclosure would benefit municipal entities and the general public. Even if the municipal entity does not otherwise seek to obtain this disciplinary information as part of its selection process, the information would be available to interested persons (*e.g.*, the press and concerned citizens) who might directly or indirectly influence the selection of the municipal advisor.

In addition, such public disclosure may deter municipal advisors that have disclosable disciplinary events from entering the market. Thus, this proposed requirement (as well as the ability to regulate municipal advisors going forward) could help discourage entities with disclosable disciplinary histories from entering the pool of potential municipal advisors and reduce the potential for corruption in the municipal market.

To the extent that municipal entities or obligated persons have been deterred from engaging a municipal advisor because they were not familiar with the municipal advisor population and were unsure whether they could identify a trustworthy advisor (including fear of hiring someone tainted with conflicts or violations too expensive to uncover), the proposed permanent registration regime might increase the use of municipal advisors generally. As such, there could be an increased likelihood of using a municipal advisor when a municipal entity or obligated person makes issuance or investment decisions.

With respect to the issuance of municipal securities, this increased likelihood of using a municipal financial advisor could in turn reduce issuance costs and may produce savings. One empirical study suggests that the use of municipal financial advisors is associated with better borrowing terms, lower reoffering yields and narrower underwriter gross spreads,[393] particularly where the advisors are of a higher quality.[394] The small average size of publicly offered municipal issues, as compared, for example, to publicly offered corporate issues,[395] makes municipal securities issuers particularly sensitive to issuance costs. This sensitivity may create a demand for advisors that can successfully negotiate to lower these costs. Municipal financial advisors that provide advice with respect to the issuance of municipal securities and are continually active in the municipal securities market may help to reduce the information asymmetry gap between municipal entities and underwriters, swap dealers, bond insurers, letter of credit providers and other financial intermediaries.[396] Thus, municipal issuers and obligated persons should benefit from having municipal financial advisors compete in a more informationally efficient market that may result from the proposed permanent registration regime. In addition, reducing the cost of identifying a high-quality municipal financial advisor may be expected to

[388] See *supra* Sections II.A.2.c and II.A.2.d.

[389] According to Mark D. Robbins and Bill Simonsen, 2003, *Financial Advisor Independence and the Choice of Municipal Bond Sole Type*, Municipal Finance Journal 24: 42 ("Robbins and Simonsen"), an RFP had been used only 22.6% of the time by governments in selecting the financial advisor for their last bond sale. See also Allen & Dudney, *supra* note 11.

[390] Unless registered with the Commission as municipal advisors, state-registered investment advisers that advise municipal entities would not be subject to "pay-to-play" rules, as contemplated in the Commission's recent releases. See Political Contributions Final Rule, *supra* note 31 and IA–3110, *supra* note 104 (proposing rules implementing amendments to the Investment Advisers Act, and, among other things, modifying the Commission's "pay-to-play" rule).

[391] The Commission's recent proposed amendments to the "pay-to-play" rules for investment advisers contemplate that, if adopted, certain solicitors for municipal investment advisers would be registered as municipal advisors and potentially subject to "pay-to-play" rules. See IA–3110, *supra* note 104, at 69–70. Other solicitors for municipal investment advisers may voluntarily register as municipal advisors in order to continue in the business of soliciting on behalf of municipal investment advisers. See *supra* Section II.A.2.a.

[392] See *supra* Sections II.A.2.c and II.A.2.d.

[393] See *generally* Vijayakumar and Daniels, *supra* note 7.

[394] See *generally* Allen & Dudney, *supra* note 11.

[395] See Testimony of Christopher M. Ryon, Principal and Senior Municipal Bond Portfolio Manager, the Vanguard Group, before the Senate Committee on Banking, Housing, and Urban Affairs, June 17, 2004, at 4, available at *http://bonking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2474c4c6-d0ed-4044-09c8-6376484044cde*.

[396] See *generally* Vijayakumar and Daniels, *supra* note 7.

increase the use of such advisors, who may be in a position to obtain better financing terms for their municipal entity clients and, indirectly, for taxpayers, than those that could be negotiated by lesser-quality municipal financial advisors. Higher-quality municipal financial advisors have been shown to be associated with more efficient capital formation (*i.e.*, lower interest costs).[397]

With the readily available information on municipal advisor disciplinary histories and conflicts of interest, municipal entities would be able to more easily set objective criteria for the municipal advisors hired by decision-making officials. The ease of setting such criteria and verifying compliance with such criteria might reduce the likelihood that municipal advisors are hired because of their political or personal connections to decision-making officials, rather than because of their qualifications.

The collection of this information pursuant to the proposed permanent registration regime, and the fact that, if adopted, the information would be available directly to regulators, would also facilitate enforcement against municipal advisors by allowing the available information to be used for identifying trends and risky firms and natural persons, among other uses. If such information were requested directly from applicants as contemplated in the proposed permanent registration regime, regulators would not have to rely on other sources to obtain this disciplinary history information.

The combined effect of increasing the likelihood of using municipal advisors and improving the average quality of the municipal advisor selection pool (as described above) may improve allocative efficiency, since municipal entities may benefit from better advice in their consideration of issuance or investment alternatives. Such improvements in allocative efficiency may also promote more efficient capital formation. In addition, the improvement in disclosure about, and average quality of, municipal advisors, and the more frequent use of municipal advisors by municipal entities or obligated persons, may also increase competition among municipal advisors of all types—municipal financial advisors, municipal investment advisers, and solicitors. As noted above, however, the benefits in the case of municipal investment advisers would be limited, to the extent that the same or similar information is publicly available under an applicable state law regime.

2. Costs

The establishment of a permanent registration regime would impose costs on persons registering as municipal advisors on Form MA and/or Form MA–I. In particular, the Commission anticipates the following one-time costs for the proposed rules:

- The Commission believes that the total initial labor cost for all municipal advisory firms to complete Form MA would be approximately $1,105,000,[398] while the total initial labor cost for all natural person municipal advisors to complete Form MA–I would be approximately $11,118,000.[399]
- If adopted, municipal advisors would incur one-time costs in familiarizing themselves with the proposed rules and the relevant proposed forms. The Commission notes, however, that such a familiarization period is an inevitable necessity for any newly-introduced registration regime. As noted in the PRA section above, the paperwork burden of gathering information for the purpose of completing Forms MA and MA–I would be reduced because some of the information required by Form MA and Form MA–I would have already been gathered for Form MA–T. For municipal advisors that are either municipal financial advisors or municipal investment advisers, to the extent that the disclosures that would be required on Form MA or Form MA–I have been disclosed on Form ADV, BD or U4, the employees would be permitted to incorporate such information by reference in completing Form MA or Form MA–I, further reducing the costs to complete the form. The one-time costs for familiarizing themselves with the proposed rules and the relevant proposed forms would likely be higher for municipal financial advisors or solicitors that are not broker-dealers or investment advisers, because they may need to gather information required by Form MA and Form MA–I for the first time. For the purposes of this analysis, this one-time cost is included in the cost estimates noted above.
- If adopted, municipal advisors might incur one-time costs in establishing new internal controls such as procedures for obtaining the information required by Form MA and Form MA–I, as applicable. The Commission believes that these costs would be limited for municipal advisors that are financial advisors or investment advisers and are currently regulated with respect to their other activities or have voluntarily adopted such practices. These costs would be higher for municipal financial advisors or solicitors that are not broker-dealers or investment advisers, are not otherwise regulated, or have not voluntarily adopted such practices.[400] For the purposes of this analysis, this one-time cost is included in the cost estimates noted above.

The Commission also anticipates the following recurring costs for compliance with the proposed permanent registration regime, which would likely be similar across all municipal advisor types—municipal financial advisors, municipal investment advisers, and solicitors:

- The Commission believes that the ongoing annual labor cost for new municipal advisory firms to complete Form MA would be approximately $110,500,[401] while the ongoing annual labor cost for new natural person municipal advisors to complete Form MA–I would be approximately $918,000.[402]

[397] See *generally* Allen & Dudney, *supra* note 11, at 412.

[398] 6,500 hours (total estimated hourly burden under the proposed rules for all municipal advisors to complete a Form MA) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $1,105,000. The Commission expects that Form MA completion would most likely be performed equally by compliance managers and compliance clerks. Dividing the hourly rate evenly between a compliance manager of $273 per hour and a compliance clerk of $67 per hour results in a cost per hour of $170. ($273 × 0.5) + ($67 × 0.5) = $177. The $273 per hour figure for a Compliance Manager and the $67 per hour figure for a Compliance Clerk are from the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2010*, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[399] 65,400 hours (total estimated hourly burden under the proposed rules for all municipal advisors to complete a Form MA–I) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $11,118,000. *See id.* The Commission recognizes that instead of using a Compliance Manager or Compliance Clerk, most Form MA–I registrants would fill out the form themselves. The Commission believes, however, that the average compliance rate used to calculate the labor cost for Form MA would be a reasonable proxy for the compliance rate used to calculate the labor cost for Form MA–I.

[400] Some unregulated groups that engage in municipal advisory activities have formed professional associations that have implemented their own voluntary best practices with respect to conflicts of interest, educational standards, and other disclosure of note to their clients. *See, e.g.*, National Association of Independent Public Finance Advisors, *http://www.naipfa.com*.

[401] 650 hours (total estimated hourly burden under the proposed rules for new municipal advisors to complete a Form MA) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $110,500. *See supra* note 398 for the calculation of the combined hourly rate.

[402] 5,400 hours (total estimated hourly burden under the proposed rules for new municipal advisors to complete a Form MA–I) × $170

Continued

• The Commission believes that the ongoing annual labor cost for all municipal advisory firms to amend Form MA and complete the annual self-certification would be approximately $510,000,[403] while the ongoing annual labor cost for all natural person municipal advisors to amend Form MA–I and complete the annual self-certification would be approximately $3,519,000.[404]

• The Commission believes that the ongoing annual labor cost for all municipal advisory firms to complete Form MA–W to withdraw from Form MA registration would be approximately $5,100,[405] while the ongoing annual labor cost for all natural person municipal advisors to complete Form MA–W to withdraw from Form MA–I registration would be approximately $229,500.[406]

• If adopted, municipal advisors would incur recurring costs for monitoring and/or maintaining the information required by the registration forms and providing updates to the registration forms. For the purposes of this analysis, this recurring cost is included in the cost estimates noted above.

In addition to the direct, out-of-pocket costs estimated for PRA purposes, the Commission considered the economic costs of the proposed permanent registration regime. The Commission recognizes that the cost of becoming subject to registration for the first time may lead some municipal advisors that are not particularly active to leave the business, to the extent they presume that the additional costs associated with registration would negatively impact potential revenues to such a degree that the best economic choice for them would be to suspend operating their business or, at least, the municipal advisory portion of their business. Moreover, if the proposed permanent registration regime is adopted, municipal entities may also incur costs from decisions based on the incorrect perception that registration as a municipal advisor is a stamp of quality.

Furthermore, as noted above, the additional costs associated with registration may impact those municipal advisors that are not already registered as either investment advisers or broker-dealers to a greater degree than they would impact municipal advisors that have previously registered under another regulatory regime. To the extent that municipal advisors that have not previously registered under another regime provide greater positive value to their advisees,[407] their disproportionate exit from the market, compared to municipal advisors that have previously registered under another regulatory regime, would negatively impact the value of advice provided to municipal entities. In the case of solicitors for investment advisers to municipal pension funds, however, few are currently registered as either broker-dealers or investment advisers. The registration requirement under the proposed permanent registration regime may cause some of these solicitors to exit the market to avoid the cost and scrutiny that would accompany registration. To the extent that the solicitors that would exit this market would disproportionately include those that provide less value to municipal entities, their exit from the market would be a benefit that may mitigate these costs.

Because the existing markets for all three municipal advisor types—municipal financial advisors, municipal investment advisers, and solicitors—appear to be competitive, exits from such markets are not expected to lead to market concentration levels at which economic inefficiency (monopoly profits for the few surviving municipal advisors) would result. Moreover, given the content of the proposed forms, those municipal advisors that may exit such markets may include disproportionately more municipal advisors with disciplinary records or other negative histories.

The Commission further recognizes that some state-registered investment advisers that manage municipal pension investments may have the incentive to exit these investments to avoid Federal registration under the proposed permanent registration regime. These investment advisers may perceive the costs of the required Federal registration, in addition to one or more state registrations, to outweigh the benefits of managing such municipal pension investments.

The Commission believes that few of these initial and recurring costs, if any, would be passed on to municipal entities or obligated persons in the form of higher fees. To the extent that costs are passed on, the financial advisor and solicitor markets may be impacted to a greater degree than the investment adviser market, which would be more likely to keep fees relatively fixed for investment adviser services.

The Commission has considered the effects on competition, efficiency and capital formation of the proposed rule regarding the proposed permanent registration regime as a whole, as noted above.

C. Non-Resident Municipal Advisors

The Commission is proposing rule 15Ba1–5 to set forth the general procedures for serving non-residents on Form MA and Form MA–NR. Pursuant to the instructions to Form MA–NR, and consistent with proposed rule 15Ba1–5, non-resident municipal advisory firms, non-resident general partners and non-resident managing agents of municipal advisors must file Form MA–NR to furnish the Commission with a written irrevocable consent and power of attorney to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisory firm, non-resident general partner or non-resident managing agent. Proposed rule 15Ba1–5(e) would also require each non-resident municipal advisory firm to provide an opinion of counsel that the non-resident municipal advisory firm can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite and inspection and examination by the Commission.

1. Benefits

The proposed requirement that a non-resident municipal advisor or a non-resident general partner or non-resident managing agent of a municipal advisor file Form MA–NR in connection with the municipal advisor's initial application would help minimize any legal or logistical obstacles that the

(combined hourly rate for a Compliance Manager and Compliance Clerk) = $918,000. *See supra* note 399 for the calculation of the combined hourly rate.

[403] 3,000 hours (total estimated hourly burden under the proposed rules for all municipal advisors to amend a Form MA and complete annual self-certification) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $510,000. *See supra* note 398 for the calculation of the combined hourly rate.

[404] 20,700 hours (total estimated hourly burden under the proposed rules for all municipal advisors to amend a Form MA–I and complete annual self-certification) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $3,519,000. *See supra* note 399 for the calculation of the combined hourly rate.

[405] 30 hours (total estimated hourly burden under the proposed rules for all municipal advisors to withdraw from Form MA registration) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $5,100. *See supra* note 398 for the calculation of the combined hourly rate.

[406] 1,350 hours (total estimated hourly burden under the proposed rules for all municipal advisors to withdraw from Form MA–I registration) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $229,500. *See supra* note 399 for the calculation of the combined hourly rate.

[407] *See, e.g.*, Robbins and Simonsen, *supra* note 389, at 55 (finding that financial advisors that are not broker-dealers are more likely to recommend a competitive sale, which generally results in lower borrowing costs for the issuer).

Commission may encounter when attempting to effect service, to conserve Commission resources, and to avoid potential conflicts of law. The proposed requirement that a non-resident municipal advisory firm must obtain an opinion of counsel that the municipal advisory firm can provide access to books and records and can be subject to onsite inspection and examination would allow the Commission to better evaluate a municipal advisory firm's ability to meet the requirements of registration and ongoing supervision. These benefits would be the same across all municipal advisor types—municipal financial advisors, municipal investment advisers, and solicitors. In addition, the requirements to file Form MA–NR and provide an opinion of counsel are expected to have minimal, if any, effect on competition, efficiency and capital formation.

2. Costs

The filing of proposed Form MA–NR and the obtaining of an opinion of counsel would impose compliance burdens on municipal advisors. In particular, the Commission anticipates the following one-time costs:

- The Commission believes that the initial labor cost for non-resident municipal advisory firms, non-resident general partners or non-resident managing agents to complete the Form MA–NR would be approximately $5,100.[408]
- The Commission believes that the initial labor cost for non-resident municipal advisory firms to obtain an opinion of counsel that the municipal advisor can provide access to books and records and can be subject to onsite inspection and examination would be approximately $3,200.[409]
- If adopted, non-resident municipal advisory firms and non-resident general partners and non-resident managing agents of municipal advisors may incur one-time costs in establishing new internal controls such as procedures for obtaining the information required by Form MA–NR. For the purposes of this analysis, this one-time cost is included in the cost estimate noted above.

The Commission also anticipates the following recurring costs:

- The Commission believes that the ongoing annual labor cost for non-resident advisory firms, non-resident general partners or non-resident managing agents to complete the Form MA–NR would be approximately $340.[410]
- The Commission believes that the ongoing annual labor cost for non-resident municipal advisory firms to obtain opinion of counsel that the municipal advisory firm can provide prompt access to books and records and can be subject to onsite inspection and examination would be approximately $1,100.[411]
- If adopted, non-resident municipal advisory firms or non-resident general partners and non-resident managing agents of municipal advisors would incur recurring costs for monitoring and maintaining the information required by Form MA–NR. This cost would likely be similar across all municipal advisor types—municipal financial advisors, municipal investment advisers, and solicitors. For the purposes of this analysis, this recurring cost is included in the cost estimate noted above.

D. Record-Keeping

Proposed rule 15Ba1–7 sets forth requirements relating to the maintenance and retention of certain records relating to the business of municipal advisors and the forms required for the proposed permanent registration regime. The proposed rule would require, among other things, that municipal advisory firms maintain and preserve all books and records required to be made under the proposed rule for a period of not less than five years, the first two years in an easily accessible place.[412] Record-keeping requirements are a familiar and important element of the Commission's approach to investment adviser and broker-dealer regulation, and are designed to maintain the efficiency and effectiveness of the Commission's inspection program for regulated entities, which facilitates the Commission's review for their compliance with statutory mandates and with the Commission's rules.

1. Benefits

The proposed rule would assist the Commission in evaluating a municipal advisory firm's compliance with Section 15B of the Exchange Act[413] and rules and regulations promulgated thereunder. Regulators would benefit from standardized record-keeping practices for municipal advisory firms because they would be able to perform more efficient, targeted inspections and examinations, and have an increased likelihood of identifying improper conduct at earlier stages in the inspection or examination. In addition, municipal advisory firms should benefit from standardized record-keeping practices by having their operations interrupted for shorter time periods in response to inspections or examinations than if their record-keeping practices were not standardized. Both regulators and municipal advisory firms should benefit from standardized record-keeping requirements to the extent that uniform records would identify for regulators and municipal advisory firms the records that municipal advisory firms should have on hand.

The record-keeping practices proposed in rule 15Ba1–7 would also help regulators perform their supervisory functions in an effective manner. To the extent that more effective supervision results in greater market integrity, municipal entities may make better use of municipal advisory firms in a way that should positively affect their capital formation activities.

2. Costs

The books and records requirements of proposed rule 15Ba1–7 would impose compliance burdens on municipal advisory firms. In particular, the Commission anticipates the following one-time costs:

- If adopted, municipal advisory firms may incur one-time costs in establishing the new internal controls and systems necessary to comply with the record-keeping requirements of the proposed rule. The Commission believes that for municipal advisory firms that are municipal financial advisors or municipal investment advisers and are currently regulated with respect to their other activities, these costs would be limited because the proposed rule allows some records

[408] 30 hours (estimated initial hourly burden under the proposed rules for all respondents to complete a Form MA–NR) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $5,100. *See supra* note 398 for the calculation of the combined hourly rate.

[409] 9 hours (estimated initial hourly burden under the proposed rules for all respondents to obtain opinion of counsel) × $354 (hourly rate for an internal attorney) = $3,186. The $354 per hour figure for an Attorney is from the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2010*, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[410] 2 hours (estimated ongoing annual hourly burden under the proposed rules for respondents to complete a Form MA–NR) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $340. *See supra* note 398 for the calculation of the combined hourly rate.

[411] 3 hours (estimated ongoing annual hourly burden under the proposed rules for all respondents to obtain opinion of counsel) × $354 (hourly rate for an internal attorney) = $1,062. The $354 per hour figure for an Attorney is from the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2010*, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[412] *See supra* Section II.C.

[413] *See* 15 U.S.C. 78*o*–4.

to be maintained in compliance with those other rules.[414] The Commission believes that these costs would also be limited for municipal advisory firms that have voluntarily adopted similar record-keeping practices. Commission staff anticipates that these costs may be higher for solicitors and for municipal advisory firms that are not otherwise regulated or have not voluntarily adopted similar record-keeping practices.

The Commission also anticipates the following recurring costs:

- The Commission believes that the ongoing annual labor cost for all municipal advisory firms to comply with the proposed requirement would be approximately $9,050,000.[415]
- If adopted, municipal advisory firms would also incur recurring costs related to the maintenance of books and records and the storage of such books and records, as required by the proposed rule. For the purposes of this analysis, these recurring costs are included in the cost estimate noted above.
- If adopted, municipal advisory firms would also need to provide applicable training to ensure compliance with the proposed record-keeping requirements. For the purposes of this analysis, this recurring cost is included in the cost estimate noted above.

The Commission does not believe that currently-operating municipal advisory firms would be subject to significant additional record-keeping costs as a result of the proposed rule because such municipal advisory firms already maintain books and records as part of their day-to-day operations. The proposed rule, however, provides specific parameters relating to the retention and maintenance of certain books and records and the proposed requirements may be more extensive than current market practices. Moreover, the Commission recognizes that these costs may impact those municipal advisory firms that are not already registered as either investment advisers or broker-dealers to a greater degree than they would impact municipal advisory firms that have previously registered under another regulatory regime. Based on discussions with industry participants, however, Commission staff believes that some unregistered municipal advisory firms may already keep business records similar to those required by the Commission's proposal. The proposed record-keeping requirements would reinforce improvements in disclosure about, and the average quality of, municipal advisors.

The Commission has considered the effects on competition, efficiency and capital formation of the proposed rule regarding initial and ongoing record-keeping in the context of the proposed permanent registration regime as a whole, as noted above.

E. Request for Comment on Economic Analysis

The Commission seeks estimates of the costs and benefits identified in this Economic Analysis section, as well as any costs and benefits not already discussed, which may result from the adoption of the proposed rules and forms. In connection with the comments requested below, the Commission requests comment on its understanding of the municipal advisor markets reflected in Sections I.A.1.a and I.A.1.b above. The Commission also requests comment on the potential costs and benefits of alternatives suggested by commenters. The Commission specifically requests comments with respect to the following:

- Would the availability of disciplinary information and conflict of interest information, along with the other information required by Form MA and Form MA–I, assist municipal entities or obligated persons in making hiring decisions with respect to municipal advisors?

The Commission solicits comments on the costs associated with the registration-related rules and new forms. The Commission specifically requests comment on the following:

- Would additional benefits accrue if the Commission required different or additional information on the proposed forms and, if so, what would these requirements entail?
- Are there additional costs or benefits related to registration that the Commission should consider? In particular, are there any outside costs associated with Form MA–NR that the Commission has not identified and should consider?

The Commission solicits comments on the costs and benefits related to the proposed record-keeping requirements. The Commission specifically requests comment on the following:

- Would additional benefits accrue if the Commission imposed different or additional record-keeping requirements and, if so, what would these requirements entail?
- The Commission specifically requests comments on the initial and ongoing costs associated with establishing and maintaining the record-keeping systems and related policies and procedures, including whether municipal advisory firms that are otherwise currently regulated would incur different record-keeping costs.
- Are there additional costs or benefits related to record-keeping that the Commission should consider? If so, please explain.

The Commission generally requests comment on the competitive or anticompetitive effects, as well as efficiency and capital formation effects, of the proposed rules and forms on any market participants if the proposals are adopted as proposed. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed rules and forms.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[416] the Commission must advise OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rules and forms on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VII. Initial Regulatory Flexibility Analysis

The Commission has prepared this Initial Regulatory Flexibility Analysis

[414] *See supra* Section II.C.

[415] 181,000 hours (total estimated hourly burden under the proposed rules for all municipal advisory firms to annually comply with the books and records requirement) × $50 (hourly rate for a General Clerk) = $9,050,000. The $50 per hour figure for a General Clerk is from the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2010*, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[416] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

(IRFA) in accordance with Section 603(a) of the Regulatory Flexibility Act (RFA).[417] This IRFA relates to proposed rules 240.15Ba1–1 through 240.15Ba1–7 under the Exchange Act, which sets forth the requirements for municipal advisors to register with the Commission and the books and records that registered municipal advisory firms must make and keep.

Section 15B, as amended by the Dodd-Frank Act, generally is intended to strengthen oversight of the municipal securities markets and broaden current municipal securities market protections to cover, among other things, previously unregulated market participants. The proposed rules and forms are designed to meet this mandate by requiring each municipal advisor, whether a firm or a natural person, to provide basic identifying information about itself, a description of its activities, and facts regarding its disciplinary history, if any.

A. Reasons and Objectives for the Proposed Rules

Sections I and II of this Release describe the reasons for and objectives of the proposed rules and forms. Many market professionals are involved in issuing municipal securities and advising municipal entities and obligated persons with respect to municipal financial products. Historically, however, municipal advisors have been largely unregulated. Consistent with the requirements of the Dodd-Frank Act, the Commission is proposing new rules and forms that, if adopted, would establish a permanent registration regime for municipal advisors. The Commission believes that the information disclosed pursuant to the proposed rules and forms would provide significant value to the Commission in its oversight of municipal advisors and their activities in the municipal securities markets. The information provided pursuant to these proposed rules and forms would also aid municipal entities, obligated persons, and others in choosing municipal advisors, engaging in transactions with municipal advisors, or participating in transactions in municipal securities issued in offerings in which a municipal advisor provided municipal advisory services.

B. Legal Basis

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78*o*–4, 78q, and 78mm, respectively), the Commission is proposing to adopt §§ 240.15Ba1–1 through 240.15Ba1–7, Form MA, Form MA–I, Form MA–W, and Form MA–NR.

C. Small Entities Subject to the Proposed Rules

Under section 601(3) of the RFA, the term "small business" is defined as having "the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."[418] The Commission's rules do not define "small business" or "small organization" for purposes of municipal advisors. The SBA defines small business, for purposes of entities that provide financial investments and related activities, as a business that had annual receipts of less than $7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.[419] Therefore, the Commission is using the SBA's definition of small businesses to define municipal advisors that are small entities for purposes of the RFA.

In developing the proposed rules and forms, the Commission has considered their potential impact on the small entities that would be subject to the proposed rules and would be required to complete the proposed forms. All municipal advisors must register with the Commission, including small entities, and would be subject to the proposed rules.

Based on the number of municipal advisors who have already registered with the Commission by completing Form MA–T, the Commission estimates that approximately 1,000 municipal advisory firms, including sole proprietors, would be required to complete Form MA.[420] In connection with the promulgation of rule 15Ba2–6T, industry sources were unable to provide an estimate, based on the definitions discussed above, of how many of these municipal advisory firms would be small businesses or small organizations.[421] However, for purposes of this IRFA, the Commission believes that the proportion of small municipal advisory firms subject to the proposed rules compared to all Form MA applicants subject to the proposed rules may be similar to the proportion of small registered broker-dealers compared to all registered broker-dealers. The Commission has previously estimated that approximately 17% of all broker-dealers are "small" for the purposes of the RFA.[422] Thus, the Commission estimates that approximately 170 municipal advisory firms that would be required to register with the Commission by filing Form MA would be small entities subject to the proposed rules.[423]

The Commission estimates that approximately 21,800 natural persons must complete Form MA–I.[424] Of these Form MA–I applicants, only those that are sole proprietors and meet the annual receipts threshold would be considered small entities subject to the proposed rules.[425] Because all sole proprietors would be required to complete Form MA in addition to Form MA–I, the Commission believes that sole proprietors that would be small entities subject to the proposed rules, *i.e.*, that are under the "small entities" annual receipts thresholds, are already counted among the estimate of 170 small entities calculated above. Thus, for the purposes of this IRFA, the Commission does not believe that it would be necessary to further estimate the number of small entities among Form MA–I applicants, because such an estimate would result in the double-counting of respondents. The Commission estimates that a total of 170 municipal advisors would be small entities subject to the proposed rules.

The Commission requests comment on its estimate of how many municipal advisors would be small entities for purposes of the IRFA. Specifically, the Commission seeks comment on whether there are alternative ways to estimate the number of municipal advisors that are small entities. Is the proportion of

[417] *See* 5 U.S.C. 603(a).

[418] 5 U.S.C. 601(3).

[419] *See* 13 CFR 121.201.

[420] *See supra* Section IV.C.

[421] Proposed Form MA, Item 10, would ask municipal advisors to indicate whether they meet the definition of "small business" or "small organization." As a result, if adopted, in the future the Commission would have information on which to base estimates of the number of small municipal advisors subject to its rules.

[422] *See* Securities Exchange Act Release No. 61908 (April 14, 2010), 75 FR 21456, 21483 (April 23, 2010). The Commission received no comments on its estimate of the percentage of all broker-dealers that are considered "small" for RFA purposes.

[423] 1,000 (estimated number of municipal advisors subject to the Rule) × .17 (estimated percentage of municipal advisors that are small entities) = 170 small entity municipal advisors.

[424] *See supra* Section IV.C.

[425] Individuals who are not sole proprietors, *i.e.*, employees of municipal advisors, and must register on Form MA–I would not fall within the definitions of "small business" or "small organization," because only those businesses and organizations that are "independently owned" may qualify as small entities pursuant to the definitions contained in the RFA. *See* 5 U.S.C. 601(4) and 15 U.S.C. 632(a)(1).

small registered municipal advisors to all registered municipal advisors for purposes of the IRFA similar to the proportion of small registered broker-dealers to all registered broker-dealers?

D. Reporting, Record-keeping, and Other Compliance Requirements

The proposed rules and forms would impose certain reporting and record-keeping requirements on small municipal advisors. For example, under the proposed rules, municipal advisors would be required to complete the information disclosure requirements on Forms MA and MA–I, as applicable. Moreover, municipal advisory firms would be required to maintain books and records relating to their municipal advisory activities in which they engage.

As discussed above, under the proposed rules, municipal advisors are required by statute to register with the Commission. The Commission is proposing a permanent registration regime for municipal advisors that would require completion of Form MA and/or Form MA–I, as applicable.

The Commission estimates that the initial cost per applicant to complete Form MA and the initial self-certification would be approximately $1,110,[426] and the initial reporting cost per applicant to complete Form MA–I and the initial self-certification would be approximately $510.[427] The Commission also estimates that the ongoing annual cost per applicant to amend Form MA and complete self-certification would be approximately $510,[428] and the ongoing annual cost per applicant to amend Form MA–I and complete self-certification would be approximately $160.[429]

Municipal advisors would also incur costs when they need to withdraw their registration. The Commission estimates that the cost per registrant to complete Form MA–W would be approximately $85.[430] In addition, non-resident municipal advisors and non-resident general partners and managing agents of municipal advisors would incur costs to file Form MA–NR. The Commission estimates that the cost per filer to complete Form MA–NR would be approximately $255.[431] Non-resident municipal advisory firms would also incur costs to obtain an opinion of counsel. The Commission estimates that the cost per non-resident municipal advisory firm to obtain an opinion of counsel, including the cost to hire outside counsel, would be approximately $1,960.[432]

The Commission also believes that some municipal advisory firms would incur costs associated with hiring outside counsel to determine the need to file and to comply with the requirements of the proposed rules and forms. The Commission estimates that the total cost per municipal advisory firm to hire outside counsel would be approximately $400.[433]

Based on discussions with various industry participants and the Commission's prior experience with broker-dealers and investment advisers, the Commission estimates that the average cost per municipal advisory firm to comply with the proposed requirement to maintain annual books and records would be approximately $9,050.[434] The Commission requests comment on these estimates.

The Commission believes that these compliance burdens would not disproportionately affect small entities. The Commission notes that the proposed rules and forms strike the appropriate balance between minimizing the burden on small municipal advisors and allowing the Commission to meet its mandate under Section 15B of the Exchange Act to establish a permanent registration regime for municipal advisors. Moreover, the Commission believes that completing and submitting Forms MA and MA–I electronically should not be unduly burdensome or costly for municipal advisors, including small municipal advisors.

E. Duplicative, Overlapping, or Conflicting Federal Rules

As discussed in Section I.B, a temporary registration procedure was developed as a transitional step toward the implementation of a permanent registration regime for municipal advisors. Rule 15Ba2–6T provides that, unless rescinded, a municipal advisor's temporary registration by means of Form MA–T will expire on the earlier of (1) the date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule rescinded by the Commission or (2) December 31, 2011.[435]

The Commission is proposing rules and forms to establish a permanent municipal advisors registration regime. Under the permanent registration regime, all municipal advisors, including those who had previously registered on Form MA–T, would be required to register anew on Form MA and/or on Form MA–I. Thus, the Commission believes that current rules do not generally duplicate, overlap, or conflict with the proposed rules.

The Commission recognizes, however, that some of the information that respondents would collect for purposes of the proposed record-keeping rules and the relevant proposed registration forms would overlap with information previously collected for other registration regimes or record-keeping rules. As acknowledged above, the Commission recognizes that persons who have registered on Form MA–T under the temporary registration regime or that have completed a Form BD, ADV or U4, could require less time to research and complete the proposed permanent registration forms to the extent information contained in those

[426] 6.5 hours (total estimated hourly burden under the proposed rules for one municipal advisor to complete a Form MA and complete initial self-certification) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $1,110. *See supra* note 398 for the calculation of the combined hourly rate.

[427] 3.0 hours (total estimated hourly burden under the proposed rules for one municipal advisor to complete a Form MA–I and complete initial self-certification) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $510. *See supra* note 399 for the calculation of the combined hourly rate.

[428] 2.5 hours (estimated time to prepare one annual amendment and complete annual self-certification for Form MA) × 1.0 (number of annual amendments per year) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) + 0.5 hours (estimated time to prepare one interim updating amendment per year for Form MA) × 1.0 (average number of interim updating amendments per year) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $510. *See supra* note 398 for the calculation of the combined hourly rate.

[429] 0.5 hours (estimated time to complete amended Form MA–I) × 1.7 (average number of amendments per year) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $145; 0.1 hours (estimated time to complete annual self-certification on Form MA–I) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $17; $145 + $17 = $162. *See supra* note 399 for the calculation of the combined hourly rate.

[430] 0.5 hours (estimated time to complete Form MA–W) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $85. *See supra* note 398 for the calculation of the combined hourly rate.

[431] 1.5 hours (estimated time to complete Form MA–NR) × $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $255. *See supra* note 398 for the calculation of the combined hourly rate.

[432] 3.0 hours (estimated time to obtain opinion of counsel) × $354 (hourly rate for an internal attorney) = $1,062. *See supra* note 411 regarding the hourly rate. $900 = estimated cost to hire outside counsel. *See supra* note 344 for an explanation of the outside counsel cost estimate. $1,062 + $900 = $1,962.

[433] 1 hour (estimated time spent by outside counsel to help municipal advisor comply with rule) × $400 (hourly rate for an attorney) = $400. *See supra* note 357 for the calculation of the hourly rate.

[434] 181 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) × $50 (hourly rate for a General Clerk) = $9,050. *See supra* note 415 for the calculation of the hourly rate.

[435] *See* 17 CFR 240.15Ba2–6T(e).

other forms can be incorporated by reference or used to assist in completing information on Forms MA or MA–I. Persons who are Commission-registered investment advisers or broker-dealers may also require less time to comply with the proposed rule 15Ba1–7 books and records requirements, to the extent that the proposed books and records requirements overlap with those required to be kept and maintained in accordance with investment adviser and/or broker-dealer books and records requirements.

F. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[436] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or recording requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed rules, or any part of the proposed rules, for small entities.

The Commission believes that the proposed rules and forms strike the appropriate balance between minimizing the burden on small municipal advisors and allowing the Commission to meet its mandate under Section 15B of the Exchange Act to establish a registration regime for municipal advisors. The Commission does not believe that establishing different compliance or reporting standards is necessary because the information requested in Forms MA and MA–I would be accessible to municipal advisors regardless of whether the municipal advisor is a small entity. Moreover, the Commission believes that completing and submitting Forms MA and MA–I electronically should not be unduly burdensome or costly for municipal advisors, including small municipal advisors. In developing the proposed rules and forms, the Commission considered requiring additional information from municipal advisors and using different submission mechanisms. The Commission decided that the information in the proposed forms and the submission requirements would be simple, straightforward, and take into account the resources available to all municipal advisors, including small municipal advisors. The Commission believes that it is inconsistent with the goals of a uniform registration system to use performance standards rather than design standards. Further, the Commission believes that it would be inconsistent with the purposes of the Exchange Act to exempt small entities from compliance with the proposed rules.

G. General Request for Comment

The Commission is soliciting comments regarding its analysis. The Commission requests comment on the number of small entities that would be subject to the proposed rules and forms and whether the proposed rules and forms would have any effects that have not been discussed. The Commission requests that commenters describe the nature of any effects on small entities subject to the rule and provide empirical data to support the nature and extent of such effects. The Commission also requests comment on the compliance burdens and how they would affect small entities. Does the proposed permanent registration regime create an undue burden on small entities? Are there any additional compliance burdens that would affect small entities in particular, compared to larger entities?

VIII. Statutory Basis and Text of Proposed Amendments

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78*o*–4, 78q, and 78mm, respectively), the Commission is proposing to adopt §§ 240.15Ba1–1 through 240.15Ba1–7, Form MA, Form MA–I, Form MA–W, and Form MA–NR.

List of Subjects in 17 CFR Parts 240 and 249

Municipal advisors, Registration requirements, Reporting and record-keeping requirements.

Text of Proposed Rules and Forms

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78*o*, 78*o*–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Sections 240.15Ba1–1 through 240.15Ba1–7 are also issued under Pub. L. 111–203, § 975, 124 Stat. 1376, 1915–1923 (2010).

* * * * *

2. Section 240.15Ba1–1 through 240.15Ba1–7 are added to read as follows:

Sec.

* * * * *

§ 240.15Ba1–1 Definitions.

As used in the rules and regulations prescribed by the Commission pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4):

(a) *Guaranteed investment contract* has the same meaning as in Section 15B(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(2)).

(b) The term *investment strategies*, as defined in Section 15B(e)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(3)), includes plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity.

(c) *Managing agent* means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(d)(1) *Municipal Advisor* has the same meaning as in Section 15B(e)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(4)).

(2) The term *Municipal Advisor* shall not include:

(i) A broker, dealer, or municipal securities dealer serving as an underwriter (as that term is defined in Section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) on behalf of a municipal entity or obligated person, unless the broker, dealer or municipal securities dealer engages in municipal advisory activities while acting in a capacity other than as an underwriter on behalf of a municipal entity or obligated person.

[436] 5 U.S.C. 603(c).

(ii) An investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or a person associated with such registered investment adviser, unless the registered investment adviser or person associated with the investment adviser engages in municipal advisory activities other than providing investment advice that would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940.

(iii) Any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor, unless the registered commodity trading advisor or persons associated with the registered commodity trading advisor engages in municipal advisory activities other than advice related to swaps (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder).

(iv) Any attorney, unless the attorney engages in municipal advisory activities other than the offer of legal advice or the provision of services that are of a traditional legal nature to a client of the attorney that is a municipal entity or obligated person.

(v) Any engineer, unless the engineer engages in municipal advisory activities other than providing engineering advice.

(vi) Any accountant, unless the accountant engages in municipal advisory activities other than preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.

(e) *Municipal advisory activities* means providing advice to or on behalf of a municipal entity (as defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(8)) or obligated person (as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(10))) with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or solicitation of a municipal entity or obligated person.

(f) *Municipal derivatives* means any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which a municipal entity is a counterparty, or to which an obligated person, acting in its capacity as an obligated person, is a counterparty.

(g) *Municipal financial product* has the same meaning as in Section 15B(e)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(5)).

(h) *Non-resident* means:

(1) In the case of an individual, one who resides in or has his principal office and place of business in any place not in the United States;

(2) In the case of a corporation, one incorporated in or having its principal office and place of business in any place not in the United States; and

(3) In the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not in the United States.

(i) The term *obligated person*, as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(10)), shall not include providers of municipal bond insurance, letters of credit, or other liquidity facilities.

(j) *Principal office and place of business* means the executive office of the municipal advisor from which the officers, partners, or managers of the municipal advisor direct, control, and coordinate the activities of the municipal advisor.

§ 240.15Ba1–2 Application for municipal advisor registration.

(a) *Form MA.* A person, other than a natural person, including a sole proprietor, applying for registration with the Commission as a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4) must complete Form MA (17 CFR 249.1300) in accordance with the instructions in such Form and file such Form electronically with the Commission.

(b) *Form MA–I.* A natural person (including a sole proprietor) applying for registration with the Commission as a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4) must complete Form MA–I (17 CFR 249.1310) in accordance with the instructions in the Form and file such Form electronically with the Commission.

(c) *When filed.* Each Form MA (17 CFR 249.1300) and Form MA–I (17 CFR 249.1310) shall be considered filed with the Commission upon acceptance by the [applicable electronic system]. Filings required to be made on a day that the [applicable electronic system] is closed shall be considered timely filed with the Commission if filed electronically no later than the following business day.

(d) *Form MA and Form MA–I are reports.* Each Form MA (17 CFR 249.1300) and Form MA–I (17 CFR 249.1310) required to be filed under this section shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.

§ 240.15Ba1–3 Withdrawal from municipal advisor registration.

(a) *Form MA–W.* Notice of withdrawal from registration as a municipal advisor shall be filed on Form MA–W (17 CFR 249.1320) in accordance with the instructions to the Form.

(b) *Electronic filing.* Any notice of withdrawal on Form MA–W (17 CFR 249.1320) must be filed electronically.

(c) *Effective date.* A notice of withdrawal from registration shall become effective for all matters on the 60th day after the filing thereof, within such longer period of time as to which such municipal advisor consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such municipal advisor, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (c), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (c) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) *Form MA–W is a report.* Each Form MA–W (17 CFR 249.1320) required to be filed under this section shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.

§ 240.15Ba1–4 Amendments to application for registration and self-certification.

(a) *When amendment is required—Form MA.* A registered municipal advisor shall promptly amend the information contained in its Form MA (17 CFR 249.1300):

(1) At least annually, within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for municipal advisors that are sole proprietors; and

(2) More frequently, if required by the General Instructions to Form MA (17 CFR 249.1300), as applicable.

(b) *When amendment is required—Form MA–I.* A registered municipal advisor shall promptly amend the information contained in its Form MA–I (17 CFR 249.1310) by filing an amended Form MA–I whenever the information contained in the Form MA–I becomes inaccurate for any reason.

(c) *Electronic filing of amendments.* A registered municipal advisor shall file all amendments to Form MA (17 CFR 249.1300) and Form MA–I (17 CFR 249.1310) electronically.

(d) *Amendments to Form MA and Form MA–I are reports.* Each amendment required to be filed under this section shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.

(e) *Self-certification.* A registered municipal advisor shall complete the self-certification contained in Form MA (17 CFR 249.1300) or Form MA–I (17 CFR 249.1310), as applicable:

(1) At the time the municipal advisor initially files its application for registration as a municipal advisor on Form MA (17 CFR 249.1300) or Form MA–I (17 CFR 249.1310), as applicable; and

(2) In the case of a municipal advisor registered on Form MA (17 CFR 249.1300), annually, within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for municipal advisors that are sole proprietors; and in the case of a municipal advisor registered on Form MA–I (17 CFR 249.1310), annually within 90 days of the end of the calendar year.

§ 240.15Ba1–5 Consent to service of process to be furnished by non-resident municipal advisors, general partners and managing agents; legal opinion to be furnished by non-resident municipal advisors.

(a) Each non-resident municipal advisor, and each non-resident general partner or managing agent of a municipal advisor, applying for registration pursuant to Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(a)) shall, at the time of filing of the municipal advisor's application on Form MA (17 CFR 249.1300) or MA–I (17 CFR 249.1310), furnish to the Commission a written irrevocable consent and power of attorney on Form MA–NR (17 CFR 249.1330) to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, or non-resident general partner or non-resident managing agent of a municipal advisor, to enforce this Title.

(b) Any change to the name or address of each non-resident municipal advisor's, general partner's or managing agent's agent for service of process shall be communicated promptly to the Commission through amendment of the Form MA–NR (17 CFR 249.1330).

(c) Each non-resident municipal advisor, general partner and managing agent must promptly appoint a successor agent for service of process and file an amended Form MA–NR (17 CFR 249.1330) if the non-resident municipal advisor, general partner or managing agent discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the non-resident municipal advisor, general partner or managing agent.

(d) Each non-resident municipal advisor, other than a natural person, including non-resident sole proprietors, applying for registration pursuant to this section shall provide an opinion of counsel on Form MA (17 CFR 249.1300) that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of such municipal advisor as required by law and that the municipal advisor can, as a matter of law, submit to onsite inspection and examination by the Commission.

§ 240.15Ba1–6 Registration of successor to municipal advisor.

(a) In the event that a municipal advisor succeeds to and continues the business of a municipal advisor registered pursuant to Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(a)), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MA (17 CFR 249.1300), and the predecessor files a notice of withdrawal from registration on Form MA–W (17 CFR 249.1320); provided, however, that the registration of the predecessor municipal advisor will cease to be effective as the registration of the successor municipal advisor 45 days after the application for registration on Form MA is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal advisor succeeds to and continues the business of a registered predecessor municipal advisor, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor municipal advisor on Form MA (17 CFR 249.1300) to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Ba1–7 Books and records to be maintained by municipal advisors.

(a) Every person, other than a natural person, including sole proprietors, registered or required to be registered under Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4) shall make and keep true, accurate, and current the following books and records relating to its municipal advisory activities:

(1) Originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications;

(2) All check books, bank statements, cancelled checks and cash reconciliations of the municipal advisor;

(3) A copy of each version of the municipal advisor's policies and procedures, if any, that are in effect or at any time within the last five years were in effect;

(4) A copy of any document created by the municipal advisor that was material to making a recommendation to a municipal entity or obligated person or that memorializes the basis for that recommendation;

(5) All written agreements (or copies thereof) entered into by the municipal advisor with any municipal entity, employee of a municipal entity, or an obligated person or otherwise relating to the business of such municipal advisor as such;

(6) A record of the names of persons who are currently, or within the past five years were, associated with the municipal advisor; and

(7) Books and records containing a list or other record of:

(i) The names, titles, and business and residence addresses of all persons associated with the municipal advisor;

(ii) All municipal entities or obligated persons with which the municipal advisor is engaging or has engaged in municipal advisory activities in the past five years;

(iii) The name and business address of each person to whom the municipal advisor provides or agrees to provide, directly or indirectly, payment to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf; and

(iv) The name and business address of each person that provides or agrees to provide, directly or indirectly, payment to the municipal advisor to solicit a municipal entity, an employee of a municipal entity or an obligated person on its behalf.

(8) A record of the initial or annual review, as applicable, conducted by the municipal advisor of such municipal advisor's business in connection with its self-certification on Form MA (17 CFR 249.1300).

(b)(1) All books and records required to be made under this section shall be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the municipal advisor and of any predecessor shall be maintained in the principal office of the municipal advisor and preserved until at least three years after termination of the business or withdrawal from registration as a municipal advisor.

(c) A municipal advisor subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as a municipal advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing, at its principal office, Washington, DC, of the exact address where such books and records will be maintained during such period.

(d) *Electronic storage permitted.* (1) *General.* The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time on:

(i) Electronic storage media, including any digital storage medium or system that meets the terms of this section; or

(ii) Paper documents.

(2) *General requirements.* The municipal advisor must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the municipal advisor must establish and maintain procedures:

(i) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) to limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and

(iii) to reasonably ensure that any reproduction of a non-electronic record on electronic storage media is complete, true, and legible when retrieved.

(e)(1) Any book or other record made, kept, maintained, and preserved in compliance with §§ 240.17a–3 and 240.17a–4 of this chapter, rules of the Municipal Securities Rulemaking Board, or § 275.204–2 under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1), which is substantially the same as a book or other record required to be made, kept, maintained and preserved under this section, shall satisfy the requirements of this section.

(2) A record made and kept pursuant to any provision of paragraph (a) of this section that contains all the information required under any other provision of paragraph (a) of this section, need not be maintained in duplicate in order to meet the requirements of the other provisions of paragraph (a) of this section.

(f)(1) Except as provided in paragraph (f)(3) of this section, each non-resident municipal advisor, other than a natural person, including sole proprietors, registered or applying for registration pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4) shall keep, maintain, and preserve, at a place within the United States designated in a notice from such municipal advisor as provided in paragraph (f)(2) of this section, true, correct, complete, and current copies of books and records which such municipal advisor is required to make, keep current, maintain or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Securities Exchange Act of 1934.

(2) Except as provided in paragraph (f)(3) of this section, each non-resident municipal advisor subject to paragraph (f)(1) of this section shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by such municipal advisor pursuant to paragraph (f)(1) of this section are located. Each non-resident municipal advisor registered or applying for registration when this paragraph becomes effective shall file such notice within 30 days after this paragraph becomes effective. Each non-resident municipal advisor that files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.

(3) Notwithstanding the provisions of paragraphs (f)(1) and (2) of this section, a non-resident municipal advisor need not keep or preserve within the United States copies of the books and records referred to in paragraphs (f)(1) and (2) of this section, if:

(i) Such non-resident municipal advisor files with the Commission, at the time or within the period provided by paragraph (f)(2) of this section, a written undertaking, in a form acceptable to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at the Commission's principal office in Washington, DC, or at any Regional Office of the Commission designated in such demand, true, correct, complete, and current copies of any or all of the books and records which such municipal advisor is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), or any part of such books and records that may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at the Commission's principal office in Washington, DC or at any Regional

Office of the Commission specified in a demand for copies of books and records made by or on behalf of the Commission, true, correct, complete, and current copies of any or all, or any part, of the books and records that the undersigned is required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Securities Exchange Act of 1934. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with 17 CFR 240.15Ba1–7(f)(1). This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners, and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce the same.

and

(ii) Such non-resident municipal advisor furnishes to the Commission, at such municipal advisor's own expense 14 days after written demand therefor forwarded to such municipal advisor by registered mail at such municipal advisor's last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete, and current copies of any or all books and records which such municipal advisor is required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Securities and Exchange Act of 1934, or any part of such books and records that may be specified in said written demand. Such copies shall be furnished to the Commission at the Commission's principal office in Washington, DC, or at any Regional Office of the Commission which may be specified in said written demand.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The general authority citation for part 249 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Sections 249.1300, 1310, 1320 and 1330 are also issued under Pub. L. 111–203, § 975, 124 Stat. 1376, 1915–1923 (2010).

* * * * *

4. Subpart N is amended by removing § 249.1300T and adding §§ 249.1300, 249.1310, 249.1320, and 249.1330 to read as follows:

Subpart N—Forms for Registration of Municipal Advisors

Sec.

§ 249.1300 Form MA, for registration as a municipal advisor, and for amendments to registration.

The form shall be used for registration as municipal advisors by persons other than natural persons, and by sole proprietors, and for amendments to registrations pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4).

§ 249.1310 Form MA–I, for registration as a municipal advisor, and for amendments to registration.

The form shall be used for registration as municipal advisors by natural persons, and for amendments to registrations, pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4).

§ 249.1320 Form MA–W, for withdrawal from registration as a municipal advisor.

The form shall be used for filing a notice of withdrawal from registration as a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4).

§ 249.1330 Form MA–NR, for appointment of agent for service of process by non-resident municipal advisor, and non-resident general partner and non-resident managing agent of a municipal advisor.

The form shall be used for appointment of agent for service of process by a non-resident general partner and non-resident managing agent of a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4).

By the Commission.

Dated: December 20, 2010.

Elizabeth M. Murphy,

Secretary.

Note: The following Forms will not appear in the Code of Federal Regulations:

BILLING CODE 8011–01–P

FORM MA

APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION
ANNUAL UPDATE OF MUNICIPAL ADVISOR REGISTRATION
AMENDMENT OF A PRIOR APPLICATION FOR REGISTRATION

PART 1

This form must be completed by *municipal advisors* that are organized entities, including sole proprietors (referred to herein as "*municipal advisory firms*"). Natural persons applying for registration as a *municipal advisor*, including sole proprietors, must complete Form MA-I.

WARNING: Complete this form truthfully. False statements or omissions may result in denial of application, revocation of registration, or criminal prosecution. Form MA must be amended promptly upon the occurrence of certain material events, and updated at least annually, within 90 days of the end of the *municipal advisor*'s fiscal year, or, if a sole proprietor, the *municipal advisor*'s calendar year. See *General Instruction 8.* All *italicized* terms are defined or described in the Glossary to this Form.

Check the appropriate box:

This is an:

- ☐ Initial application to register as a *municipal advisor* with the *SEC.*
- ☐ *Annual update* of *municipal advisor*'s Form MA, for fiscal year ended _____, or, if a sole proprietor, for calendar year ____.
  If no changes are made in this *annual update* to information provided in the *municipal advisor*'s most recent Form MA, check here: ☐
- ☐ Amendment (other than *annual update*) to any part of the *municipal advisor*'s most recent Form MA.

Item 1 Identifying Information

A. Full legal name of the firm. (If the applicant is a sole proprietor, provide last, first, and middle names.)

_____

If full legal name has changed since the *municipal advisor*'s most recent Form MA, check here and provide the previous full legal name.

☐ _____

B. Name under which *municipal advisor-related* business is primarily conducted, if different from Item 1-A.

_____

If name under which *municipal advisor-related* business is primarily conducted has changed since the *municipal advisor*'s most recent Form MA, check here and provide the previous name under which the *municipal advisor-related* business was primarily conducted.

☐ _____

List on Section 1-B of Schedule D any additional names under which municipal advisor-related business is conducted.

C. IRS employer identification number. If the applicant is a sole proprietor and has no employer identification number, provide the applicant's social security number.

_____

D. Registrations

Was the applicant previously registered on Form MA-T as a *municipal advisor*?

☐ Yes File No. _____

☐ No

Is the applicant registered as or with any of the following?

Check all that apply. An applicant firm that does not have a CRD number, or other specified number, should enter nothing in the space provided. Such applicant should NOT provide the CRD number, or other specified number, of any of its officers, employees, or affiliates.

☐ *Municipal Advisor* *SEC* File No.: _____

☐ Municipal Securities Dealer *SEC* File No.: _____

☐ Broker-Dealer *SEC* File No.: _____ *CRD* No.: _____

☐ *Investment Adviser*

- ☐ *SEC*-Registered *SEC* File No.: _____ *CRD* No.: _____
- ☐ State Registered *CRD* No. _____

☐ Government Securities Broker-Dealer *SEC* File No.: _____ Bank Identifier _____

☐ Other *SEC* Registration (Specify) _____ *SEC* File No.: _____

☐ Another federal or state regulator (Specify) _____ Registration No.: _____

If more space is needed, list any additional registrations in Section 1-D of Schedule D.

E. *Principal Office and Place of Business*

Do not use a P.O. Box.

Address:

_____

(number and street)

_____

(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

List on Section 1-E of Schedule D any office(s) at which municipal advisor-related business is conducted other than applicant's principal office and place of business listed above.

Telephone number at this location: _____

(area code) (telephone number)

Fax number (if any) at this location: _____

(area code) (fax number)

Mailing address:

Complete this item only if mailing address is different from principal office and place of business address in Item 1-E:

_____

(number and street)

_____

(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

F. Does the applicant have one or more websites? Yes ☐ No ☐

If "yes," list all website addresses on Section 1-F of Schedule D.

G. If the applicant has a *Chief Compliance Officer,* provide his or her name and contact information:

_____
(name)

_____
(other title(s), if any)

_____ _____
(area code) (telephone number) (area code) (fax number)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____@_____
(E-mail address of *Chief Compliance Officer*)

H. Contact Person: If a *person* other than the *Chief Compliance Officer* is authorized to receive information and respond to questions about this Form, provide the name and contact information for that *person*:

_____
(name)

_____
(title)

_____ _____
(area code) (telephone number) (area code) (fax number)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____@_____
(E-mail address of contact person)

I. Does the applicant maintain, or intend to maintain, some or all of the books and records required to be kept under *MSRB* rules and *SEC* rules at a location other than the *principal office and place of business* address listed in Item 1-E? Yes ☐ No ☐

If "yes," complete Section 1-I of Schedule D.

J. Is the applicant registered with a *foreign financial regulatory authority*?
Answer "no" even if affiliated with a business that is registered with a foreign financial regulatory authority.

Yes ☐ No ☐

If "yes," complete Section 1-J of Schedule D.

K. Is the applicant affiliated with any other business entities?

Yes ☐ No ☐

If "yes," provide the names of these affiliates and any applicable registrations in Section 1-K of Schedule D.

Item 2 Form of Organization

A. Applicant's form of organization:

If this is an annual update or amendment, and the applicant's form of organization has changed, see Instruction 8 of the General Instructions.

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC) ☐ Limited Partnership (LP)
☐ Other (specify):_____

B. Month of applicant's annual fiscal year end: _____

C. The state in the U.S. or the jurisdiction outside the U.S. under which the applicant is organized:

If the applicant is a corporation or limited liability company, indicate the state or jurisdiction where the applicant is incorporated. If the applicant is a partnership, indicate the name of the state or jurisdiction under the laws of which the partnership was formed. If applicant is a sole proprietor, indicate the state or jurisdiction in which applicant resides.

If this is not an initial application for registration, and the applicant's information has changed since the applicant's most recent Form MA, see General Instruction 8.

_____

D. Date of organization: _____

E. Is the applicant a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934?

☐ Yes ☐ No

If "yes", provide applicant's CIK number: _____
(A CIK, or Central Index Key number, is assigned by the SEC to every public reporting company.)

Item 3 Successions

Is the applicant, at the time of this filing, succeeding to the business of a registered *municipal advisor*?

If this succession was previously reported on Form MA, do not report the succession again. Instead, check "No." See Instruction 1 of the General Instructions to this Form.

☐ Yes
Date of Succession: _____
(mm/dd/yyyy)

☐ No

If "yes," complete Section 3 of Schedule D.

Item 4 Information About Applicant's Business

Note: Instruction 2 of the General Instructions to this Form provides guidance for newly-formed municipal advisors completing this Item 4.

Employees

If the applicant is organized as a sole proprietorship, include the sole proprietor as an employee.

A. Approximate number of *employees* of applicant. Include full- and part-time *employees*, but do not include clerical workers: _____

B. Approximately how many of these *employees* engage in *municipal advisory activities*? *(Include employees who perform other functions in addition to engaging in municipal advisory activities.)* _____

C. Approximately how many of the *employees* who are included in the response to part B are registered representatives of a broker-dealer? _____

Approximately how many are registered representatives of an investment adviser? _____

D. Approximately how many firms and other *persons* who are not employed by the applicant and who are not otherwise *associated persons* of the applicant *solicit clients* on the applicant's behalf? *(Count a firm only once; do not count each of the firm's employees that solicits on the applicant's behalf.)*

_____

If the number entered includes firms, please list the names of these firms on Section 4D of Schedule D.

E. Does the applicant have any *employees* that also do business independently on the applicant's behalf as affiliates of the applicant?

☐ Yes ☐ No

If yes, list the names of these employees on Section 4E of Schedule D.

Clients

F. Approximately how many *clients* did the applicant serve in the context of its *municipal advisory activities* during its most-recently completed fiscal year? _____

The applicant has the following types of *clients*:
(Check all that apply.)

☐ (1) *Municipal entities*
☐ (2) Non-profit organizations (*e.g.*, 501(c)(3) organizations) who are *obligated persons*
☐ (3) Corporations or other businesses not listed above who are *obligated persons*
☐ (4) Other: _____
☐ (5) Not applicable - applicant engages only in *solicitation*; does not serve *clients* in the context of its *municipal advisory activities*.

G. Approximately how many *municipal entities* and *obligated persons* were *solicited* by the applicant on behalf of a third-party during its most-recently completed fiscal year? *(If the applicant solicits its clients in addition to serving them in the context of its municipal advisory activities, these clients should be counted in the response to this Part G even if counted in Part F.)* _____

The applicant *solicits* the following types of *persons*:
(Check all that apply.)

- ☐ (1) Public pension funds
- ☐ (2) 529 Plans
- ☐ (3) Local government investment pools
- ☐ (4) State government investment pools
- ☐ (5) Hospitals
- ☐ (6) Colleges
- ☐ (7) Other: _____
- ☐ (8) Not applicable – applicant only serves *clients;* does not engage in *solicitation* in the context of its *municipal advisory activities.*

Compensation Arrangements

H. Applicant is compensated for its advice to or on behalf of *municipal entities* or *obligated persons* with respect to *municipal financial products* or the issuance of municipal securities by:
(Check all that apply.)

- ☐ (1) Hourly charges
- ☐ (2) Fixed fees (not contingent on the issuance of municipal securities)
- ☐ (3) *Contingent fees*
- ☐ (4) Subscription fees (for a newsletter or other publications)
- ☐ (5) Other (specify): _____
- ☐ (6) Not applicable – applicant engages only in *solicitation*; does not serve *clients* in the context of its *municipal advisory activities.*

I. Applicant is compensated for its *solicitation* activities by:
(Check all that apply.)

- ☐ (1) Hourly charges
- ☐ (2) Fixed fees (not contingent on the success of *solicitations*)
- ☐ (3) *Contingent fees*
- ☐ (4) Subscription fees (for a newsletter or other publications)
- ☐ (5) Other (specify): _____
- ☐ (6) Not applicable; applicant only serves *clients*; does not engage in *solicitation* as part of its *municipal advisory activities.*

J. Does the applicant receive compensation, in the context of its *municipal advisory activities*, from anyone other than *clients*?

☐ Yes ☐ No

If yes, please explain:

_____
_____
_____

Applicant's Business Relating to Municipal Securities

K. Applicant is engaged in the following types of activities:
(Check all that apply.)

- ☐ (1) Advice concerning the issuance of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters, such as the preparation of feasibility studies, tax rate studies, appraisals and similar documents, related to an offering of municipal securities)

- ☐ (2) Advice concerning the investment of the proceeds of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments)
- ☐ (3) Advice concerning municipal escrow investments (including, without limitation, advice concerning their structure, timing, terms and other similar matters)
- ☐ (4) Advice concerning the investment of other funds of a *municipal entity* (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments)
- ☐ (5) Advice concerning *guaranteed investment contracts* (including, without limitation, advice concerning their structure, timing, terms and other similar matters)
- ☐ (6) Advice concerning the use of *municipal derivatives* (including, without limitation, advice concerning their structure, timing, terms and other similar matters)
- ☐ (7) *Solicitation* of investment advisory business from a *municipal entity* or *obligated person* (including, without limitation, municipal pension plans) on behalf of an unaffiliated broker, dealer, *municipal advisor* or *investment adviser* (e.g., third party marketers, placement agents, solicitors, and finders)
- ☐ (8) *Solicitation* of business other than investment advisory business from a *municipal entity* or *obligated person* on behalf of an unaffiliated *person* or firm (e.g., third party marketers, placement agents, solicitors, and finders)
- ☐ (9) Advice or recommendations concerning the selection of other *municipal advisors* or underwriters with respect to *municipal financial products* or the issuance of municipal securities
- ☐ (10) Brokerage of municipal escrow investments
- ☐ (11) Other (specify):_____

Item 5 Other Business Activities

A. Applicant is actively engaged in business in or as a:
(Check all that apply.)

- ☐ (1) Broker-dealer, municipal securities dealer or government securities broker or dealer
- ☐ (2) Registered representative of a broker-dealer
- ☐ (3) Commodity pool operator (whether registered or exempt from registration)
- ☐ (4) Commodity trading advisor (whether registered or exempt from registration)
- ☐ (5) Futures commission merchant
- ☐ (6) Major swap participant
- ☐ (7) Major security-based swap participant
- ☐ (8) Swap dealer or security-based swap dealer
- ☐ (9) Trust company
- ☐ (10) Real estate broker, dealer, or agent
- ☐ (11) Insurance company, broker, or agent
- ☐ (12) Banking or thrift institution (including a separately identifiable department or division of a bank)
- ☐ (13) *Investment adviser* (including financial planners)
- ☐ (14) Lawyer or law firm (Jurisdiction(s) where licensed: _____)
- ☐ (15) Accountant or accounting firm (Jurisdiction(s) where licensed: _____)
- ☐ (16) Engineering firm
- ☐ (17) Other financial product advisor (specify): _____

B. Is applicant actively engaged in any other business not listed in Part A of this Item (other than engaging in *municipal advisory activities)*? ☐ Yes ☐ No

If yes, is this other business applicant's primary business? ☐ Yes ☐ No

Also, if "yes", describe this other business on Section 5-B of Schedule D.

Item 6 Financial Industry Affiliations of *Associated Persons*

"Associated Person" herein refers to a person who is an associated person of a municipal advisor. Note that "associated person" includes employees and persons with control over the municipal advisor that do not themselves engage in municipal advisory activities, but does not include employees that are solely clerical or administrative.

Applicant has one or more *associated persons* that is a:
(Check all that apply.)

- ☐ (1) Broker-dealer, municipal securities dealer, or government securities broker or dealer
- ☐ (2) Investment company (including mutual funds)
- ☐ (3) *Investment adviser* (including financial planners)
- ☐ (4) Swap dealer
- ☐ (5) Security-based swap dealer
- ☐ (6) Major swap participant
- ☐ (7) Major security-based swap participant
- ☐ (8) Commodity pool operator (whether registered or exempt from registration)
- ☐ (9) Commodity trading advisor (whether registered or exempt from registration)
- ☐ (10) Futures commission merchant
- ☐ (11) Banking or thrift institution
- ☐ (12) Trust company
- ☐ (13) Accountant or accounting firm
- ☐ (14) Lawyer or law firm
- ☐ (15) Insurance company or agency
- ☐ (16) Pension consultant
- ☐ (17) Real estate broker or dealer
- ☐ (18) Sponsor or syndicator of limited partnerships
- ☐ (19) Engineer or engineering firm
- ☐ (20) Other *municipal advisor*

Applicant must list on Section 6 of Schedule D all *associated persons,* including foreign affiliates, that are broker-dealers, municipal securities dealers, or government securities brokers or dealers, or *investment advisers*, *municipal advisors*, registered swap dealers, banking or thrift institutions, or trust companies.

Item 7 Participation or Interest of Applicant, or of *Associated Persons* of Applicant, in *Municipal Advisory Client* Transactions

Proprietary Interest in Municipal Advisory Client Transactions

A. Does applicant or any *associated person*:

(1) buy securities or other investment or derivative products for itself from *clients* that it serves or *persons* that it has *solicited* or intends to *solicit* in the context of its *municipal advisory activities*, or sell securities it owns to such *clients*? ☐ Yes ☐ No

(2) buy or sell for itself securities (other than shares of mutual funds) or other investment or derivative products that the applicant also recommends to such *clients*?
☐ Yes ☐ No

(3) enter into derivatives contracts with such *clients*?
☐ Yes ☐ No

(4) recommend securities or other investment or derivative products to such *clients* in which applicant or any *associated person* has some other proprietary (ownership) interest (other than those mentioned in Items 7-A(1), (2) or (3) above)?

☐ Yes ☐ No

Sales Interest in Client Transactions

B. Does applicant or any *associated person*:

(1) recommend purchases of securities or derivatives to *clients* that are served by the applicant or *associated person*, or *persons* that the applicant or *associated person* has *solicited* or intends to *solicit* in the context of its *municipal advisory activities*, for which the applicant or any *associated person* serves as underwriter, general or managing partner, or purchaser representative?

☐ Yes ☐ No

(2) recommend purchases or sales of securities or derivatives to such *clients* in which applicant or any *associated person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? ☐ Yes ☐ No

Investment or Brokerage Discretion

C. Does applicant or any *associated person* have *discretionary authority* to determine the:

(1) securities or other investment or derivative products to be bought or sold for the account of a *client* that it serves or *person* that it has *solicited* or intends to *solicit* in the context of its *municipal advisory activities*?

☐ Yes ☐ No

(2) amount of securities or other investment or derivative products to be bought or sold for the account of such a *client*?

☐ Yes ☐ No

(3) broker or dealer to be used for a purchase or sale of securities or other investment or derivative products for the account of such a *client*?

☐ Yes ☐ No

If "yes," are any of the brokers or dealers *associated persons*? ☐ Yes ☐ No

(4) commission rates or other fees to be paid to a broker or dealer for such a *client*'s securities transactions or transactions in other investment or derivative products?

☐ Yes ☐ No

D. Does applicant or any *associated person* recommend brokers, dealers or *investment advisers* to *clients* that it serves or *persons* that it has *solicited* or intends to *solicit* in the context of its *municipal advisory activities*?

☐ Yes ☐ No

If "yes," are any of the brokers, dealers, or *investment advisers associated persons*?

☐ Yes ☐ No

In responding to Items 7-E and 7-F below, consider all cash and non-cash compensation that the applicant or an associated person gave or received from any person in exchange for referrals of such clients, including any bonus that is based, at least in part, on the number or amount of such referrals.

E. Does the applicant or any *associated person*, directly or indirectly, compensate any *person* for referrals of *clients* in connection with *municipal advisory activities*?

☐ Yes ☐ No

F. Does the applicant or any *associated person*, directly or indirectly, receive compensation from any *person* for referrals of *clients* in connection with *municipal advisory activities*?

☐ Yes ☐ No

Item 8 *Control Persons*

In this Item, identify every *person* that, directly or indirectly, *controls* the applicant, or that the applicant directly or indirectly *controls*.

If this is an initial application, the applicant must complete Schedule A and Schedule B. Schedule A asks for information about direct owners and executive officers. Schedule B asks for information about indirect owners. If this is an amendment updating information reported on either the Schedule A or Schedule B (or both) filed with the applicant's initial application, the applicant must also complete Schedule C.

Does any *person* not named in Item 1-A or Schedules A, B, or C, directly or indirectly, *control* the applicant's management or policies? ☐ Yes ☐ No

If yes, complete Section 8-A of Schedule D.

If any person in Schedules A, B, or C, or in Section 8-A of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, complete Section 8-B of Schedule D.

Item 9 Disclosure Information

In this Item, provide information about the applicant's disciplinary history and the disciplinary history of all associated persons of the applicant.

This information is used to determine whether to approve an application for registration, to decide whether to revoke registration, or to place limitations on the applicant's activities as a municipal advisor, and to identify potential problem areas on which to focus during on-site examinations. One event may result in the requirement to answer "yes" to more than one of the questions below.

If the answer is "yes" to any question in this Item 9, the applicant must complete the appropriate Disclosure Reporting Page ("DRP") – Criminal, Regulatory, etc. – found at the back of this application, as indicated below.

Criminal Action Disclosure

If the answer is "yes" to any question below in Part A or B below, complete a Criminal Action DRP.

Check all that apply:

A. In the past ten years, has the applicant or any *associated person*:

(1) been convicted of any *felony*, or pled guilty or nolo contendere ("no contest") to any *charge* of a *felony*, in a domestic, foreign, or military court? ☐ Yes ☐ No

(2) been *charged* with any *felony*? ☐ Yes ☐ No

The response to Item 9-A(2) may be limited to charges that are currently pending.

B. In the past ten years, has the applicant or any *associated person*:

(1) been convicted of any *misdemeanor*, or pled guilty or nolo contendere ("no contest"), in a domestic, foreign, or military court to any *charge* of a *misdemeanor* in a case *involving*: *municipal advisor-related* business, investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? ☐ Yes ☐ No

The response to the following question may be limited to charges that are currently pending:

(2) been *charged* with a *misdemeanor* listed in Item 9-B(1)? ☐ Yes ☐ No

Regulatory Action Disclosure

If the answer is "yes" to any question in Parts C-G below, complete a Regulatory Action DRP.

Check all that apply:

C. Has the *SEC* or the *CFTC* ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission? ☐ Yes ☐ No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of any *SEC* or *CFTC* regulation or statute? ☐ Yes ☐ No

(3) *found* the applicant or any *associated person* to have been a cause of the denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐ Yes ☐ No

(4) entered an *order* against the applicant or any *associated person* in connection with *municipal advisor-related* or *investment-related* activity? ☐ Yes ☐ No

(5) imposed a civil money penalty on the applicant or any *associated person*, or *ordered* the applicant or any *associated person* to cease and desist from any activity? ☐ Yes ☐ No

D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:

(1) ever *found* the applicant or any *associated person* to have made a false statement or omission, or been dishonest, unfair, or unethical? ☐ Yes ☐ No

(2) ever *found* the applicant or any *associated person* to have been *involved* in a violation of *municipal advisor-related* or *investment-related* regulations or statutes? ☐ Yes ☐ No

(3) ever *found* the applicant or any *associated person* to have been the cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐ Yes ☐ No

(4) ever entered an *order* against the applicant or any *associated person* in connection with a *municipal advisor-related* or *investment-related* activity? ☐ Yes ☐ No

(5) ever denied, suspended, or revoked the registration or license of the applicant or that of any *associated person*, or otherwise prevented the applicant or any *associated person* of the applicant, by *order*, from associating with a *municipal advisor-related* or *investment-related* business or restricted the activities of the applicant or any *associated person*? ☐ Yes ☐ No

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission? ☐ Yes ☐ No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the *SEC*)? ☐ Yes ☐ No

(3) *found* the applicant or any *associated person* to have been the cause of a denial, suspension, revocation or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐ Yes ☐ No

(4) disciplined the applicant or any *associated person* by expelling or suspending the applicant or the *associated person* from membership, barring or suspending the applicant or the *associated person* from association with other members, or by otherwise restricting the activities of the applicant or the *associated person*? ☐ Yes ☐ No

F. Has the applicant or any *associated person* ever had an authorization to act as an attorney, accountant, or federal contractor revoked or suspended? ☐ Yes ☐ No

G. Is the applicant or any *associated person* currently the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 9-C, 9-D, or 9-E.? ☐ Yes ☐ No

Civil Judicial Disclosure

If the answer is "yes" to a question below, complete a Civil Judicial Action DRP

Check all that apply:

H. (1) Has any domestic or foreign court:

(a) ever *enjoined* the applicant or any *associated person* in connection with any *municipal advisor-related* or *investment-related* activity? ☐ Yes ☐ No

(b) ever *found* that the applicant or any *associated person* was *involved* in a violation of *municipal advisor-related* or *investment-related* statutes or regulations? ☐ Yes ☐ No

(c) ever dismissed, pursuant to a settlement agreement, a *municipal advisor-related* or *investment-related* civil action brought against the applicant or any *associated person* by a state or *foreign financial regulatory authority*? ☐ Yes ☐ No

(2) Is the applicant or any *associated person* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 9-H(1)? ☐ Yes ☐ No

Item 10 Small Businesses

The *SEC* is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, the *SEC* needs to determine whether you meet the Small Business Administration's definition of "small business" for purposes of entities that provide investment and related activities. Accordingly, answer "yes" or "no," as appropriate, to Item 10-A below:

A. Did the applicant have annual receipts of less than $7 million during its most recent fiscal year (or during the time the applicant has been in business, if it has not completed its first fiscal year in business)?

☐ Yes ☐ No

B. Is the applicant affiliated with any business or organization that had annual receipts of $7 million or more during its most recent fiscal year (or during the time it has been in business, if it has not completed its first fiscal year in business)?

☐ Yes ☐ No

FORM MA

SCHEDULE A

Direct Owners and Executive Officers

1. Complete Schedule A only if submitting an initial application. Schedule A asks for information about the applicant's direct owners and executive officers. Use Schedule C to amend this information.

2. Direct Owners and Executive Officers. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, *Chief Compliance Officer*, director and any other individuals with similar status or functions;

   (b) if applicant is organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of the applicant's voting securities, unless applicant is a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of the applicant's voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (c) if the applicant is organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the applicant's capital;

   (d) in the case of a trust, a *person* that directly owns 5% or more of a class of the applicant's voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital, the trust and each trustee; and

   (e) if the applicant is organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the applicant's capital, and (ii) if managed by elected managers, all elected managers.

3. Does applicant have any indirect owners to be reported on Schedule B? ☐ Yes ☐ No

4. In the DE/FE/NP column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "NP" if the owner or executive officer is a natural person.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA - less than 5% A - 5% but less than 10% B - 10% but less than 25% C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

7.

   (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form MA, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

   (c) Complete each column.

FULL LEGAL NAME (Natural Persons: Last Name, First Name, Middle Name)	**DE/FE/NP**	**Title or Status**	**Date Title or Status Acquired**		**Ownership Code**	***Control Person***		***CRD* No. (If None: S.S. No. and Date or Birth, IRS Tax No., or Employer ID No.)**
			MM	YYYY		Yes/No	PR	

FORM MA
SCHEDULE B

Indirect Owners

1. Complete Schedule B only if applicant is submitting an initial application. Schedule B asks for information about the applicant's indirect owners; the applicant must first complete Schedule A, which asks for information about direct owners. Use Schedule C to amend this information.

2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

   (c) in the case of an owner that is a trust, the trust and each trustee; and

   (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/NP column below, enter "DE" if the indirect owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "NP" if the owner is a natural person.

5. Complete the Status column by entering the indirect owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more F - Other (general partner, trustee, or elected manager)

7.

   (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form MA, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

   (b) In the PR column, enter "PR" if the indirect owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

   (c) Complete each column.

FULL LEGAL NAME (Natural Persons: Last Name, First Name, Middle Name)	**DE/ FE/ NP**	**Entity in Which Interest is Owned**	**Status**	**Date Title or Status Acquired**		**Ownership Code**	***Control Person***		***CRD* No. (If None: S.S. No. and Date or Birth, IRS Tax No., or Employer ID No.)**
				MM	YYYY		Yes/No	PR	

FORM MA

SCHEDULE C

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.

2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are: NA - less than 5%; A - 5% but less than 10%; B - 10% but less than 25%; C - 25% but less than 50%; D - 50% but less than 75%; E - 75% or more; G - Other (general partner, trustee, or elected member)

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

FULL LEGAL NAME (Natural Persons: Last Name, First Name, Middle Name)	DE/ FE/ NP	Type of Amend-ment	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		*CRD* No. (If None: S.S. No. and Date or Birth, IRS Tax No., or Employer ID No.)
				MM	YYYY		Yes/No	PR	

5. List below all changes to Schedule B (Indirect Owners):

FULL LEGAL NAME (Natural persons: Last Name, First Name, Middle Name)	DE/ FE/ NP	Type of Amend-ment	Entity in Which Interest is Owned	Status	Date Title or Status Acquired		Ownership Code	*Control Person*		*CRD* No. (If None: S.S. No. and Date or Birth, IRS Tax No., or Employer ID No.)
					MM	YYYY		Yes/No	PR	

FORM MA
SCHEDULE D

Certain items in Part 1 of Form MA require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D.

SECTION 1-B Other Names under which *Municipal Advisor-Related* Business is Conducted

List the applicant's other business names and the jurisdictions in which they are used. A separate Schedule D must be completed for each business name..

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name _____ Jurisdictions _____

SECTION 1-D Additional Registrations of the Applicant

Indicate any additional federal or state registration, and the relevant registration number. A separate Schedule D must be completed for each such registration.

Name _____ Registration No. _____

SECTION 1-E Additional Offices at which the Applicant's *Municipal Advisor-Related* Business is Conducted

Provide the location of any additional offices at which the applicant's *municipal advisor-related* business is conducted other than applicant's *principal office and place of business*. A separate Schedule D must be completed for each such office. List only the largest five (in terms of numbers of *employees*).

Check only one box: ☐ Add ☐ Delete ☐ Amend

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

_____ _____
(area code) (telephone number) (area code) (fax number)

SECTION 1-F Website Addresses

List the applicant's website addresses. A separate Schedule D must be completed for each website address.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Website Address: _____

SECTION 1-I Location of Books and Records

Complete the following information for each location at which the applicant keeps books and records, other than its *principal office and place of business*. A separate Schedule D must be completed for each location.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of entity where books and records are kept: _____

_____

(number and street)

_____

(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

_____ _____

(area code) (telephone number) (area code) (fax number)

This is (check one): ☐ one of applicant's branch offices or affiliates.
☐ a third-party unaffiliated recordkeeper.
☐ other.

Briefly describe the books and records kept at this location.

_____

_____

_____

_____

SECTION 1-J Registration with *Foreign Financial Regulatory Authorities*

List the name, in English, of each *foreign financial regulatory authority* and country with which the applicant is registered. A separate Schedule D must be completed for each *foreign financial regulatory authority* with whom the applicant is registered.

Check only one box: ☐ Add ☐ Delete ☐ Amend

English Name of *Foreign Financial Regulatory Authority* _____

Name of Country _____

SECTION 1-K Business Affiliates of the Applicant

Provide the name of any business affiliate of the applicant and any federal or state registration of such affiliate and the registration number. A separate Schedule D must be completed for each such affiliate.

Name of Affiliate _____ Registration No. _____

SECTION 3 Successions

Complete the following information if succeeding to the business of a currently-registered *municipal advisor*. If the applicant acquired more than one *municipal advisory firm* in the succession being reported on this Form MA, a separate Schedule D must be completed for each acquired firm. See Instruction 1 of the General Instructions to this Form.

Name of Acquired *Municipal Advisory Firm* _____

☐ *Municipal Advisor* *SEC* File No.: [MA]- _____

☐ Municipal Securities Dealer *SEC* File No.: _____

☐ Broker-Dealer *SEC* File No.: _____ *CRD* No.: _____

☐ *Investment Adviser*
- ☐ *SEC*-Registered *SEC* File No.: _____ *CRD* No.: _____
- ☐ State Registered *CRD* No. _____

☐ Government Securities Broker-Dealer *SEC* File No.: _____ Bank Identifier _____

☐ Other *SEC* Registration (Specify) _____ *SEC* File No. or CIK: _____

☐ Another federal or state regulator (Specify) _____ Registration No.: _____

SECTION 4-D Firms that *Solicit Municipal Advisor Clients* on the Applicant's Behalf

Provide the name, address, and phone number of any firm that is not otherwise an *associated person* of the applicant that *solicits municipal advisor clients* on the applicant's behalf. A separate Schedule D must be completed for each such firm.

Name of Firm _____

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____ _____
(area code) (telephone number) (area code) (fax number)

SECTION 5-B Description of Primary Business (when primary business is not business as *municipal advisor*)

Describe the applicant's primary business (not the applicant's *municipal advisor-related* business):

_____
_____
_____
_____

SECTION 6 Financial Industry Affiliations

The following information must be completed for each *associated person* that is a *municipal advisor*, broker-dealer, municipal securities dealer, government securities broker or dealer, *investment adviser*, registered swap dealer, banking or thrift institution, or trust company, foreign or domestic. A separate Schedule D must be completed for each listed *associated person*.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Legal Name of *Associated Person*: _____

Primary Business Name of *Associated Person*: _____

Associated person is a (check all that apply):

☐ Broker-Dealer, Municipal Securities Dealer, or Government Securities Broker or Dealer

☐ Government Securities Broker or Dealer

☐ Swap Dealer ☐ Pension Consultant

☐ Banking or Thrift Institution ☐ Trust Company

☐ Investment Company (including mutual funds) ☐ *Investment Adviser* (including financial planners)

☐ Security-Based Swap Dealer ☐ Major Swap Participant ☐ Major Security-Based Swap Participant

☐ Futures Commission Merchant ☐ Commodity Pool Operator (whether registered or exempt from registration)

☐ Commodity Trading Advisor (whether registered or exempt from registration) ☐ Accountant or Accounting Firm

☐ Sponsor or Syndicator of Limited Partnerships ☐ Lawyer or Law Firm

☐ Engineer or Engineering Firm

☐ Other *Municipal Advisor*

1. Does the applicant *control* or is it *controlled* by the *associated person*? ☐ Yes ☐ No

2. Are the applicant and the *associated person* under common *control*? ☐ Yes ☐ No

3. (a) Is the *associated person* registered with a *foreign financial regulatory authority*? ☐ Yes ☐ No
   (b) If the answer to 3(a) is "yes", list the name, in English, of each *foreign financial regulatory authority* and country with which the *associated person* is registered.

   _____

SECTION 8 ***Control Persons***

A. A separate Schedule D must be completed for each *control person* not named in Item 1-A. or Schedules A, B, or C that directly or indirectly *controls* the applicant's management or policies.

Check only one box: ☐ Add ☐ Delete ☐ Amend

If *control person* is a firm or organization:

Name_____

☐ *Municipal Advisor*
Effective Date_____ mm/dd/yyyy
SEC File No.: _____
Termination Date _____ mm/dd/yyyy

☐ Municipal Securities Dealer
Effective Date _____ mm/dd/yyyy
SEC File No.: _____
Termination Date _____ mm/dd/yyyy

☐ Broker-Dealer
Effective Date _____ mm/dd/yyyy
SEC File No.: _____ *CRD* No.: _____
Termination Date _____ mm/dd/yyyy

☐ *Investment Adviser*

☐ *SEC*-Registered
Effective Date _____ mm/dd/yyyy
SEC File No.: _____ *CRD* No.: _____
Termination Date _____ mm/dd/yyyy

☐ State Registered
Effective Date _____ mm/dd/yyyy
CRD No. _____
Termination Date _____ mm/dd/yyyy

☐ Government Securities Broker-Dealer
Effective Date _____ mm/dd/yyyy
SEC File No.: _____ Bank Identifier _____
Termination Date _____ mm/dd/yyyy

☐ Other *SEC* Registration (Specify) _____
Effective Date _____ mm/dd/yyyy
SEC File No. or CIK: _____
Termination Date _____ mm/dd/yyyy

☐ Another federal or state regulator (Specify) _____
Effective Date _____ mm/dd/yyyy
Registration No.: _____
Termination Date _____ mm/dd/yyyy

Business Address:

_____

(number and street)

_____

(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

If *control person* is a natural person:

Name (Last, First, Middle) _____

CRD Number (if any) _____ Effective Date _____ Termination Date _____

mm/dd/yyyy mm/dd/yyyy

Business Address:

_____

(number and street)

_____

(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

Briefly describe the nature of the *control*:

_____

_____

_____

B. If any *person* named in Schedules A, B, or C or in Section 8-A of this Schedule D is a public reporting company under Section 12 or 15(d) of the Securities Exchange Act of 1934, provide the information below. A separate Schedule D must be completed for each public reporting company.

(1) Full legal name of the public reporting company: _____

(2) The public reporting company's CIK number (Central Index Key number that the *SEC* assigns to each reporting company):

_____

MISCELLANEOUS

The space below may be used to explain a response to an Item or to provide any other information.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

CRIMINAL ACTION DISCLOSURE REPORTING PAGE (MA)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP MA) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to Items 9-A or 9-B of Form MA.

Check item(s) being responded to: ☐ 9-A(1) ☐ 9-A(2) ☐ 9-B(1) ☐ 9-B(2)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same *charge* arising out of the same event(s) should be reported on the same DRP. Use this DRP to report all *charges* arising out of the same event. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. One event may result in more than one affirmative answer to the items listed above.

PART I

Check all that apply:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ Applicant
☐ Applicant and one or more *associated persons*
☐ One or more of applicant's *associated persons*

If this DRP is being filed for the applicant, and it is an amendment that seeks to remove a DRP concerning the applicant from the record, the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error.

If this DRP is being filed for an *associated person*:

This *associated person* is: ☐ a firm ☐ a natural person
The *associated person* is: ☐ registered with the *SEC* ☐ not registered with the *SEC*

Full name of the *associated person* (including, for natural persons, last, first and middle names):

_____

If the *associated person* has a *CRD* number, provide that number. _____

If this is an amendment that seeks to remove a DRP concerning the *associated person*, the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

B. If the *municipal advisor* or *associated person* is registered through the *IARD* system or *CRD* system, or if the *municipal advisor* previously registered with the *SEC* on Form MA-T, has the *municipal advisor* or *associated person* previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or has the *municipal advisor* filed disclosure on Form MA-T, for the event that contains the information required by this DRP? ☐ Yes ☐ No

If the answer is "Yes," no other information on this DRP must be provided.
NOTE: The completion of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

PART II

1. If *charge*(s) were brought against a firm or organization over which the applicant or an *associated person* exercised *control*:

Enter the firm or organization's name _____

Was the firm or organization engaged in a *municipal advisor-related* business? ☐ Yes ☐ No

What was the relationship of the applicant with the firm or organization? (In the case of an *associated person*, include any position or title with the firm or organization.)

_____

2. Formal *charge*(s) were brought in: (include the name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, and Docket/Case number).

Name of court: _____
Location: _____
Docket/Case number: _____

3. Event Disclosure Detail (Use this for both organizational and individual *charges*.)

A. Date First *Charged* (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

B. Event Disclosure Detail (include *charge*(s)/*charge* Description(s), and for each *charge* provide: (1) number of counts, (2) *felony* or *misdemeanor*, (3) plea for each *charge*, and (4) product type if *charge* is *municipal advisor-related* or *investment-related*).

_____
_____

C. Did any of the *charge*(s) within the event *involve* a *felony*? ☐ Yes ☐ No

D. Current status of the event? ☐ Pending ☐ On Appeal ☐ Final

E. Event status date (Complete unless status is pending) (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

4. Disposition Disclosure Detail: Include for each *charge* (a) Disposition Type (e.g., convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc.), (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.

_____
_____
_____
_____

5. Provide a brief summary of circumstances leading to the *charge*(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the *charge*(s) occurred. (The response must fit within the space provided.)

_____
_____
_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (MA)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP MA) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to Items 9-C, 9-D, 9-E, 9-F or 9-G of Form MA.

Check item(s) being responded to: ☐ 9-C(1) ☐ 9-C(2) ☐ 9-C(3) ☐ 9-C(4) ☐ 9-C(5) ☐ 9-D(1) ☐ 9-D(2) ☐ 9-D(3) ☐ 9-D(4) ☐ 9-D(5) ☐ 9-E(1) ☐ 9-E(2) ☐ 9-E(3) ☐ 9-E(4) ☐ 9-F ☐ 9-G

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 9-C, 9-D, 9-E, 9-F or 9-G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

PART I

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more of the applicant's *associated person*(s)
☐ One or more of applicant's *associated person*(s)

If this DRP is being filed for the applicant, and it is an amendment that seeks to remove a DRP concerning the applicant from the record, the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error.

If this DRP is being filed for an *associated person*:

This *associated person* is: ☐ a firm ☐ a natural person
The *associated person* is: ☐ registered with the *SEC* ☐ not registered with the *SEC*

Full name of the *associated person* (including, for natural persons, last, first and middle names):

_____

If the *associated person* has a *CRD* number, provide that number. _____

If this is an amendment that seeks to remove a DRP concerning the *associated person*, the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

C. If the *municipal advisor* or *associated person* is registered through the *IARD* system or *CRD* system, or if the *municipal advisor* previously registered with the *SEC* on Form MA-T, has the *municipal advisor* or *associated person* previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or has the *municipal advisor* filed disclosure on Form MA-T, for the event that contains the information required by this DRP? ☐ Yes ☐ No

If the answer is "Yes," no other information on this DRP must be provided.
NOTE: The completion of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

PART II

1. Regulatory Action was initiated by:

☐ *SEC* ☐ Other Federal Authority ☐ State ☐ *SRO* ☐ Foreign Authority

(Full name of regulator, *foreign financial regulatory authority*, federal authority, state or *SRO*)

_____

_____

2. Principal Sanction (check appropriate item):

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

_____

_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

4. Docket/Case Number: _____

5. *Associated person*'s Employing Firm when activity occurred which led to the regulatory action (if applicable):

_____

_____

6. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

_____

_____

7. Describe the allegations related to this regulatory action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, to whom the regulatory action was appealed (*SEC*, *SRO*, Federal or State Court) and date appeal filed:

_____

_____

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved (check appropriate item):

☐ Acceptance, Waiver & Consent (AWC) ☐ Dismissed ☐ Vacated
☐ Consent ☐ *Order* ☐ Withdrawn
☐ Decision ☐ Settled ☐ Other _____
☐ Decision & *Order* of Offer of Settlement ☐ Stipulation and Consent

11. Resolution Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $_____ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions *Ordered*:

_____

_____

_____

_____

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against the applicant or an *associated person*, date paid and if any portion of penalty was waived:

_____

_____

_____

_____

_____

_____

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates.

_____

_____

_____

_____

_____

_____

_____

_____

_____

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (MA)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP MA) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 9-H. of Form MA.

Check item(s) being responded to: ☐ 9-H(1)(a) ☐ 9-H(1)(b) ☐ 9-H(1)(c) ☐ 9-H(2)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 9-H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more of the applicant's *associated person*(s)
☐ One or more of applicant's *associated person*(s)

If this DRP is being filed for the applicant, and it is an amendment that seeks to remove a DRP concerning the applicant from the record, the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error.

If this DRP is being filed for an *associated person*:

This *associated person* is: ☐ a firm ☐ a natural person
The *associated person* is: ☐ registered with the *SEC* ☐ not registered with the *SEC*

Full name of the *associated person* (including, for natural persons, last, first and middle names):

_____

If the *associated person* has a *CRD* number, provide that number. _____

If this is an amendment that seeks to remove a DRP concerning the *associated person*, the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

D. If the *municipal advisor* or *associated person* is registered through the *IARD* system or *CRD* system, or if the *municipal advisor* previously registered with the *SEC* on Form MA-T, has the *municipal advisor* or *associated person* previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or has the *municipal advisor* filed disclosure on Form MA-T, for the event that contains the information required by this DRP? ☐ Yes ☐ No

If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority*, *SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

2. Principal Relief Sought (check appropriate item):

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

_____

_____

3. Filing Date of Court Action (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

4. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

_____

_____

5. Formal Action was brought in (include the name of the Federal, State or Foreign Court, Location of Court - City or County and State or Country, and Docket/Case Number):

_____

6. *Associated person*'s Employing Firm when activity occurred which led to the civil judicial action (if applicable):

_____

_____

7. Describe the allegations related to this civil action (the response must fit within the space provided):

_____

_____

_____

_____

_____

_____

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, court to which the action was appealed (provide name of the court) and Date Appeal Filed (MM/DD/YYYY):

_____

_____

10. If pending, date notice/process was served (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other _____

12. Resolution Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

13. Resolution Detail:

A. Were any of the following Sanctions *Ordered* or Relief Granted (check appropriate items)?

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $_____ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions *Ordered*:

_____

_____

_____

_____

C. Sanction detail: If suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against the applicant or an *associated person*, date paid and if any portion of penalty was waived:

_____

_____

_____

_____

_____

_____

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above.

_____

_____

_____

_____

_____

_____

_____

_____

Form MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

DOMESTIC MUNICIPAL ADVISOR EXECUTION PAGE

You must complete the following execution page to Form MA. This execution page must be signed and attached to your initial application for *SEC* registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form MA, you, the undersigned advisor, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business*, as your agents to receive service, and agree that such *persons* may be served any process, pleadings, subpoenas, or other papers in (a) any *investigation* or administrative *proceeding* conducted by the *Commission* that relates to the applicant or about which the applicant may have information; and (b) any civil suit or action brought against the applicant or to which the applicant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, where the *investigation*, *proceeding* or cause of action arises out of or relates to or concerns *municipal advisory activities* of the *municipal advisor*. The applicant stipulates and agrees that any such civil suit or action or administrative *proceeding* may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

Signature

I, the undersigned, sign this Form MA on behalf of, and with the authority of, the *municipal advisor*. The *municipal advisor* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA as a free and voluntary act.

I certify that the advisor's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal regulatory representatives.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Advisor *CRD* Number: _____

DOMESTIC MUNICIPAL ADVISOR EXECUTION PAGE 2 OF 2

Self-Certification

I, the undersigned, sign this self-certification on behalf of and with the authority of the *municipal advisor*.

The *municipal advisor* and I both certify that the *municipal advisor* and every natural person associated with it has met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a *municipal advisor* and natural persons associated with it, required by the *Commission*, the *MSRB* or any other relevant self-regulatory organization.

The *municipal advisor* and I certify that the *municipal advisor* has conducted an initial or annual review, as applicable, of the *municipal advisor*'s business and has reasonably determined that the municipal advisor: 1) can carry out the activities described in the items that are checked in Item 4.K (Applicant's Business Relating to Municipal Securities) of this form; 2) can comply with all applicable regulatory obligations; and 3) has met such regulatory obligations during the last year (or such shorter period if this is an initial application for registration). For these purposes, such applicable regulatory obligations are obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the *MSRB*, or any other relevant self-regulatory organization. The *municipal advisor* has documented this review process and will maintain all documents relating to such review in accordance with rule 15Ba1-7(a)(8) under the Exchange Act.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Advisor *CRD* Number: _____

Form MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

NON-RESIDENT MUNICIPAL ADVISOR EXECUTION

You must complete the following execution page to Form MA. You must also complete Form MA-NR. This execution page must be signed and attached to your initial application for *SEC* registration and all amendments to registration.

Non-Resident Municipal Advisor Undertaking Regarding Books and Records

By signing this Form MA, you agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the *Commission*, or at any one of its offices in the United States, as specified by the *Commission*, correct, current, and complete copies of any or all records that you are required to maintain by law. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form MA on behalf of, and with the authority of, the *non-resident municipal advisor*. The *municipal advisor* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA as a free and voluntary act.

I certify that the *municipal advisor*'s books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal regulatory representatives. Further, attached as an exhibit to this Form MA is an opinion of counsel that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of such municipal advisor, as required by law, and that the municipal advisor can, as a matter of law, submit to onsite inspection and examination by the Commission.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Advisor *CRD* Number: _____

Self-Certification

I, the undersigned, sign this self-certification on behalf of and with the authority of the *municipal advisor*.

The *municipal advisor* and I both certify that the *municipal advisor* and every natural person associated with it has met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a *municipal advisor* and natural persons associated with it, required by the *Commission*, the *MSRB* or any other relevant self-regulatory organization.

The *municipal advisor* and I certify that the *municipal advisor* has conducted an initial or annual review, as applicable, of the *municipal advisor*'s business and has reasonably determined that the municipal advisor: 1) can carry out the activities described in the items that are checked in Item 4.K (Applicant's Business Relating to Municipal Securities) of this form; 2) can comply with all applicable regulatory obligations; and 3) has met such regulatory obligations during the last year (or such shorter period if this is an initial application for registration). For these purposes, such applicable regulatory obligations are obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the *MSRB*, or any other relevant self-regulatory organization. The *municipal advisor* has documented this review process and will maintain all documents relating to such review in accordance with rule 15Ba1-7(a)(8) under the Exchange Act.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Advisor *CRD* Number: _____

FORM MA-I

APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION FOR NATURAL PERSONS

PART 1

This form must be completed by all *municipal advisors* who are natural persons, including *employees* of *municipal advisors* that are organized entities (referred to herein as "*municipal advisory firms*") and sole proprietors (together, "*natural person municipal advisors*"). A *municipal advisory firm* applying for registration as a *municipal advisor* must complete Form MA. A sole proprietor must complete both Form MA and this Form MA-I.

WARNING: Complete this form truthfully. False statements or omissions may result in denial of application, revocation of registration, or criminal prosecution. Form MA-I must be amended whenever any information previously provided becomes inaccurate. See *General Instruction 9*. All *italicized* terms are defined or described in the Glossary to this Form.

Check the appropriate box:

This is an:

- ☐ Initial application to register as a *municipal advisor* with the *SEC*.
- ☐ Amendment to the *municipal advisor*'s most recent Form MA-I.
- ☐ *Municipal advisor*'s annual self-certification.

Item 1 Identifying Information

Note: If this is an amendment to change identifying information regarding the applicant in part A below, check this box ☐

A. The Applicant

Full Legal Name:
First: _____ Middle: _____ Last: _____ Suffix: ___
Individual *CRD* No.: _____ SSN: _____

B. The Applicant's Municipal Advisory Firm

Name of *municipal advisory firm* with which applicant is employed:

_____

Most recent date employment with this *municipal advisory firm* commenced (MM/DD/YYYY): _____
Does the applicant have an independent contractor relationship with the above-named firm? ☐ Yes ☐ No

Municipal Advisory Firm's Registration Information:

Check all that apply:

- ☐ *Municipal Advisor* *SEC* File No.: _____
- ☐ Municipal Securities Dealer *SEC* File No.: _____
- ☐ Broker-Dealer *SEC* File No.: _____ *CRD* No.: _____
- ☐ *Investment Adviser*
  - ☐ *SEC*-Registered *SEC* File No.: _____ *CRD* No.: _____
  - ☐ State Registered *CRD* No. _____
- ☐ Government Securities Broker-Dealer *SEC* File No.: _____ Bank Identifier _____

☐ Other *SEC* Registration (Specify) _____ *SEC* File No. or CIK: _____

Enter the following information for each office of the *municipal advisory firm* where the *natural person municipal advisor* will be physically located, and supervised from, as applicable:

Office

☐ Located At ☐ Supervised From
Start Date: _____ End Date: _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Private Residence Check Box: If the Office of Employment address is a private residence, check this box. ☐

Item 2 Other Names

Enter the following information for all other names that you have used or are using, or by which you are known or have been known, other than your legal name, since the age of 18. This space should include, for example, nicknames, aliases, and names used before or after marriage.

First Name: _____ Middle Name: _____ Last Name: _____ Suffix: ___

Item 3 Residential History

Starting with the current address, enter the following information for all residential addresses for the past 5 years. Leave no gaps greater than three months between addresses. Report changes in an amendment as they occur.

Current Address:
From (MM/YYYY): _____ To (MM/YYYY): _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Prior Address:
From (MM/YYYY): _____ To (MM/YYYY): _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Item 4 Employment History

Provide complete employment history for the past 10 years. Include the *municipal advisory firm* noted in Item 1. Enter the following information for each employer. Account for all time, leaving no gaps longer than three months, including full and part-time employment, self-employment, military service, and homemaking. Also include statuses such as unemployed, full-time education, extended travel, or other similar statuses.

Report changes in an amendment as they occur.

Current Employer:
From (MM/YYYY): _____ To (MM/YYYY): _____
Name of *Municipal Advisory Firm* or Company:
_____
City: _____ State: _____ Country: _____
Municipal Advisor-Related Business? ☐ Yes ☐ No
Investment-Related Business? ☐ Yes ☐ No
Position Held: _____

Prior to the Above:

From (MM/YYYY): _____ To (MM/YYYY): _____

Name of *Municipal Advisory Firm* or Company:

_____

City: _____ State: _____ Country: _____

Municipal Advisor-Related Business? ☐ Yes ☐ No

Investment-Related Business? ☐ Yes ☐ No

Position Held: _____

Item 5 Other Business

Are you currently engaged in any other business either as a proprietor, partner, officer, director, *employee*, trustee, agent or otherwise? ☐ Yes ☐ No

If yes, please enter the following details for each other business below:

Other Business:

Start Date (MM/YYYY): _____

Name of Business: _____

Street Address 1: _____

Street Address 2: _____

City: _____ State: _____ Country: _____

Municipal Advisor-Related Business? ☐ Yes ☐ No

Investment-Related Business? ☐ Yes ☐ No

Nature of Business: _____

Position/Title/Relationship: _____

Approximate No. of Hours / Month: _____

Description of Duties:

Item 6 Disclosure Questions

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES," COMPLETE DETAILS OF ALL EVENTS OR *PROCEEDINGS* ON THE APPROPRIATE DISCLOSURE REPORTING PAGES IN PART II.

Refer to the Glossary for definitions or descriptions of italicized terms.

	YES	NO
CRIMINAL ACTION DISCLOSURE		
Item 6A.		
(1) Have you ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony?*	☐	☐
(b) been *charged* with any *felony*?	☐	☐
(2) Based upon activities that occurred while you exercised *control* over it, has an organization ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *felony*?	☐	☐
(b) been *charged* with any *felony*?	☐	☐
Item 6B.		
(1) Have you ever:		

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: *municipal advisory activities* or a *municipal advisor-related* or *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(b) been *charged* with a *misdemeanor* specified in 6B(1)(a)?	☐	☐
(2) Based upon activities that occurred while you exercised *control* over it, has an organization ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to a *misdemeanor* specified in 6B(1)(a)?	☐	☐
(b) been *charged* with a *misdemeanor* specified in 6B(1)(a)?	☐	☐

REGULATORY ACTION DISCLOSURE	YES	NO
Item 6C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* you to have made a false statement or omission?	☐	☐
(2) *found* you to have been *involved* in a violation of its regulations or statutes?	☐	☐
(3) *found* you to have been the cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* business or *investment-related* business to operate?	☐	☐
(4) entered an *order* against you in connection with *municipal advisor-related* or *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on you, or *ordered* you to cease and desist from any activity?	☐	☐
(6) *found* you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or *found* you to have been unable to comply with any provision of such Act, rule or regulation?	☐	☐
(7) *found* you to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?	☐	☐
(8) *found* you to have failed reasonably to supervise another *person* subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?	☐	☐

Item 6D.

(1) Has any other federal regulatory agency or any state regulatory agency or *foreign financial regulatory authority* ever:

(a) *found* you to have made a false statement or omission or been dishonest, unfair or unethical? ☐ ☐

(b) *found* you to have been *involved* in a violation of *municipal advisor-related* or *investment-related* regulation(s) or statute(s)? ☐ ☐

(c) *found* you to have been a cause of the denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or *investment-related* business to operate? ☐ ☐

(d) entered an *order* against you in connection with a *municipal advisor-related* or *investment-related* activity? ☐ ☐

(e) denied, suspended, or revoked your registration or license or otherwise, by *order*, prevented you from associating with a *municipal advisor-related* or *investment-related* business or restricted your activities? ☐ ☐

(2) Have you been subject to any final *order* of a state securities commission (or any agency or office performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate *federal banking agency,* or the National Credit Union Administration, that:

(a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or ☐ ☐

(b) constitutes a final *order* based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? ☐ ☐

6E.

Has any *self-regulatory organization* ever:

(1) *found* you to have made a false statement or omission? ☐ ☐

(2) *found* you to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)? ☐ ☐

(3) *found* you to have been the cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or *investment-related* business to operate? ☐ ☐

(4) disciplined you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities? ☐ ☐

(5) *found* you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or *found* you to have been unable to comply with any provision of such Act, rule or regulation? ☐ ☐

(6) *found* you to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? ☐ ☐

(7) *found* you to have failed reasonably to supervise another *person* subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? ☐ ☐

6F.
Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended? ☐ ☐

6G.
Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or *proceeding* that could result in a "yes" answer to any part of 6C, D or E? (*If "yes," complete the Regulatory Action Disclosure Reporting Page.)* ☐ ☐

(2) *investigation* that could result in a "yes" answer to any part of 6A, B, C, D or E? *(If "yes," complete the Investigation Disclosure Reporting Page.)* ☐ ☐

CIVIL JUDICIAL ACTION DISCLOSURE	YES	NO

6H.
(1) Has any domestic or foreign court ever:

(a) *enjoined* you in connection with any *municipal advisor-related* or *investment-related* activity? ☐ ☐

(b) *found* that you were *involved* in a violation of any *municipal advisor-related* or *investment-related* statute(s) or regulation(s)? ☐ ☐

(c) dismissed, pursuant to a settlement agreement, a *municipal advisor-related* or *investment-related* civil action brought against you by a state or *foreign financial regulatory authority?* ☐ ☐

(2) Are you named in any pending *municipal advisor-related* or *investment-related* civil action that could result in a "yes" answer to any part of 6H(1)? ☐ ☐

CUSTOMER COMPLAINT/ARBITRATION/CIVIL LITIGATION DISCLOSURE	YES	NO

6I.
(1) Have you ever been the subject of a *municipal advisor-related* or *investment-related,* consumer-initiated (written or oral) complaint which alleged that you were *involved* in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices, and which:

(a) is still pending, or; ☐ ☐

(b) was settled? ☐ ☐

(2) Have you ever been the subject of a *municipal advisor-related* or *investment-related,* consumer-initiated arbitration or civil litigation which alleged that you were *involved* in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices, and which:

(a) is still pending, or; ☐ ☐

(b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;	☐	☐
(c) was settled?	☐	☐

TERMINATION DISCLOSURE	YES	NO
6J. Have you ever voluntarily *resigned*, been discharged or permitted to *resign* after allegations were made that accused you of:		
(1) violating *municipal advisor-related* or *investment-related* statutes, regulations, rules, or industry standards of conduct?	☐	☐
(2) fraud or the wrongful taking of property?	☐	☐
(3) failure to supervise in connection with *municipal advisor-related* or *investment-related* statutes, regulations, rules or industry standards of conduct?	☐	☐

FINANCIAL DISCLOSURE	YES	NO
6K. Within the past 10 years:		
(1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?	☐	☐
(2) based upon events that occurred while you exercised *control* over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?	☐	☐
(3) based upon events that occurred while you exercised *control* over it, has a broker or dealer been the subject of an involuntary bankruptcy petition, or had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
6L. Has a bonding company ever denied, paid out on, or revoked a bond for you?	☐	☐
6M. Do you have any unsatisfied judgments or liens against you?	☐	☐

Item 7 Signature and Self-Certification

Signature

The *municipal advisor* consents that service of any civil action brought by, or notice of any *proceeding* before, the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *municipal advisor*'s *municipal advisory activities* may be given by registered or certified mail or confirmed telegram to the *municipal advisor*'s address given in Item 1. To the extent that the *municipal advisor* is a *non-resident municipal advisor*, the *municipal advisor* must also complete Form MA-NR.

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-I, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA-I Execution Page as a free and voluntary act.

Date: _____

Full Legal Name of *Municipal Advisor*: _____

By: _____
(signature)

Title: _____

Self-Certification

I, the undersigned, certify that:

I have 1) sufficient qualifications, training, experience, and competence to effectively carry out my designated functions; 2) met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor, required by the *Commission*, the *MSRB* or any other relevant self-regulatory organization; and 3) the necessary understanding of, and ability to comply with, all applicable regulatory obligations. For these purposes, such applicable regulatory obligations are obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the *MSRB*, or any other relevant self-regulatory organization.

Date: _____

Full Legal Name of *Municipal Advisor*: _____

By: _____
(signature)

Title: _____

Warning: Intentional misstatements or omissions of fact constitute Federal criminal violations. See, 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

PART 2: DISCLOSURE REPORTING PAGES (DRPs)

CRIMINAL ACTION DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6A and 6B*** on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":

☐ **6A(1)(a)**	☐ **6A(1)(b)**	☐ **6A(2)(a)**	☐ **6A(2)(b)**
☐ **6B(1)(a)**	☐ **6B(1)(b)**	☐ **6B(2)(a)**	☐ **6B(2)(b)**

Use this Disclosure Form to report all *charges* arising out of the same event. One event may result in more than one affirmative answer to the above items. Multiple counts of the same *charge* arising out of the same event should be reported on the same Disclosure Form. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate Disclosure Forms.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided electronically if not previously submitted.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No

If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

1. If *charge*(s) were brought against an organization over which you exercise(d) *control*:
A. Organization Name:_____
B. *Municipal Advisor-Related* or *Investment-Related* business? ☐ Yes ☐ No
C. Position, title or relationship:_____

2. Formal action was brought in:
☐ Federal Court
☐ State Court
☐ Foreign Court
☐ Military Court
☐ Other: _____

A. Name of Court:_____
B. Location of Court (City or County and State or Country):_____
C. Docket/Case#:_____

3. Event Status:
A. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final
B. Event Status Date (complete unless status is pending) (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

4. Event and Disposition Disclosure Detail (Use this for both organizational and individual *charges*.):
A. Date First *Charged* (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

CRIMINAL ACTION DISCLOSURE (CONT.)

B. Event and Disposition Detail:

***Charge* Details (complete every space for each *charge*)**
Formal *Charge*/Description:

No. of Counts: _____
Felony or *Misdemeanor*: ☐ *Felony* ☐ *Misdemeanor*
Plea for each *Charge*: _____

Disposition of *Charge*:
☐ Acquitted ☐ Dismissed ☐ Pre-trial intervention
☐ Amended ☐ *Found* not guilty ☐ Reduced
☐ Convicted ☐ Pled guilty ☐ Other (requires explanation)
☐ Deferred Adjudication ☐ Pled not guilty
Explanation:

Date of Amended *Charge*, if applicable: _____

If original *charge* was amended or reduced, specify new *charge* (i.e., list amended *charge* or reduced *charge*):
No. of Counts (for amended or reduced *charge*): _____
Specify if amended or reduced *charge* is a *Felony* or *Misdemeanor*: ☐ *Felony* ☐ *Misdemeanor*
Plea for each amended or reduced *Charge*: _____

Disposition of amended or reduced *Charge*:
☐ Acquitted ☐ Dismissed ☐ Pre-trial intervention
☐ Amended ☐ *Found* not guilty ☐ Reduced
☐ Convicted ☐ Pled guilty ☐ Other (requires explanation)
☐ Deferred Adjudication ☐ Pled not guilty
Explanation:

***Charge* Details (complete every space for each *charge*)**
Formal *Charge*/Description:

No. of Counts: _____
Felony or *Misdemeanor*: ☐ *Felony* ☐ *Misdemeanor*
Plea for each *Charge*: _____

Disposition of *Charge*:
☐ Acquitted ☐ Dismissed ☐ Pre-trial intervention
☐ Amended ☐ *Found* not guilty ☐ Reduced
☐ Convicted ☐ Pled guilty ☐ Other (requires explanation)
☐ Deferred Adjudication ☐ Pled not guilty
Explanation:

Date of Amended *Charge*, if applicable: _____
If original *charge* was amended or reduced, specify new *charge* (i.e., list amended *charge* or reduced *charge*):

No. of Counts (for amended or reduced *charge*): _____
Specify if amended or reduced *charge* is a *Felony* or *Misdemeanor*: ☐ *Felony* ☐ *Misdemeanor*
Plea for each amended or reduced *Charge*: _____

CRIMINAL ACTION DISCLOSURE (CONT.)

Disposition of amended or reduced *Charge*:

☐ Acquitted ☐ Dismissed ☐ Pre-trial intervention
☐ Amended ☐ *Found* not guilty ☐ Reduced
☐ Convicted ☐ Pled guilty ☐ Other (requires explanation)
☐ Deferred Adjudication ☐ Pled not guilty

Explanation:

***Charge* Details (complete every space for each *charge*)**
Formal *Charge*/Description:

No. of Counts: _____
Felony or *Misdemeanor*: ☐ *Felony* ☐ *Misdemeanor*
Plea for each *Charge*: _____

Disposition of *Charge*:

☐ Acquitted ☐ Dismissed ☐ Pre-trial intervention
☐ Amended ☐ *Found* not guilty ☐ Reduced
☐ Convicted ☐ Pled guilty ☐ Other (requires explanation)
☐ Deferred Adjudication ☐ Pled not guilty

Explanation:

Date of Amended *Charge*, if applicable: _____

If original *charge* was amended or reduced, specify new *charge* (i.e., list amended *charge* or reduced *charge*):
No. of Counts (for amended or reduced *charge*): _____
Specify if amended or reduced *charge* is a *Felony* or *Misdemeanor*: ☐ *Felony* ☐ *Misdemeanor*
Plea for each amended or reduced *Charge*: _____

Disposition of amended or reduced *Charge*:

☐ Acquitted ☐ Dismissed ☐ Pre-trial intervention
☐ Amended ☐ *Found* not guilty ☐ Reduced
☐ Convicted ☐ Pled guilty ☐ Other (requires explanation)
☐ Deferred Adjudication ☐ Pled not guilty

Explanation:

C. Date of Disposition (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

D. Sentence/Penalty; Duration (if suspension, probation, etc): Start Date of Penalty: (MM/DD/YYYY); End date of Penalty: (MM/DD/YYYY); If Monetary penalty/fine - Amount paid; Date monetary/penalty fine paid: (MM/DD/YYYY) if not exact, provide explanation.

5. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the *charge*(s) as well as the current status or final disposition. Your information must fit within the space provided.

REGULATORY ACTION DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6C, 6D, 6E, 6F and 6G(1)*** on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":

☐**6C(1)**	☐**6D(1)(a)**	☐**6E(1)**	☐**6F**
☐**6C(2)**	☐**6D(1)(b)**	☐**6E(2)**	
☐**6C(3)**	☐**6D(1)(c)**	☐**6E(3)**	☐**6G(1)**
☐**6C(4)**	☐**6D(1)(d)**	☐**6E(4)**	
☐**6C(5)**	☐**6D(1)(e)**	☐**6E(5)**	
☐**6C(6)**	☐**6D(2)(a)**	☐**6E(6)**	
☐**6C(7)**	☐**6D(2)(b)**	☐**6E(7)**	
☐**6C(8)**			

One matter may result in more than one affirmative answer to the above items. Use a single Disclosure Form to report details to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate Disclosure Form.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No
If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

1. Regulatory Action initiated by:
A. (Select appropriate item):

☐ *SEC*	☐ Other Federal Agency	☐ Jurisdiction	☐ *SRO*	☐ *CFTC*	☐ *Foreign Financial Regulatory Authority*
☐ *Federal Banking Agency*	☐ National Credit Union Administration	☐ Other:_____			

B. Full name of regulator (if other than the *SEC*) that initiated the action:_____

2. Sanctions Sought (select all that apply):

☐Bar	☐Cease and Desist	☐Censure
☐Civil and Administrative	☐Denial	☐Disgorgement

Penalty(ies)/Fines(s)

☐Expulsion	☐ Monetary Penalty other than Fines	☐Prohibition
☐Reprimand	☐ Requalification	☐Rescission
☐Restitution	☐ Revocation	☐Suspension
☐Undertaking	☐Other:_____	

3. Date Initiated (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:
4. Docket/Case#:_____
5. Employing *Municipal Advisory Firm* when activity occurred which led to the regulatory action:_____

REGULATORY ACTION DISCLOSURE (CONT.)

6. Product Type(s): (select all that apply)

☐No Product	☐Derivative	☐Mutual Fund
☐Annuity-Charitable	☐Direct Investment-DPP & LP Interest	☐Oil & Gas
☐Annuity-Fixed	☐Equipment Leasing	☐Options
☐Annuity-Variable	☐Equity Listed (Common & Preferred Stock)	☐Penny Stock
☐Banking Product (other than CD)	☐Equity-OTC	☐Prime Bank Instrument
☐CD	☐Futures Commodity	☐Promissory Note
☐Commodity Option	☐Futures-Financial	☐Real Estate Security
☐Debt-Asset Backed	☐Index Option	☐Security Futures
☐Debt-Corporate	☐Insurance	☐Unit Investment Trust
☐Debt-Government	☐Investment Contract	☐Viatical Settlement
☐Debt-Municipal	☐Money Market Fund	☐Other:_____

7. Describe the allegations related to this regulatory action:

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If pending, are there any limitations or restrictions currently in effect? ☐ Yes ☐ No
If the answer is "yes," provide details:

10. If on appeal:
A. Action appealed to:
☐ *SEC* ☐ *SRO* ☐ *CFTC* ☐ Federal Court ☐ State Agency or Commission ☐ State Court
☐ Other:_____
B. Date appeal filed (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

C. Are there any limitations or restrictions currently in effect while on appeal? ☐ Yes ☐ No
If the answer is "yes," provide details:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. Resolution Detail:
A. How was matter resolved? (select appropriate item):

☐Acceptance Waiver & Consent (AWC)	☐Consent	☐Decision
☐Decision & *Order* of Offer of Settlement	☐Dismissed	☐*Order*
☐Settled	☐Stipulation and Consent	☐Vacated
☐Vacated Nunc Pro Tunc / ab initio	☐Withdrawn	
☐Other:_____		

B. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

REGULATORY ACTION DISCLOSURE (CONT.)

12. Does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct?
☐ Yes ☐ No

13. Sanction Detail:
A. Were any of the following sanctions *ordered*? (Select all appropriate items):

☐Bar (Permanent)	☐Bar (Temporary / Time Limited)	☐Cease and Desist
☐Censure	☐Civil and Administrative Penalty(ies)/Fine(s)	☐Denial
☐ Disgorgement	☐ Expulsion	☐ Letter of Reprimand
☐ Monetary Penalty Other than Fines	☐ Prohibition	☐Requalification
☐ Rescission	☐ Restitution	☐Revocation
☐Suspension	☐Undertaking	

B. Other sanctions *ordered*:_____
C. If suspended or barred, provide:

Sanction Type: ☐ Bar (Permanent) ☐ Bar (Temporary / Time Limited) ☐ Suspension

Registration Capacities affected (e.g., General Securities Principal, Financial Operations Principal, All Capacities, etc.):

Duration (length of time):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Start Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

End Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Sanction Details

Sanction Type: ☐ Bar (Permanent) ☐ Bar (Temporary / Time Limited) ☐ Suspension

Registration Capacities affected (e.g., General Securities Principal, Financial Operations Principal, All Capacities, etc.):

Duration (length of time):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Start Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

End Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

REGULATORY ACTION DISCLOSURE (CONT.)

Sanction Details

Sanction Type: ☐ Bar (Permanent) ☐ Bar (Temporary / Time Limited) ☐ Suspension

Registration Capacities affected (e.g., General Securities Principal, Financial Operations Principal, All Capacities, etc.):

B. Duration (length of time):______________________________ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Start Date (MM/DD/YYYY):______________________________ ☐ Exact ☐ Explanation
If not exact, provide explanation:

End Date (MM/DD/YYYY):______________________________ ☐ Exact ☐ Explanation
If not exact, provide explanation:

D. If requalification by exam/retraining was a condition of the sanction, provide:

Requalification Details

Requalification Type: ☐ Requalification by Exam ☐ Re-Training ☐ Other
Length of time given to requalify/retrain:__________________
Type of Exam required:____
Has condition been satisfied? ☐ Yes ☐ No
Explanation:

Requalification Details

Requalification Type: ☐ Requalification by Exam ☐ Re-Training ☐ Other
Length of time given to requalify/retrain:__________________
Type of Exam required:____
Has condition been satisfied? ☐ Yes ☐ No
Explanation:

Requalification Details

Requalification Type: ☐ Requalification by Exam ☐ Re-Training ☐ Other
Length of time given to requalify/retrain:__________________
Type of Exam required:____
Has condition been satisfied? ☐ Yes ☐ No
Explanation:

REGULATORY ACTION DISCLOSURE (CONT.)

E. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide:

Monetary Sanction Details
Monetary Related Sanction Type: ☐ Civil and Administrative Penalty(ies)/Fine(s) ☐ Disgorgement
☐ Monetary Penalty other than Fines ☐ Restitution
Total Amount: $________________
Portion levied against you: $________________
Payment Plan:

Is Payment Plan Current? ☐ Yes ☐ No
Date Paid by You (MM/DD/YYYY):________________ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Was any portion of penalty waived? ☐ Yes ☐ No
If yes, amount: $________________

Monetary Sanction Details
Monetary Related Sanction Type: ☐ Civil and Administrative Penalty(ies)/Fine(s) ☐ Disgorgement
☐ Monetary Penalty other than Fines ☐ Restitution
Total Amount: $________________
Portion levied against you: $________________
Payment Plan:

Is Payment Plan Current? ☐ Yes ☐ No
Date Paid by You (MM/DD/YYYY):________________ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Was any portion of penalty waived? ☐ Yes ☐ No
If yes, amount: $________________

Monetary Sanction Details
Monetary Related Sanction Type: ☐ Civil and Administrative Penalty(ies)/Fine(s) ☐ Disgorgement
☐ Monetary Penalty other than Fines ☐ Restitution
Total Amount: $________________
Portion levied against you: $________________
Payment Plan:

Is Payment Plan Current? ☐ Yes ☐ No
Date Paid by You (MM/DD/YYYY):________________ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Was any portion of penalty waived? ☐ Yes ☐ No
If yes, amount: $________________

14. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the action as well as the current status or disposition and/or finding(s).

INVESTIGATION DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6G(2)*** on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":
☐ **6G(2)**

Complete this Disclosure Form only if you are answering "yes" to Item 6G(2). If you answered "yes" to Item 6G(1), complete the Regulatory Action Disclosure Form. If you have been notified that the *investigation* has been concluded without formal action, complete items 4 and 5 of this Disclosure Form to update. One event may result in more than one *investigation*. If more than one authority is *investigating* you, use a separate Disclosure Form to provide details.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No
If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

1. *Investigation* initiated by:
A. Notice Received From (select appropriate item):
☐ *SRO* ☐ *Foreign Financial Regulatory Authority* ☐ Jurisdiction ☐ *SEC* ☐ Other Federal Agency
☐ Other:_____
B. Full name of regulator (if other than the *SEC*) that initiated the *investigation*:_____

2. Notice Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

3. Describe briefly the nature of the *investigation*, if known:

4. Is *investigation* pending? ☐ Yes ☐ No
If no, complete item 5. If yes, skip to item 6.

5. Resolution Details:
A. Date Closed/Resolved (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

B. How was *investigation* resolved? (select appropriate item):
☐ Closed Without Further Action ☐ Closed - Regulatory Action Initiated ☐ Other:_____

6. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the *investigation*, as well as the current status or final disposition and/or finding(s).

CIVIL JUDICIAL ACTION DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to *Question(s) 6H* on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":
☐ **6H(1)(a)** ☐ **6H(1)(b)** ☐ **6H(1)(c)** ☐ **6H(2)**

One event may result in more than one affirmative answer to the above items. Use only one Disclosure Form to report details related to the same event. Unrelated civil judicial actions must be reported on separate Disclosure Forms.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No
If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

1. Court Action initiated by:
A. (Select appropriate item):
☐ *SEC*
☐ Other Federal Agency
☐ Jurisdiction
☐ *Foreign Financial Regulatory Authority*
☐ *Municipal Advisory Firm*
☐ Private Plaintiff

B. Name of party initiating the *proceeding*:_____

2. Relief Sought: (select all that apply):
☐ Cease and Desist ☐ Injunction ☐ Restraining Order ☐ Civil and Administrative Penalty(ies)/Fine(s)
☐ Monetary Penalty other than Fines ☐ Other:_____
☐ Disgorgement ☐ Restitution

3. A. Filing Date of Court Action (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

B. Date notice/process was served (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

CIVIL JUDICIAL ACTION DISCLOSURE (CONT.)

4. Product Type(s): (select all that apply)

☐No Product	☐Derivative	☐Mutual Fund
☐Annuity-Charitable	☐Direct Investment-DPP & LP Interest	☐Oil & Gas
☐Annuity-Fixed	☐Equipment Leasing	☐Options
☐Annuity-Variable	☐Equity Listed (Common & Preferred Stock)	☐Penny Stock
☐Banking Product (other than CD)	☐Equity-OTC	☐Prime Bank Instrument
☐CD	☐Futures Commodity	☐Promissory Note
☐Commodity Option	☐Futures-Financial	☐Real Estate Security
☐Debt-Asset Backed	☐Index Option	☐Security Futures
☐Debt-Corporate	☐Insurance	☐Unit Investment Trust
☐Debt-Government	☐Investment Contract	☐Viatical Settlement
☐Debt-Municipal	☐Money Market Fund	☐Other:_____

5. Formal Action was brought in:
☐ Federal Court
☐ State Court
☐ Foreign Court
☐ Military Court
☐ Other:_____

A. Name of Court:_____
B. Location of Court (City or County and State or Country):_____
C. Docket/Case#:_____

6. Employing *Municipal Advisory Firm* when activity occurred which led to the civil judicial action:_____

7. Describe the allegations related to this civil action. (Your information must fit within the space provided.):

8. Current Status?
☐ Pending
☐ On Appeal
☐ Final

9. If pending and any limitations or restrictions are currently in effect, provide details:

10. If on appeal:
A. Action appealed to (provide name of court):_____
B. Location of Court (City or County and State or Country):_____
C. Docket/Case#:_____
D. Date appeal filed (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

E. Appeal details (including status):

F. If on appeal and any limitations or restrictions are currently in effect, provide details:

CIVIL JUDICIAL ACTION DISCLOSURE (CONT.)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

11. Resolution Detail:
A. How was matter resolved? (Select appropriate item)
☐ Consent
☐ Judgment Rendered
☐ Settled
☐ Vacated
☐ Vacated Nunc Pro Tunc / ab initio
☐ Dismissed
☐ Withdrawn
☐ Other: _____

B. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

12. Sanction Detail:
A. Were any of the following Sanctions *Ordered* or Relief Granted? (Select all that apply)
☐ Civil and Administrative Penalty(ies)/Fine(s) ☐ Injunction ☐ Cease and Desist
☐ Monetary Penalty other than fines ☐ Disgorgement ☐ Restitution

B. Other Sanctions: _____
C. If *enjoined*, provide:

Injunction Details
Registration Capacities Affected (e.g., General Securities Principal, Financial Operations Principal, All Capacities, etc.):

Duration (length of time):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Start Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

End Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Injunction Details
Registration Capacities Affected (e.g., General Securities Principal, Financial Operations Principal, All Capacities, etc.):

Duration (length of time):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Start Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

End Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

CIVIL JUDICIAL ACTION DISCLOSURE (CONT.)

Injunction Details
Registration Capacities Affected (e.g., General Securities Principal, Financial Operations Principal, All Capacities, etc.):

Duration (length of time):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Start Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

End Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

D. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide:

Monetary Related Sanction Details
Monetary Related Sanction Type:
☐ Monetary Fine
☐ Disgorgement
☐ Restitution
☐ Other (requires explanation)
Explanation:

Total Amount: $_____
Portion levied against you: $_____
Date Paid by You (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Was any portion of penalty waived? ☐ Yes ☐ No
If yes, amount: $_____

Monetary Related Sanction Details
Monetary Related Sanction Type:
☐ Monetary Fine
☐ Disgorgement
☐ Restitution
☐ Other (requires explanation)
Explanation:

Total Amount: $_____
Portion levied against you: $_____
Date Paid by You (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Was any portion of penalty waived? ☐ Yes ☐ No
If yes, amount: $_____

CIVIL JUDICIAL ACTION DISCLOSURE (CONT.)

Monetary Related Sanction Details
Monetary Related Sanction Type:
☐ Monetary Fine
☐ Disgorgement
☐ Restitution
☐ Other (requires explanation)
Explanation:

Total Amount: $_____
Portion levied against you: $_____
Date Paid by You (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

Was any portion of penalty waived? ☐ Yes ☐ No
If yes, amount: $_____

13. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the action, as well as the current status or disposition and/or finding(s).

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6I*** on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":

☐ **6I(1)(a)** ☐ **6I(2)(a)** ☐ **6I(2)(c)**
☐ **6I(1)(b)** ☐ **6I(2)(b)**

One matter may result in more than one affirmative answer to the above items. Use a single Disclosure Form to report details relating to a particular matter (i.e., a customer complaint/arbitration/*CFTC* reparation/civil litigation). Use a separate Disclosure Form for each matter.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No
If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

Disclosure Instructions:

- Complete items 1-6 for all matters (i.e., customer complaints, arbitrations/*CFTC* reparations and civil litigation in which you are not named as a party, as well as arbitrations/*CFTC* reparations and civil litigation in which you are named as a party).
- If the matter *involves* a customer complaint, or an arbitration/*CFTC* reparation or civil litigation in which you are not named as a party, complete items 7-11 as appropriate.
- If a customer complaint has evolved into an arbitration/*CFTC* reparation or civil litigation, amend the existing Disclosure Form by completing items 9 and 10.
- If the matter *involves* an arbitration/*CFTC* reparation in which you are a named party, complete items 12-16, as appropriate. If the matter *involves* a civil litigation in which you are a named party, complete items 17-23.
- Item 24 is an optional space and applies to all event types (i.e., customer complaint, arbitration/*CFTC* reparation, civil litigation).

Complete items 1-6 for all matters (i.e., customer complaints, arbitrations/*CFTC* reparations, civil litigation).

1. Customer Name(s):_____

2. A. Customer(s) State of Residence (select "not on list" when the customer's residence is a foreign address):_____
B. Other state(s) of residence/detail:

3. Employing *Municipal Advisory Firm* when activities occurred which led to the customer complaint, arbitration, *CFTC* reparation or civil litigation:

4. Allegation(s) and a brief summary of events related to the allegation(s) including dates when activities leading to the allegation(s) occurred:

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DISCLOSURE (CONT.)

5. Product Type(s): (select all that apply)

☐No Product	☐Derivative	☐Mutual Fund
☐Annuity-Charitable	☐Direct Investment-DPP & LP Interest	☐Oil & Gas
☐Annuity-Fixed	☐Equipment Leasing	☐Options
☐Annuity-Variable	☐Equity Listed (Common & Preferred Stock)	☐Penny Stock
☐Banking Product (other than CD)	☐Equity-OTC	☐Prime Bank Instrument
☐CD	☐Futures Commodity	☐Promissory Note
☐Commodity Option	☐Futures-Financial	☐Real Estate Security
☐Debt-Asset Backed	☐Index Option	☐Security Futures
☐Debt-Corporate	☐Insurance	☐Unit Investment Trust
☐Debt-Government	☐Investment Contract	☐Viatical Settlement
☐Debt-Municipal	☐Money Market Fund	☐Other:_____

6. Alleged Compensatory Damage Amount: $_____
☐ Exact
☐ Explanation:

If the matter *involves* a customer complaint, arbitration/*CFTC* reparation or civil litigation in which you are not named as a party, complete items 7-11 as appropriate. [Note: Report in Items 12-16, or 17-23, as appropriate, only arbitrations/*CFTC* reparations or civil litigation in which you are named as a party.]

7. A. Is this an oral complaint? ☐ Yes ☐ No
B. Is this a written complaint? ☐ Yes ☐ No

C. Is this an arbitration/*CFTC* reparation or civil litigation? ☐ Yes ☐ No
If yes, provide:
i. Arbitration/reparation forum or court name and location:_____
ii. Docket/Case#:_____
iii. Filing date of arbitration/*CFTC* reparation or civil litigation (MM/DD/YYYY):_____

D. Date received by/served on firm (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

8. Is the complaint, arbitration/*CFTC* reparation or civil litigation pending? ☐ Yes ☐ No
If "No," complete item 9.

9. If the complaint, arbitration/*CFTC* reparation or civil litigation is not pending, provide status:
☐ Closed/No Action ☐ Withdrawn ☐ Denied ☐ Settled
☐ Arbitration Award/Monetary Judgment (for claimants/plaintiffs)
☐ Arbitration Award/Monetary Judgment (for respondents/defendants)
☐ Evolved into Arbitration/*CFTC* reparation (you are a named party)
☐ Evolved into Civil litigation (you are a named party)

If status is arbitration/*CFTC* reparation in which you are not a named party, provide details in item 7C.
If status is arbitration/*CFTC* reparation in which you are a named party, complete items 12-16.
If status is civil litigation in which you are a named party, complete items 17-23.

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DISCLOSURE (CONT.)

10. Status Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

11. Settlement/Award/Monetary Judgment:
A. Settlement/Award/Monetary Judgment amount: $_____
B. Your Contribution Amount: $_____

If the matter *involves* an arbitration or *CFTC* reparation in which you are a named respondent, complete items 12-16, as appropriate.

12. A. Arbitration/*CFTC* reparation claim filed with (*FINRA*, AAA, *CFTC*, etc.):_____
B. Docket/Case#:_____
C. Date notice/process was served (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

13. Is arbitration/ *CFTC* reparation pending? ☐ Yes ☐ No
If "No," complete item 14.

14. If the arbitration/*CFTC* reparation is not pending, what was the disposition?

☐Award to Applicant (Agent/Representative) ☐Award to Customer ☐Denied ☐Dismissed
☐Judgment (other than monetary) ☐No Action ☐Settled ☐Withdrawn
☐Other:_____

15. Disposition Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

16. Monetary Compensation Details (award, settlement, reparation amount):
A. Total Amount: $_____
B. Your Contribution Amount: $_____

If the matter *involves* a civil litigation in which you are a defendant, complete items 17-23.

17. Court in which case was filed:
☐ Federal Court ☐ State Court ☐ Foreign Court ☐ Military Court ☐ Other: _____

A. Name of Court:_____
B. Location of Court (City or County and State or Country):_____
C. Docket/Case#:_____
18. Date received by/served on firm (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

19. Is the civil litigation pending? ☐ Yes ☐ No
If "No," complete item 20.

20. If the civil litigation is not pending, what was the disposition?
☐Denied ☐Dismissed ☐Judgment (other than monetary)
☐Monetary Judgment to Applicant (Agent/Representative) ☐Monetary Judgment to Customer
☐ No Action ☐Settled ☐Withdrawn
☐Other:_____

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DISCLOSURE (CONT.)

21. Disposition Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

22. Monetary Compensation Details (judgment, restitution, settlement amount):
A. Total Amount: $_____
B. Your Contribution Amount: $_____

23. If action is currently on appeal:
A. Enter date appeal filed (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

B. Court appeal filed in:
☐ Federal Court ☐ State Court ☐ Foreign Court ☐ Military Court ☐ Other: _____

A. Name of Court:_____
B. Location of Court (City or County and State or Country):_____
C. Docket/Case#:_____

24. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the customer complaint, arbitration/*CFTC* reparation and/or civil litigation as well as the current status or final disposition(s). Your information must fit within the space provided.

TERMINATION DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6J*** on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":

☐ **6J(1)** ☐ **6J(2)** ☐ **6J(3)**

One event may result in more than one affirmative answer to the above items. Use only one Disclosure Form to report details to the same termination. Use a separate Disclosure Form for each termination reported.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No
If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

1. *Municipal Advisory Firm* Name:_____
2. Termination Type:
☐ Discharged ☐ Permitted to *Resign* ☐ Voluntary *Resignation*
3. Termination Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

4. Allegation(s):

5. Product Type(s): (select all that apply)

☐No Product	☐Derivative	☐Mutual Fund
☐Annuity-Charitable	☐Direct Investment-DPP & LP Interest	☐Oil & Gas
☐Annuity-Fixed	☐Equipment Leasing	☐Options
☐Annuity-Variable	☐Equity Listed (Common & Preferred Stock)	☐Penny Stock
☐Banking Product (other than CD)	☐Equity-OTC	☐Prime Bank Instrument
☐CD	☐Futures Commodity	☐Promissory Note
☐Commodity Option	☐Futures-Financial	☐Real Estate Security
☐Debt-Asset Backed	☐Index Option	☐Security Futures
☐Debt-Corporate	☐Insurance	☐Unit Investment Trust
☐Debt-Government	☐Investment Contract	☐Viatical Settlement
☐Debt-Municipal	☐Money Market Fund	☐Other:_____

6. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the termination. Your information must fit within the space provided.

JUDGMENT / LIEN DISCLOSURE

This Disclosure Form is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6M*** on Form MA-I;

Check the question(s) you are responding to, regardless of whether you are answering the question "yes" or amending the answer(s) to "no":
☐ **6M**

If multiple, unrelated events result in the same affirmative answer, details must be provided on separate Disclosure Forms.

If the applicant is also registered through the *IARD* system or *CRD* system, registered with the *SEC* as a *municipal advisor* on Form MA, or previously registered with the *SEC* on Form MA-T, or is an *associated person of a municipal advisor* that is registered with the *SEC* on Form MA or that previously registered with the SEC on Form MA-T, has the applicant or *municipal advisor* with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the *IARD* or *CRD*, or submitted to the *SEC* disclosure on Form MA-T or a DRP with a Form MA, for the event that contains the information required by this DRP? ☐ Yes ☐ No
If the answer is "Yes," no other information on this DRP must be provided.

NOTE: The completion of this form does not relieve the applicant or any municipal advisor with which it is associated of its obligation to update its Form MA or its IARD or CRD records.

1. Judgment/Lien Amount:$_____
2. Judgment/Lien Holder:_____
3. Judgment/Lien Type: ☐ Civil ☐ Tax

4. Date Filed (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

5. Court action brought in: ☐ Federal Court ☐ State Court ☐ Foreign Court ☐ Other:_____
A. Name of Court:_____
B. Location of Court (City or County and State or Country):_____
C. Docket/Case#:_____
☐ Check this box if the Docket/Case# is your SSN, a Bank Card number, or a Personal Identification Number.

6. Is Judgment/Lien outstanding? ☐ Yes ☐ No
If "No," complete item 7. If "Yes," skip to item 8.

7. If Judgment/Lien is not outstanding, provide:
A. Status Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

B. How was matter resolved? (select appropriate item): ☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Comment (Optional). You may use this space to provide a brief summary of the circumstances leading to the action as well as the current status or final disposition. Your information must fit within the space provided.

FORM MA-NR **DESIGNATION OF U.S. AGENT FOR SERVICE OF PROCESS**	Applicant Name: _____ *Municipal Advisor* Name: _____ Date: _____ Advisor *SEC* No.: _____	**Official Use**

Use Form MA-NR to identify an agent for service of process for *non-resident municipal advisors* and *non-resident* general partners and *managing agents* of *municipal advisors*.

Instructions:
1. The power of attorney, consent, stipulation and agreement shall be signed by the applicant and its authorized agent for service of process in the United States.
2. The name of each *person* who signs this Form MA-NR shall be typed or printed beneath such *person*'s signature.
3. Any *person* who occupies more than one of the specified positions shall indicate each capacity in which such *person* signs Form MA-NR.
4. If any name is signed pursuant to a board resolution, a copy of the resolution shall be filed as an attachment to the applicant's Form MA-NR.
5. If any name is signed pursuant to a power of attorney, a copy of the power of attorney shall be filed as an attachment to the applicant's Form MA-NR.

A. Name of United States *person* applicant designates and appoints as agent for service of process

B. Address of United States *person* applicant designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in (a) any *investigation* or administrative *proceeding* conducted by the *Commission* that relates to the applicant or about which the applicant may have information; and

(b) any civil suit or action brought against the applicant or to which the applicant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, where the *investigation*, *proceeding* or cause of action arises out of or relates to or concerns *municipal advisory activities* of the *municipal advisor*. The applicant stipulates and agrees that any such civil suit or action or administrative *proceeding* may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made. Such person cannot be a *Commission* member, official, or employee.

The applicant certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized,

In the City of:	In the Country of:
Applicant Name:	Date:
Signature:	Print Name and Title:

Notary Public Signature and Information:

Signature:

Subscribed and sworn to me this ___ day of _____, _____

My Commission expires _____ County of _____ State of _____

This statement has been signed by the following *persons* in the capacities and on the dates indicated.

1.	Signature:
	Print Name and Title:
	Date:
2.	Signature:
	Print Name and Title:
	Date:
3.	Signature:
	Print Name and Title:
	Date:

FORM MA-W
NOTICE OF WITHDRAWAL FROM REGISTRATION AS A MUNICIPAL ADVISOR

Form MA-W

A municipal advisor must complete this Form MA-W to withdraw its municipal advisor registration with the SEC. Form MA-W must be filed by both municipal advisors that are organized entities (including sole proprietors, and each hereinafter a "municipal advisory firm"); and natural persons that are municipal advisors (including sole proprietors, and each hereinafter a "natural person municipal advisor").

WARNING: Complete this form truthfully. False statements or omissions may result in administrative or civil action or criminal prosecution. All *italicized* terms are defined or described in the Glossary to this Form.

Item 1 Identifying Information

A. Full Legal Name:
The name entered here must be the same as the name entered on the registrant's most recent Form MA or Form MA-I. Do not report a name change on this Form MA-W.

_____

B. Registrant's *Municipal Advisor* Registration Number: _____

Item 2 Contact Person (for *Municipal Advisory Firms*)

The registrant's contact person must be a principal or employee (not outside counsel) of the municipal advisor authorized to receive information and respond to questions about this Form MA-W.

Name, title, and contact information:

_____
(name) (title)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

_____@_____
(E-mail address)

Item 3 Money Owed to *Clients*

Has the registrant:

A. Received any pre-paid municipal advisory fees for *municipal advisory activities*, including subscription fees for publications, that have not been delivered: ☐ Yes ☐ No
If "yes," what is the amount owed for these pre-paid services (including subscriptions)? $_____.00

B. Borrowed any money from *clients* that has not been repaid?
If "yes," what is the amount owed for these borrowed funds? $_____.00

Form MA-W **Page 2**

Item 4 Advisory Contract Assignments

Has the registrant assigned any municipal advisory contracts to another *person* that engages in *municipal advisory activities*? ☐ Yes ☐ No

If yes, list on Section 4 of Schedule W1 each provider to whom the registrant has assigned any such municipal advisory contracts and provide the requested information.

Item 5 Judgments and Liens

Are there any unsatisfied judgments or liens against the registrant? ☐ Yes ☐ No

Item 6 Books and Records

NOTE: Rule 15Ba1-7(b) under the Exchange Act requires a municipal advisor to preserve its books and records after the municipal advisor ceases to conduct or discontinues business as a municipal advisor.

Provide in Schedule W1 the name and address of each *person* who has or will have custody or possession of the *municipal advisor*'s books and records; and each location at which any of such books and records are or will be kept.

Item 7 Statement of Financial Condition

If registrant answered "yes" to Item 3 or Item 5, complete Schedule W2, disclosing the nature and amount of the registrant's assets and liabilities and net worth as of the last day of the month prior to the filing of this Form MA-W.

Execution

For *a Natural Person Municipal* Advisor other than a sole proprietor:

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true and complete. I understand that if any information contained in this Form MA-W is different from the information contained on a Form MA-I, the information on this Form MA-W will replace the corresponding entry on the Form MA-I.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

For a Sole Proprietor:

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true and complete. I further certify that the books and records of my *municipal advisor-related* business will be preserved and available for inspection as required by law, and that all information submitted on my most recent Form MA and Form MA-I is accurate and complete as of this date. I understand that if any information contained in this Form MA-W is different from the information contained on my Form MA and Form MA-I, the information on this Form MA-W will replace the corresponding entry on my Form MA and Form MA-I. Finally, I authorize any *person* having custody or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

For a *Municipal Advisory Firm*:

I, the undersigned, have signed this Form MA-W on behalf of, and with the authority of, the *municipal advisor* withdrawing its registration. The advisor and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true and complete. I further certify that the *municipal advisor's* books and records will be preserved and available for inspection as required by law, and that all information submitted on the *municipal advisor*'s most recent Form MA is accurate and complete as of this date. The *municipal advisor* and I understand that if any information contained in this Form MA-W is different from the information contained on Form MA, the information on this Form MA-W will replace the corresponding entry on the *municipal advisor*'s Form MA. Finally, I authorize any *person* having custody or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

FORM MA-W
Schedule W1

Certain items in Form MA-W may require additional information on this Schedule W1. Use this Schedule W1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

SECTION 4 Advisory Contract Assignments

Check here if this section is being completed: ☐

Complete the following information for each *person* to whom the registrant has assigned any advisory contract. Complete a separate Schedule W1 for each *person* to whom the registrant has assigned an advisory contract.

Name and business address of the *person* to whom advisory contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

If this address is a private residence, check this box: ☐

SECTION 6 Books and Records

Person with Custody

Complete the following information for the *person* that has or will have custody or possession of the books and records kept at the location described in this Section 6 of this Schedule. A separate Schedule W1 must be completed for each *person* that has or will have custody of any of the registrant's books and records. If the *person* listed below has or will have custody of any of the registrant's books and records at any other location, a separate Schedule W1 must be completed listing this *person* and each other location where the *person* has custody of the registrant's books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

If this address is a private residence, check this box: ☐

Location:

Complete the following information for the location where the books and records of which the *person* listed in this Section 6 of this Schedule has or will have custody or possession. A separate Schedule W1 must be completed for each location at which the registrant's records are or will be kept. If any other *person* has or will have custody or possession of any of the books and records at the location described below, a separate Schedule W1 must be completed listing this location and each other *person* that has or will have custody of the registrant's books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

If this address is a private residence, check this box: ☐
Briefly describe the books and records kept at this location. _____

FORM MA-W
Schedule W2

If the registrant answered "yes" to Items 3 or 5 of Form MA-W, complete this Schedule W2. This balance sheet must be prepared in accordance with generally accepted accounting principles, but need not be audited.

SECTION 7 STATEMENT OF FINANCIAL CONDITION

I. Assets

Current Assets
- Cash _____
- Securities at Market _____
- Non-Marketable Securities _____
- Other Current Assets _____
- **Total Current Assets** $ _____

Fixed Assets
- **Total Fixed Assets** $ _____

TOTAL ASSETS $ _____

II. Liabilities & Shareholders' Equity

Current Liabilities
- Prepaid Advisory Fees _____
- Short-Term Loans from *Clients* _____
- Other Short-Term Loans _____
- Other Current Liabilities _____
- **Total Current Liabilities** $ _____

Fixed Liabilities
- Long-Term Debt Owed to *Clients* _____
- Other Long-Term Debt _____
- Other Long-Term Liabilities _____
- **Total Fixed Liabilities** $ _____

Shareholders' Equity
- **Total Shareholders' Equity (or Deficit)** $ _____

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY $ _____

FORM MA, FORM MA-I, FORM MA-NR, FORM MA-W
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION FOR NATURAL PERSONS
DESIGNATION OF U.S. AGENT FOR SERVICE OF PROCESS
WITHDRAWAL OF MUNICIPAL ADVISOR REGISTRATION

General Instructions

Read these general instructions carefully before filing Form MA, Form MA-I, Form MA-NR, or Form MA-W. Specific instructions for Forms MA and MA-I are available after these general instructions. Failure to follow instructions or properly complete the form may result in the application being delayed or rejected.

Italicized terms are defined or described in the Glossary of Terms.

1. Where can an applicant obtain more information on Form MA, Form MA-I, Form MA-NR, Form MA-W, and electronic filing?

The *Commission* provides information about its rules with respect to *municipal advisors* and the Exchange Act on its website at: <http://www.sec.gov/info/municipal.shtml>.

2. Who should file these forms?

A partnership, corporation, trust, limited liability company, limited liability partnership, sole proprietorship, or other organized entity (other than a natural person) must use Form MA to register with the *Commission* and to amend a previously submitted Form MA.

A natural *person* doing business in his or her own name as a sole proprietor must use both Form MA and Form MA-I to register with the *Commission* and to amend a previously submitted Form MA and Form MA-I.

Every natural *person*, including any *employee* of a *municipal advisor*, who engages in *municipal advisory activities*, must use Form MA-I to register with the *Commission* and to amend a previously submitted Form MA-I.

A person that makes a direct or indirect communication with a *municipal entity* or *obligated person* on behalf of a broker, dealer, municipal securities dealer, *municipal advisor*, or *investment adviser* that *controls*, is *controlled* by, or is under common *control* with the person undertaking such communication, where the communication is for the purpose of obtaining or retaining an engagement by a *municipal entity* or *obligated person* of a broker, dealer, municipal securities dealer, or *municipal advisor* for or in connection with *municipal financial products*, the issuance of municipal securities, or of an *investment adviser* to provide investment advisory services to or on behalf of a *municipal entity*, may voluntarily file these forms and apply to register as a *municipal advisor*. By registering as a *municipal advisor*, such persons must

comply with all federal securities laws and rules or regulations promulgated thereunder relating to registered *municipal advisors*, including the obligation to comply with *MSRB* rules (such as *MSRB* pay-to-play rules) that apply to *municipal advisors*.

Every (i) *non-resident municipal advisor; and (ii) non-resident* general partner and *non-resident managing agent* of a *municipal advisor*, whether or not the *municipal advisor* is a resident of the United States; must file Form MA-NR in connection with the *municipal advisor*'s initial application for registration. An *SEC*-registered *municipal advisor, or* general partner or *managing agent* of an *SEC*-registered *municipal advisor*, who becomes a *non-resident* after the *municipal advisor*'s initial application has been submitted, must file Form MA-NR within 30 days of becoming a *non-resident*. **Failure to file Form MA-NR promptly may delay *SEC* consideration of the initial application.**

A *municipal advisor* no longer required to register must file Form MA-W to withdraw its registration.

3. How is Form MA organized?

Form MA asks a number of questions about the *municipal advisor*, the *municipal advisor*'s business practices, the *persons* who own and *control* the *municipal advisor*, and the *persons* who engage in *municipal advisory activities* on behalf of the *municipal advisor*. All items must be completed.

Form MA also contains several supplemental schedules.

Schedule A asks for information about the *municipal advisor*'s direct owners and executive officers.

Schedule B asks for information about the *municipal advisor*'s indirect owners.

Schedule C is used to amend information on either Schedule A or Schedule B.

Schedule D asks for additional information on certain items and provides space for explanations.

Criminal Disclosure Reporting Pages, Regulatory Action Disclosure Reporting Pages, and Civil Judicial Action Disclosure Reporting Pages are schedules that ask for details about disciplinary events *involving* the *municipal advisor* and the *municipal advisor*'s *associated persons*.

4. How is Form MA-I organized?

Form MA-I asks a number of questions about a *natural person municipal advisor* (including a sole proprietor), including the residential history and employment history of the *municipal advisor*, and other business in which the *municipal advisor* is engaged. All items must be completed.

Form MA-I also contains several supplemental schedules with respect to disciplinary events *involving* the *municipal advisor*. These supplemental schedules include Criminal Action Disclosure, Regulatory Action Disclosure, *Investigation* Disclosure, Civil Judicial Action Disclosure, Customer Complaint/Arbitration/Civil Litigation Disclosure, Termination Disclosure, and Judgment/Lien Disclosure.

5. Where does an applicant sign the Form MA?

The *municipal advisor* must sign the appropriate Execution Page – either the:

- Domestic Municipal Advisor Execution Page, if the *municipal advisory firm* (including a sole proprietor) is a resident of the United States (a sole proprietor would also need to sign the Form MA-I, as discussed below); or

- Non-Resident Municipal Advisor Execution Page, if the *municipal advisory firm* (including a sole proprietor) is not a resident of the United States. *Non-Resident municipal advisors* must also file Form MA-NR as specified in Instruction 2 above.

6. Where does an applicant sign the Form MA-I?

The *municipal advisor* must sign Item 7 of the Form MA-I.

7. Who must sign the Form MA or MA-I?

The individual who signs the form depends upon the *municipal advisor*'s form of organization:

- For a sole proprietorship, the sole proprietor.
- For a partnership, a general partner.
- For a corporation, an authorized principal officer.
- For all others, an authorized individual who participates in managing or directing the *municipal advisor*'s affairs; or in the case of a natural person, the natural person filing the form on his or her own behalf.

For purposes of this electronic form, the signature is a typed name.

8. When does Form MA (for municipal advisory firms, including sole proprietors) need to be updated?

Every *municipal advisor* must amend Form MA each year by filing an *annual update* within 90 days after the end of its fiscal year (calendar year for sole proprietors). Responses to all items must be updated when submitting the *annual update*.

In addition to the *annual update*, a *municipal advisor* must amend Form MA by filing additional amendments (other than *annual updates*) promptly if a material event has occurred that changes

the information provided in Form MA. For purposes of Form MA, a material event will be deemed to have occurred if:

- information provided in response to Items 1 (Identifying Information); 2 (Form of Organization); or 9 (Disclosure Information) becomes inaccurate in any way; or

- information provided in response to Items 3 (Successions); 7 (Participation or Interest of Applicant or *Associated Persons* of Applicant in *Municipal Advisory Client* Transactions); or 8 (*Control Persons*) becomes materially inaccurate.

A non-resident *municipal advisor* shall file an amendment promptly to Form MA to provide an updated opinion counsel after any changes in the legal or regulatory framework that would impact the ability of the *municipal advisor* to provide the *Commission* with the access to its books and records, as required by law, or would impact the *Commission*'s ability to inspect and examine the *municipal advisor* onsite.

Note: If submitting an amendment (other than an *annual update*), a *municipal advisor* is not required to update the responses to Items 4 (Information About Applicant's Business), 5 (Other Business Activities), 6 (Financial Industry Affiliations of *Associated Persons*), or 10 (Small Businesses) even if the responses to those items have become inaccurate.

Failure to update Form MA, as required by this instruction, is a violation of *SEC* rule 15Ba1-4 and could lead to the revocation of registration.

9. When does Form MA-I (for natural person municipal advisors) need to be updated?

Every *natural person municipal advisor* (including sole proprietors) must promptly amend Form MA-I whenever any information previously provided on Form MA-I becomes inaccurate.

10. How does an applicant file these forms?

An applicant must complete and file the forms electronically.

11. How does an applicant get started filing electronically?

[Instructions to come on how to file electronically]

12. How does an applicant make the required self-certification?

Municipal advisors applying for registration on both Form MA and Form MA-I must certify as to their training, experience, and competence and their ability to comply with federal securities laws. *Municipal advisors* filing on Form MA must complete the self-certification included on the execution page to Form MA. *Municipal advisors* filing on Form MA-I must complete the self-certification included in Item 7.

13. When must an applicant make the required self-certification?

All *municipal advisors* must complete the required certification at the time of filing an initial application for registration as a *municipal advisor*, and annually thereafter. *Municipal advisory firms* must complete their annual certification at the time of their annual amendment as described in Instruction 8 above. *Natural person municipal advisors* must check the appropriate box on Form MA-I to indicate filing of an annual self-certification and complete the certification included in Item 7 of Form MA-I within 90 days after the end of the calendar year.

14. How does a non-resident municipal advisor file its opinion of counsel?

A *non-resident municipal advisor* must attach as Exhibit A to its execution page an opinion of counsel that the *municipal advisor* can, as a matter of law, provide the *Commission* with access to the books and records of such *municipal advisor*, as required by law, and that the m*unicipal advisor* can, as a matter of law, submit to onsite inspection and examination by the *Commission*.

Federal Information Law and Requirements

Section 15B(a) of the Securities Exchange Act [15 U.S.C. § 78o-4(a)] authorizes the *SEC* to collect the information required by Form MA and Form MA-I. The *SEC* collects the information for regulatory purposes. Filing Form MA and/or Form MA-I is mandatory for *municipal advisors* who are required to register with the *SEC*. The *SEC* maintains the information submitted on these forms and, unless otherwise specified, makes it publicly available. The *SEC* will not accept forms that do not include the required information.

***SEC*'s Collection of 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 control number. The Exchange Act authorizes the *SEC* to collect the information on Form MA and Form MA-I from applicants. See 15 U.S.C. § 78o-4. Filing of the form is mandatory.

The main purpose of these forms is to enable the *SEC* to register *municipal advisors*. Every applicant for registration with the *SEC* as a *municipal advisor* must file the applicable form. See 17 C.F.R. § 240.15Ba1-2. By accepting Form MA and/or Form MA-I, however, the *SEC* does not make a finding that it has been completed or submitted correctly. Form MA must be filed annually by every *municipal advisory firm*, no later than 90 days after the end of its fiscal year (calendar year for sole proprietors). Form MA also must be filed promptly during the year to reflect changes as described in these instructions. Form MA-I must be filed by every *natural person municipal advisor* (including sole proprietors). Form MA-I also must be filed promptly whenever any information previously provided becomes inaccurate. The *SEC* maintains the information on the forms and, unless otherwise specified, makes it publicly available through the *SEC* website.

Anyone may send the *SEC* comments on the accuracy of the burden estimate on page 1 of the forms, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507.

Intentional misstatements or omissions of fact constitute federal criminal violations.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

FORM MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

These instructions explain how to complete certain items in Form MA.

1. Item 3: Successions

Succession of a Registered *Municipal Advisor*. If the applicant has (i) taken over the business of another *municipal advisor* or (ii) changed its structure or legal status (e.g., form of organization or state of incorporation), a new organization has been created, which has registration obligations under the Exchange Act. There are different ways to fulfill these obligations. The *municipal advisor* may rely on the registration provisions discussed in the General Instructions, or may be able to rely on special registration provisions for "successors" to registered *municipal advisors*, which may ease the transition to the successor *municipal advisor*'s registration.

If the *municipal advisor* has taken over another *municipal advisor*, follow the instructions below under: "Succession by Application." If the *municipal advisor* has changed its structure or legal status, follow the instruction below under "Succession by Amendment."

a. **Succession by Application.** If the applicant is not registered with the *SEC* as a *municipal advisor*, and is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered *municipal advisor*, file a new application for registration on Form MA. The applicant will receive new registration numbers. The applicant must file the new application within 30 calendar days after the succession. On the application, make sure to check "yes" to Item 3, enter the date of the succession in Item 3, and complete Section 3 of Schedule D.

   Until the *SEC* declares the new registration effective, the *municipal advisor* may rely on the registration of the acquired *municipal advisor*, but only if the acquired *municipal advisor* is no longer engaged in *municipal advisory activities*. Once the new registration is effective, a Form MA-W must be filed with the *SEC* to withdraw the registration of the acquired *municipal advisor*.

b. **Succession by Amendment.** If a new *municipal advisor* is formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in *control* or management, the applicant may amend the registration of the registered *municipal advisor* to reflect these changes rather than file a new application. The applicant will keep the same registration number, and should not file a Form MA-W. On the amendment, make sure to check "yes" to Item 3, enter the date of the succession in Item 3, and complete Section 3 of Schedule D. The amendment must be submitted within 30 calendar days after the change or reorganization.

2. Item 4: Information About Applicant's Business

Newly-Formed *Municipal Advisors*: Several questions in Item 4 that ask about *municipal advisory activities* assume that the *municipal advisor* has been in existence for some time. Responses to these questions should reflect the applicant's current *municipal advisory activities* (i.e., at the time of filing of the Form MA or MA-I), with the following exceptions:

- Base responses to Item 4.H., I. and J. on the types of compensation the applicant expects to accept; and
- Base responses to Item 4.K. on the types of *municipal advisory activities* in which the applicant expects to engage during the next year.

3. Additional Information

Complete Schedule D if any response to an item in Form MA requires further explanation or if the applicant wishes to provide additional information.

FORM MA-I

APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION FOR NATURAL PERSONS

These instructions explain how to complete certain items in Form MA-I.

1. Item 1: Identifying Information

If the applicant has an assigned *CRD* number, enter it.

Enter the applicant's social security number.

Enter the address of every office at which the applicant will be physically located, and from which the applicant will be supervised.

2. Item 2: Other Names

Enter all other names that the applicant has used or is using, or by which the applicant is known or has been known, other than the legal name, since the age of 18. For example, include nicknames, aliases, and names used before or after marriage.

3. Item 3: Residential History

Provide residential addresses for the past 5 years. Leave no gaps greater than 3 months between addresses. Post office boxes are not acceptable.

4. Item 4: Employment History

Provide employment history for the past 10 years. Leave no gaps greater than 3 months between entries. All entries must include beginning and end dates of employment. Account for full-time and part-time employment, self-employment, military service, and homemaking. Include unemployment, full-time education, extended travel, and other similar statuses.

5. Item 5: Other Business

Provide information regarding any other business in which the applicant is currently engaged, including:

Name and address of the other business.
Nature of the other business, including whether it is *municipal advisor-related*.
Position, title, or relationship with the other business, including duties.
The start date of the relationship with the other business.
The approximate number of hours per month devoted to the other business.

6. Item 6: Disclosure Questions

Note that an affirmative answer to certain disclosure questions may make an individual subject to a statutory disqualification as defined in Section 3(a)(39) and Section 15B(c) of the Securities Exchange Act of 1934.

7. Item 7: Signature

Signature is effected by typing a name in the designated signature field. By typing a name in this field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature. Submit the signed form electronically with the *Commission.*

GLOSSARY OF TERMS

1. **Annual Update:** Within 90 calendar days after the *municipal advisor*'s fiscal year end (calendar year for sole proprietors), the *municipal advisor* must file an "*annual update*," which is an amendment to the *municipal advisor*'s Form MA that updates the responses to any item for which the information is no longer accurate.

2. **Associated Person** or **Associated Person of a Municipal Advisor:** Any partner, officer, director, or branch manager of a *municipal advisor* (or any *person* occupying a similar status or performing similar functions); any other *employee* of such *municipal advisor* who is engaged in the management, direction, supervision, or performance of any *municipal advisory activities* relating to the provision of advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities (other than *employees* who are solely clerical or administrative); and any *person* directly or indirectly *controlling*, *controlled* by, or under common *control* with such *municipal advisor*.

3. **Charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal *charge*).

4. **CFTC:** Commodity Futures Trading Commission.

5. **Chief Compliance Officer:** The officer in charge of the *municipal advisor*'s compliance issues.

6. **Client** or **Municipal Advisory Client:** Any of the *municipal advisor*'s *clients*. This term includes *clients* from which the *municipal advisor* receives no compensation. If the *municipal advisor* also engages in activities that are not *municipal advisory activities*, this term does not include such *clients*.

7. **Contingent Fees:** Any fee or payment for services provided where the fee is payable upon a condition to be satisfied.

8. **Control:** The power, directly or indirectly, to direct the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise.

   - Each of the *municipal advisor*'s officers, partners, or directors exercising executive responsibility (or *persons* having similar status or functions) is presumed to *control* the *municipal advisor*.

   - A *person* is presumed to *control* a corporation if the *person*: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

- A *person* is presumed to *control* a partnership if the *person* has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

- A *person* is presumed to *control* a limited liability company ("LLC") if the *person*: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.

- A *person* is presumed to *control* a trust if the *person* is a trustee or *managing agent* of the trust.

9. **CRD:** The Web Central Registration Depository ("*CRD*") system operated by *FINRA* for the registration of broker-dealers and broker-dealer representatives.

10. **Discretionary Authority:** The *municipal advisor* has *discretionary authority* or manages assets on a discretionary basis if it has the authority to decide which securities to purchase and sell for a *client*. The *municipal advisor* also has *discretionary authority* if it has the authority to decide which *investment advisers* to retain on behalf of a *client*.

11. **Employee:** This term includes an independent contractor who engages in *municipal advisory activities* on the *municipal advisor*'s behalf.

12. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining *order*.

13. **Federal Banking Agency:** This term includes any *Federal banking agency* as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

14. **Felony:** For jurisdictions that do not differentiate between a *felony* and a *misdemeanor*, a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. This term also includes a general court martial.

15. **FINRA:** Financial Industry Regulatory Authority.

16. **Foreign Financial Regulatory Authority:** This term includes (i) a foreign securities regulatory authority; (ii) another governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *municipal advisor-related* activities; and (iii) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

17. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

18. **Guaranteed Investment Contract:** This term includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract.

19. **IARD:** The Investment Adviser Registration Depository ("*IARD*") system operated by *FINRA* for the registration of *investment advisers* and investment adviser representatives.

20. **Investigation:** This term includes: (a) grand jury investigations; (b) *SEC* investigations after the "Wells" notice has been given; (c) *FINRA* investigations after the "Wells" notice has been given or after a *person* associated with a member, as defined by The *FINRA* By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action; (d) *NYSE* Regulation investigations after the "Wells" notice has been given or after a *person* over whom *NYSE* Regulation has jurisdiction, as defined in the applicable rules, has been advised by *NYSE* Regulation that it intends to recommend formal disciplinary action; (e) formal investigations by other *SROs*; or (f) actions or procedures designated as investigations by other federal, state, or local jurisdictions. The term *investigation* does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

21. **Investment Adviser:** As defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

22. **Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an *investment adviser*, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association).

23. **Investment Strategies:** The term includes plans, programs, or pools of assets that invest funds held by or on behalf of a *municipal entity*.

24. **Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in an act.

25. **Managing Agent:** Any *person,* including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

26. **Minor Rule Violation:** A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the *SEC*. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned *person* does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes.)

27. **Misdemeanor:** For jurisdictions that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. This term also includes a special court martial.

28. **MSRB** or **Board:** Municipal Securities Rulemaking Board.

29. **Municipal Advisor:** This term means a *person* (who is not a *municipal entity* or an *employee* of a *municipal entity*) that (i) provides advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a *solicitation of a municipal entity or obligated person*. This term does not include:

A broker, dealer, or municipal securities dealer serving as an underwriter (as that term is defined in Section 2(a)(11) of the Securities Act of 1933) on behalf of a *municipal entity* or *obligated person*, unless the broker, dealer or municipal securities dealer engages in *municipal advisory activities* while acting in a capacity other than as an underwriter on behalf of a *municipal entity* or *obligated person*;

An *investment adviser* registered under the Investment Advisers Act of 1940 or a *person* associated with such registered *investment adviser* unless the registered *investment adviser* or a *person* associated with the *investment adviser* engages in *municipal advisory activities* other than providing investment advice that would subject such adviser or *person* associated with such adviser to the Investment Advisers Act of 1940;

Any commodity trading advisor registered under the Commodity Exchange Act or *persons* associated with a commodity trading advisor, unless the registered commodity trading advisor or *persons* associated with the registered commodity trading advisor engages in *municipal advisory activities* other than advice related to swaps;

Any attorney, unless the attorney engages in *municipal advisory activities* other than the offer of legal advice or the provision of services that are of a traditional legal nature;

Any engineer, unless the engineer engages in *municipal advisory activities* other than providing engineering advice; and

Any accountant, unless the accountant engages in *municipal advisory activities* other than preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a *municipal entity* or *obligated person*.

30. **Municipal Advisor-Related:** Conduct that pertains to *municipal advisory activities* (including, but not limited to, acting as, or being an *associated person* of, a *municipal advisor*).

31. **Municipal Advisory Activities:** Providing advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar

matters concerning such financial products or issues; or *solicitation of a municipal entity or obligated person*.

32. **Municipal Advisory Firm:** Any organized entity that is a *municipal advisor*, including sole proprietors. A sole proprietor that is a *municipal advisor* is also a *natural person municipal advisor*.

33. **Municipal Derivatives:** Any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68), including any rules and regulations thereunder) to which a *municipal entity* or *obligated person* is a counterparty.

34. **Municipal Entity:** Any State, political subdivision of a State, or municipal corporate instrumentality of a State, including (i) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (ii) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (iii) any other issuer of municipal securities.

35. **Municipal Financial Products:** *Municipal derivatives*, *guaranteed investment contracts*, and *investment strategies*.

36. **Natural Person Municipal Advisor:** Any natural person that is a *municipal advisor*, including sole proprietors. A sole proprietor that is a *municipal advisor*, is also a *municipal advisory firm*.

37. **Non-Resident:** (i) in the case of an individual, one who resides in or has his *principal office and place of business* in any place not in the United States; (ii) in the case of a corporation, one incorporated in or that has its *principal office and place of business* in any place not in the United States; and (iii) in the case of a partnership or other unincorporated organization or association, one having its *principal office and place of business* in any place not in the United States.

38. **NYSE:** New York Stock Exchange.

39. **Obligated Persons:** Any *person*, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such *person*, committed by contract or other arrangement to support payment of all or part of the obligations of the municipal securities to be sold in an offering of municipal securities. This term does not include providers of municipal bond insurance, letters of credit, or other liquidity facilities.

40. **Order:** A written directive issued pursuant to statutory authority and procedures, including an *order* of denial, exemption, suspension, or revocation. Unless included in an *order*, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity or other restrictions.

41. **Person:** An individual, sole proprietorship, or a firm. A firm includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), or other organization.

42. **Principal Place of Business** or **Principal Office and Place of Business:** The executive office of the *municipal advisor* from which the officers, partners, or managers of the *municipal advisor* direct, *control*, and coordinate the activities of the *municipal advisor*.

43. **Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal *charge*); or a *misdemeanor* criminal information (or equivalent formal *charge*). This term does not include other civil litigation, *investigations*, arrests or similar *charges* effected in the absence of a formal criminal indictment or information (or equivalent formal *charge*).

44. **Resign:** relates to separation from employment with any employer, is not restricted to *municipal advisory-related* or *investment-related* employments, and would include any termination in which allegations are a proximate cause of separation, even if the individual initiated the separation.

45. **Self-Regulatory Organization** or **SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago Board of Trade ("CBOT"), *FINRA*, *MSRB* and *NYSE* are *self-regulatory organizations*.

46. **SEC** or **Commission:** Securities and Exchange Commission.

47. **Solicitation** or **Solicitation of a Municipal Entity or Obligated Person:** A direct or indirect communication with a *municipal entity* or *obligated person* made by a *person*, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, *municipal advisor*, or *investment adviser* (as defined in Section 202 of the Investment Advisers Act of 1940) that does not *control*, is not *controlled* by, or is not under common *control* with the *person* undertaking such *solicitation* for the purpose of obtaining or retaining an engagement by a *municipal entity* or *obligated person* of a broker, dealer, municipal securities dealer, or *municipal advisor* for or in connection with *municipal financial products*, the issuance of municipal securities, or of an *investment adviser* to provide investment advisory services to or on behalf of a *municipal entity* or *obligated person*.

48. **Supervised Person:** Any of the *municipal advisor*'s officers, partners, directors (or other *persons* occupying a similar status or performing similar functions), or *employees*, or any other *person* who engages in *municipal advisory activities* on the *municipal advisor*'s behalf and is subject to the *municipal advisor*'s supervision or *control*.

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Part III

Department of Energy

10 CFR Part 430
Energy Conservation Program for Consumer Products: Test Procedures for Clothes Dryers and Room Air Conditioners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–TP–0010]

RIN 1904–AC02

Energy Conservation Program for Consumer Products: Test Procedures for Clothes Dryers and Room Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) amends its test procedures for residential clothes dryers and room air conditioners under the Energy Policy and Conservation Act (EPCA). The amendments provide for measurement of standby mode and off mode power use by these products and also amend the active mode test procedures for these products. For standby and off mode energy use, these amendments incorporate into the DOE test procedures relevant provisions from the International Electrotechnical Commission (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power," (first edition June 2005), including language to clarify application of these provisions for measuring standby mode and off mode power consumption in clothes dryers and room air conditioners. In addition, DOE is adopting definitions of modes based on the relevant provisions from IEC Standard 62301 Second Edition Committee Draft for Vote. For active mode energy use, DOE adopts testing methods for ventless clothes dryers, test cloth preconditioning requirements for clothes dryer energy tests, test conditions for gas clothes dryers, test conditions for clothes dryer drum capacity measurement, amendments to clarify current clothes dryer usage patterns and capabilities and to update the references to industry standards in the room air conditioner and clothes dryer test procedures.

DATES: This rule is effective February 7, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on February 7, 2011.

ADDRESSES: You may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 287–1414. *E-mail: Subid.Wagley@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into part 430 the following industry standards:

(1) AHAM HLD–1–2009 ("AHAM HLD–1"), "Household Tumble Type Clothes Dryers," (2009).

Copies of AHAM HLD–1 are available from the Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955, or *http://www.aham.org/.*

(2) ANSI/AHAM RAC–1–2008 ("ANSI/AHAM RAC–1"), "Room Air Conditioners," (2008; ANSI approved July 7, 2008).

Copies of ANSI/AHAM RAC–1 are available from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936, or *http://webstore.ansi.org/.*

(3) ANSI/ASHRAE Standard 16–1983 ("ANSI/ASHRAE 16") (RA 2009), (Reaffirmation of ANSI/ASHRAE Standard 16–1983 [RA 1999]), "Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners," ASHRAE approved October 18, 1988, and reaffirmed June 20, 2009; ANSI approved October 20, 1998 and reaffirmed June 25, 2009.

Copies of ANSI/ASHRAE 16 are available from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936, or *http://webstore.ansi.org/.*

(4) International Electrotechnical Commission (IEC) Standard 62301 ("IEC 62301"), "Household electrical appliances—Measurement of standby power (first edition June 2005)."

Copies of IEC 62301 are available from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936, or *http://webstore.iec.ch/.*

Table of Contents

I. Background and Authority

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; "EPCA" or, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III, Public Law 94–163 (42 U.S.C. 6291–6309, as codified) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," a program covering most major household appliances including clothes dryers and room air conditioners (all of which are referred to below as "covered products").[1] (42 U.S.C. 6291(1)–(2) and 6292(a)(2) and (8))

Under the Act, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and DOE implements the remainder of the program. The testing requirements consist of test procedures that, pursuant to EPCA, manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA and for representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with EPCA standards. Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In any rulemaking to amend a test procedure, DOE must also determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2)) EPCA also states that models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard. (42 U.S.C. 6293(e)(3)) EPCA also states that the Secretary's authority to amend energy conservation standards under 42 U.S.C. 6293(e) shall not affect the Secretary's obligation to issue final rules as described in 42 U.S.C. 6295. (42 U.S.C. 6293(e)(4))

DOE's test procedures for clothes dryers are found at 10 CFR part 430, subpart B, appendix D. DOE established its test procedure for clothes dryers in a final rule published in the **Federal Register** on September 14, 1977 (the September 1977 TP Final Rule). 42 FR 46145. On May 19, 1981 DOE published a final rule (the May 1981 TP Final Rule) to amend the test procedure by establishing a field-use factor for clothes dryers with automatic termination controls, clarifying the test cloth specifications and clothes dryer preconditioning, and making editorial and minor technical changes. 46 FR 27324. The existing clothes dryer test procedure incorporates by reference two industry test standards: (1) The Association of Home Appliance Manufacturers (AHAM) Standard HLD–1–1974, "AHAM Performance Evaluation Procedure for Household Tumble Type Clothes Dryers" (AHAM Standard HLD–1–1974); and (2) AHAM Standard HLD–2EC, "Test Method for Measuring Energy Consumption of Household Tumble Type Clothes Dryers" December 1975 (AHAM Standard HLD–2EC). The test procedure includes provisions for determining the energy factor (EF) for clothes dryers, which is a measure of the total energy required to dry a standard test load of laundry to a "bone dry"[2] state.

DOE's test procedures for room air conditioners are found at 10 CFR part 430, subpart B, appendix F. DOE established its room air conditioner test procedure on June 1, 1977, and redesignated and amended it on June 29, 1979. 42 FR 27898; 44 FR 37938. The existing room air conditioner test procedure incorporates by reference two industry test standards: (1) American National Standard (ANS) (since renamed American National Standards Institute (ANSI)) Z234.1–1972, "Room Air Conditioners;"[3] and (2) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 16–69, "Method of Testing for Rating Room Air Conditioners."[4] The DOE test procedure includes provisions for determining the energy efficiency ratio (EER) of room air conditioners, which is the ratio of the cooling capacity in British thermal units (Btu) to the power input in watts (W).

As currently drafted, the test procedures for the products at issue in this rulemaking do not account for standby mode and off mode energy consumption, except in one narrow product class. Specifically, for gas clothes dryers with constant burning pilot lights, DOE's current test procedure for clothes dryers addresses the standby energy use of such pilot lights. EPCA, however, states that gas clothes dryers shall not be equipped with a constant burning pilot for

[1] All references to EPCA refer to the statute as amended including through the Energy Independence and Security Act of 2007, Public Law 110–140. For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

[2] "Bone dry" is defined in the DOE clothes dryer test procedure as "a condition of a load of test clothes which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less." (10 CFR subpart B, appendix D, section 1.2)

[3] ANSI standards are available at *http://www.ansi.org.*

[4] ASHRAE standards are available at *http://www.ashrae.org.*

products manufactured on or after January 1, 1988. (42 U.S.C. 6295(g)(3)) As discussed in section III.C.8, DOE amends the clothes dryer test procedure in today's final rule to remove any provisions for measuring constant burning pilot lights.

EPCA directs DOE to amend its test procedures to include measures of standby mode and off mode energy consumption. EPCA further directs DOE to amend the test procedures to integrate such energy consumption into a single energy descriptor for that product. If that is technically infeasible, DOE must prescribe a separate standby mode and off mode energy-use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301 ["Household electrical appliances—measurement of standby power," First Edition 2005–06 (IEC Standard 62301)][5][6] and IEC Standard 62087 ["Methods of measurement for the power consumption of audio, video, and related equipment," Second Edition 2008–09]. *Id.*

EPCA also provides that amendments to the test procedures to include standby mode and off mode energy consumption will not determine compliance with previously established standards. (U.S.C. 6295(gg)(2)(C)) The test procedure amendments regarding provisions for standby mode and off mode in today's final rule shall become effective 30 days after the publication of the rule in the **Federal Register**. DOE notes, however, that the procedures and calculations for standby mode and off mode energy consumption need not be performed at this time to determine compliance with the current energy conservation standards. Manufacturers would be required to use the amended test procedures' standby mode and off mode provisions starting on the compliance date of any final rule establishing amended energy conservation standards for clothes dryers and room air conditioners that address standby mode and off mode energy consumption. In addition, starting 180 days after publication of today's test procedure final rule, any representations as to the standby mode and off mode energy consumption must be based upon results generated under the applicable provisions of this test procedure. (42 U.S.C. 6293(c)(2))

DOE published a notice of proposed rulemaking (NOPR) on December 9, 2008 (the December 2008 TP NOPR), in which it proposed a number of revisions and additions to its test procedures for clothes dryers and room air conditioners. These consisted largely of provisions to address the new statutory requirement to expand test procedures to incorporate a measure of standby mode and off mode energy consumption. 73 FR 74639. DOE also proposed amendments to correct text describing the EF calculation for clothes dryers and the text referencing room air conditioner industry test standards. 73 FR 74650. The proposals in the NOPR were addressed at a public meeting on December 17, 2008 (the December 2008 Public Meeting). In addition, DOE invited written comments, data, and information on the December 2008 TP NOPR through February 23, 2009.

DOE received oral comments from interested parties at the December 2008 Public Meeting and subsequently received four written comments. The principal test procedure issues on which interested parties commented were: (1) Establishing multiple low power or standby modes for both clothes dryers and room air conditioners; (2) the number of annual hours associated with active, standby, and off modes for the calculation of energy use; (3) considering an additional standby mode (a "network mode"); (4) clarifying the definitions of standby and off mode; (5) harmonizing mode definitions and testing procedures with international standards, in particular IEC Standard 62301 Second Edition, Committee Draft 2 (IEC Standard 62301 CD2); and (6) integrating of standby and off mode energy use and active mode energy use into a single energy-use metric.

DOE determined after the December 2008 TP NOPR was published that it would consider a revised version of IEC Standard 62301, *i.e.,* IEC Standard 62301 Second Edition, which at that time was expected to be published in July 2009. DOE anticipated, based on review of drafts of the updated IEC Standard 62301, that the revisions could include different mode definitions. Subsequently, DOE received information that IEC Standard 62301 Second Edition would not be published until late 2010. To allow for the consideration of standby and off mode power consumption in the concurrent energy conservation standards rulemaking, DOE published a SNOPR on June 29, 2010 (hereafter referred to as the June 2010 TP SNOPR), proposing mode definitions based on the new mode definitions from the most recent draft version of IEC Standard 62301 Second Edition which, at that time, was designated as IEC Standard 62301 Second Edition Committee Draft for Vote (IEC Standard 62301 CDV). 75 FR 37594. The IEC circulated IEC Standard 62301 CDV on August 28, 2009. IEC Standard 62301 CDV contained the most recent proposed amendments to IEC Standard 62301, including new mode definitions, at the time the June 2010 TP SNOPR was issued. IEC Standard 62301 CDV revised the proposed mode definitions from previous draft versions of IEC Standard 62301 and addressed comments received by interested parties in response to those drafts. As a result, DOE stated in the June 2010 TP SNOPR that the mode definitions in IEC Standard 62301 CDV represent the best definitions available for the supporting analysis. *Id.*

DOE also determined after publication of the December 2008 TP NOPR to conduct a rulemaking to amend the active mode test procedure for clothes dryers and room air conditioners. As part of this rulemaking, DOE intended to address issues on which it requested comment in the concurrent energy conservation standards rulemaking, discussed below. In the June 2010 TP SNOPR, DOE proposed the following test procedure amendments for the measurement of active mode energy consumption for clothes dryers and room air conditioners: (1) Procedures for more accurately measuring the effects of different automatic termination technologies in clothes dryers; (2) provisions for ventless clothes dryers, which are being considered under an amended energy conservation standard; (3) updated detergent specifications for clothes dryer test cloth preconditioning; (4) changes to better reflect current usage patterns and capabilities for the covered products; (5) updated references to external test procedures; and (6) clarifications to the test conditions for gas clothes dryers. 75 FR 37594 (June 29, 2010).

The proposals in the SNOPR were addressed at a public meeting on July 14, 2010 (July 2010 Public Meeting). In addition, DOE invited written comments, data, and information on the June 2010 TP SNOPR through August 30, 2010. DOE received oral comments from interested parties at the July 2010 Public Meeting and subsequently received 13 written comments. The principal test procedure issues on which interested parties commented were: (1) The consideration of the most recent draft IEC Standard 62301 Second Edition, Final Draft International

[5] IEC standards are available at: *http://www.iec.ch.*

[6] Multiple editions of this standard are referenced in this final rule. Unless otherwise indicated, the terms "IEC Standard 62301" or "IEC Standard 62301 First Edition" refer to "Household electrical appliances—measurement of standby power," First Edition 2005–06.

Standard (IEC Standard 62301 FDIS); (2) the settings used for standby and off mode testing; (3) the allocation of hours to different standby and off modes; (4) the clothes dryer cycle settings selected for automatic cycle termination testing methods; (5) the inclusion of the cool-down period for clothes dryer automatic cycle termination tests; (6) revisions to the water temperature for clothes dryer test load preparation; (7) test conditions for ventless clothes dryers; (8) the consideration of the effects of clothes dryers on HVAC energy use; (9) the initial remaining moisture content (RMC) value for clothes dryers; (10) the number of room air conditioner annual operating hours; and (11) the consideration of fan-only active mode for room air conditioners.

Test procedure amendments for the measurement of active mode energy consumption for clothes dryers and room air conditioners will become effective 30 days after the publication of today's final rule in the **Federal Register**. In addition, DOE also notes that as of 180 days after the publication of today's test procedure final rule, any representations with respect to the energy use or efficiency or cost of energy consumed of the products that are the subject of this rulemaking must be based upon results generated under the applicable provisions of these amended test procedures. (42 U.S.C. 6293(c)(2))

This test procedure rulemaking fulfills the 7-year review requirement prescribed by EPCA. At least once every 7 years, the Secretary shall review test procedures for all covered products and amend test procedures with respect to any covered product or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6293(b)(1)(A))

DOE is also conducting a concurrent energy conservation standards rulemaking for residential clothes dryers and room air conditioners. For clothes dryers, EPCA establishes prescriptive standards for clothes dryers, requiring that gas dryers manufactured on or after January 1, 1988 not be equipped with a constant burning pilot and further requiring that DOE conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295(g)(3) and (4)) On May 14, 1991, DOE published a final rule in the **Federal Register** establishing the first set of performance standards for residential clothes dryers (56 FR 22250); the new standards became effective on May 14, 1994. 10 CFR 430.32(h). DOE has initiated the second cycle of clothes dryer standards rulemakings by publishing a notice of availability of a framework document, discussed in more detail below. 72 FR 57254 (October 9, 2007).

For room air conditioners, EPCA establishes performance standards that became effective on January 1, 1990, and directs DOE to conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295(c)(1) and (2)) On March 4, 1994, DOE published a NOPR for several products, including room air conditioners. 59 FR 10464. On September 24, 1997, DOE published a final rule establishing an updated set of performance standards, with an effective date of October 1, 2000. 62 FR 50122; 10 CFR 40.32(b). DOE initiated the second cycle of room air conditioner standards rulemakings concurrent with the clothes dryer rulemaking. 72 FR 57254 (October 9, 2007).

As stated above, DOE initiated the second cycle of residential clothes dryer and room air conditioner energy conservation standards rulemakings by publishing a notice in the **Federal Register** announcing the availability of a framework document to initiate a rulemaking to consider amended energy conservation standards for residential clothes dryers and room air conditioners on October 9, 2007 (hereafter the October 2007 Framework Document). 72 FR 57254. In the October 2007 Framework Document, DOE identified specific ways in which it could revise its test procedures for these two products and requested comment from interested parties on whether it should adopt such revisions. Specifically, DOE sought comment on potential amendments to the clothes dryer test procedure to: (1) Reflect lower remaining moisture content (RMC)[7] in clothes loads; (2) account for fewer annual use cycles; and (3) add the capability to test ventless clothes dryers. (Framework Document, STD No. 1 at pp. 4–6)[8] DOE received comments in response to the October 2007 Framework Document that it should consider changes to the clothes dryer test load size. For room air conditioners, DOE requested input on potential amendments to the test procedure to: (1) Incorporate the most recent ANSI and ASHRAE test standards; (2) reduce the annual operating hours; and (3) measure part-load performance. (Framework Document, STD No. 1 at pp. 6–7) DOE received comments in response to the October 2007 Framework Document that it should consider changes to the ambient test conditions for room air conditioners.

EPCA directs DOE to incorporate standby and off mode energy use into any final rule establishing or revising a standard for a covered product adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)) DOE is required by consent decree to publish a final rule setting forth any revised efficiency standards for clothes dryers and room air conditioners by June 30, 2011. As result, this final rule must incorporate standby and off mode energy use.

II. Summary of the Proposal

In today's final rule, DOE amends its test procedures for clothes dryers and room air conditioners to: (1) Use in the concurrent development of energy conservation standards that address the energy use of these products when in standby mode and off mode, as well as in the implementation of any amended standards; (2) address the statutory requirement to expand test procedures to incorporate measures of standby mode and off mode power consumption; (3) adopt changes to the water temperature for clothes dryer test load preparation; (4) expand the clothes dryer test procedures to accommodate ventless clothes dryers being considered for coverage under an amended energy conservation standard; (5) adopt technical changes to better reflect current usage patterns and capabilities for the covered products; (6) update detergent specifications for clothes dryer test cloth preconditioning; (7) update the references to external test procedures; (8) clarify the test conditions for gas clothes dryers; and (9) clarify the test conditions for clothes dryer drum capacity measurements. As discussed in this section, DOE is not adopting the technical changes and procedures to more accurately measure the effects of different automatic cycle termination technologies in clothes dryers proposed in the June 2010 TP SNOPR. The following paragraphs summarize the amendments.

Standby and Off Mode

In today's final rule, DOE incorporates by reference into both the clothes dryer and room air conditioner test procedures specific clauses from IEC

[7] RMC is the ratio of the weight of water contained by the test load to the bone-dry weight of the test load, expressed as a percent.

[8] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for clothes dryers and room air conditioners (Docket No. EERE–2007–BT–STD–0010), which is maintained in the Resource Room of the Building Technologies Program. This notation indicates that the statement preceding the reference was made in DOE's Framework Document, which is document number 1 in the docket for the clothes dryer and room air conditioner energy conservation standards rulemaking, and appears at pages 4–6 of that document.

Standard 62301 regarding test conditions and test procedures for measuring standby mode and off mode power consumption. DOE also incorporates into each test procedure the definitions of "active mode," "standby mode," and "off mode" based on the definitions provided in IEC Standard 62301 CDV. Further, DOE adopts additional language in each test procedure to clarify how clauses from IEC Standard 62301 and the mode definitions from IEC Standard 62301 CDV are to be applied when measuring standby mode and off mode power consumption.[9]

For reasons discussed in section III.B.2 for clothes dryers, DOE adopts a definition and testing procedures for a single standby mode, rather than the multiple standby modes—"inactive" mode, "cycle finished" mode, and "delay start" mode—as proposed in the December 2008 TP NOPR. 73 FR 74639, 74645 (December 9, 2008). DOE also adopts new methods to calculate clothes dryer standby mode and off mode energy use, as well as a new measure of energy efficiency—Combined Energy Factor (CEF)—that includes energy use in standby mode and off mode. The standby mode and off mode amendments do not change the method to calculate the existing clothes dryer energy efficiency metric for active mode, the energy factor (EF).

Similarly, for reasons discussed in section III.B.2 for room air conditioners, DOE adopts a definition and testing procedures for a single standby mode, rather than the multiple standby modes—"inactive" mode, "delay start" mode, and "off-cycle" mode—as proposed in the December 2008 TP NOPR. 73 FR 74639, 74645. DOE also adopts new methods to calculate room air conditioner standby mode and off mode energy use and a new measure of energy efficiency—Combined Energy Efficiency Ratio (CEER)—that includes energy use in the standby mode and the off mode. The standby mode and off mode amendments do not change the method used to calculate the existing room air conditioner energy efficiency metric for active mode, the energy efficiency ratio (EER).

In the December 2008 TP NOPR, DOE also proposed that standby mode and off mode testing be conducted with room-side air temperature at 74 ± 2 degrees Fahrenheit (°F), with a temperature control setting of 79 °F. 73 FR 74639, 74646. Upon further consideration, however, DOE determined that, because the proposed test procedure would be limited to measuring a single standby mode and an off mode, the proposed close tolerance on ambient temperature and the proposed temperature setting of 79 °F, which were relevant only for an off-cycle standby mode measurement, would not be required. Therefore, DOE is not adopting those requirements for testing conditions in today's final rule.

In the June 2010 TP SNOPR, DOE proposed that standby mode and off mode testing for both clothes dryers and room air conditioners be conducted at the settings that produce the highest power consumption level, consistent with the particular mode definition under test. 75 FR 37594, 37604 (June 29, 2010). Upon further consideration, however, DOE believes that provisions for testing in the settings that produce the highest power consumption level would not be representative of consumer usage. For the reasons discussed in section III.B.2, DOE believes the provisions in section 5.2 of IEC Standard 62301 that specify the appliance be installed and set up in accordance with manufacturers' instructions, or if no instructions are given, the appliance be tested at factory or "default" settings, is more representative of consumer usage. Therefore, DOE amends the test procedure in today's final rule to incorporate by reference section 5.2 of IEC Standard 62301 for standby and off mode testing for both clothes dryers and room air conditioners in today's final rule.

For the reasons discussed in section III.B.5, DOE revises the estimated annual operating cost calculation for both clothes dryers and room air conditioners (Estimated Annual Operating Cost and Annual Energy Cost, respectively) to integrate the cost of energy use in the standby mode and off mode.

Amendments to the Water Temperature for Clothes Dryer Test Load Preparation

The existing DOE clothes dryer test procedure requires that the test load be agitated in water whose temperature is 100 °F ± 5 °F. In the June 2010 TP SNOPR, DOE stated that it did not have data indicating whether a different water temperature for clothes dryer test load preparation would be more representative of current consumer usage, but that if consumer usage data is made available that indicates a 60 °F ± 5 °F water temperature is more representative of consumer use, DOE may adopt this alternate approach. 75 FR 37594, 37615 (June 29, 2010). As discussed in section III.C.2, DOE believes that the cold water rinse cycle is more representative of typical consumer use based on the rinse temperature use factors in the DOE clothes washer test procedure and the Energy Information Administration (EIA) 2005 "Residential Energy Consumption Survey" (RECS)[10][11] data reporting the percentage of clothes washer cycles for which consumers use cold water for the rinse cycle. Therefore, DOE amends the clothes dryer test procedure in today's final rule to change the water temperature for clothes dryer test load preparation to 60 °F ± 5 °F. This temperature is more representative of the clothes load temperature after a cold rinse cycle at the end of the wash cycle.

Provisions for Testing Ventless Clothes Dryers

In today's final rule, DOE amends the current clothes dryer test procedure to include provisions for testing ventless clothes dryers. These provisions are based upon an alternate test procedure developed by DOE and proposed in the June 2010 TP SNOPR that provide separate definitions for a "conventional clothes dryer" and a "condensing clothes dryer." These provisions also qualify the requirement for an exhaust simulator so that it would apply only to conventional clothes dryers. Further, DOE includes in the test procedure additional language based on provisions from European Standard EN 61121, "Tumble dryers for household use—Methods for measuring the performance," Edition 3 2005 (the EN Standard 61121). These provisions clarify the alternate test procedure developed by DOE. EN Standard 61121 is an internationally-accepted test standard that specifies methods for testing ventless clothes dryers. The clarifications require that if a ventless clothes dryer is equipped with a condensation box, the clothes dryer shall be tested with such condensation box installed as specified by the manufacturer. A condensation box stores condensed moisture removed from the air exiting the drum. The box is later emptied by the user. In addition, the clarifications also state that if the clothes dryer stops the test cycle because the condensation box is full, the

[9] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedure to include standby mode and off mode energy consumption. See 42 U.S.C. 6295(gg)(2)(A). As explained subsequently in this notice, because IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment, it is inapplicable to the products at issue in this rulemaking.

[10] U.S. Department of Energy-Energy Information Administration. *Residential Energy Consumption Survey* 2005 Public Use Data Files, 2005. Washington, DC. Available online at: *http://www.eia.doe.gov/emeu/recs/*.

[11] EIA's 2005 RECS is the latest available version of this survey.

test is not valid because the unit would not be operating as intended by the manufacturer to condense moisture in the air exiting the clothes dryer drum. In such cases, the condensation box must be emptied and the test re-run from the beginning. The clarifications also state that the condenser heat exchanger cannot be taken out of the clothes dryer between tests to clarify the test procedure and ensures that all manufacturers are testing products under the same conditions. Finally, DOE adopts clarifications that address clothes dryer preconditioning for ventless clothes dryers, as discussed in section III.C.3.

Amendments To Reflect Current Usage Patterns and Capabilities

DOE amends the test procedure for clothes dryers to reflect current usage patterns and capabilities. These amendments are based on DOE's analysis of consumer usage patterns data. As proposed in the June 2010 SNOPR, DOE revises the number of annual use cycles from the 416 cycles per year currently specified by the DOE test procedure to 283 cycles per year for all types (that is, product classes) of clothes dryers. This revision is based on DOE's analysis of data from the 2005 RECS for the number of laundry loads (clothes washer cycles) washed per week and the frequency of clothes dryer use. In addition, as proposed in the 2010 SNOPR, DOE changes the 7-pound (lb) clothes dryer test load size specified by the current test procedure for standard-size clothes dryers to 8.45 lb. This revision is based on the historical trends of clothes washer tub volumes and the corresponding percentage increase in clothes washer test load sizes (as specified by the DOE clothes washer test procedure). DOE assumes these historical trends proportionally impact clothes dryer load sizes. DOE believes most compact clothes dryers are used in conjunction with compact-size clothes washers, however, and DOE does not have any information to suggest that the tub volume of such clothes washers has changed significantly. Therefore, DOE is not changing the 3-lb test load size currently specified in its clothes dryer test procedure for compact clothes dryers in today's final rule.

In the June 2010 TP SNOPR, DOE also proposed to revise the 70-percent initial RMC required by the test procedure to 47 percent so as to accurately represent the condition of a laundry load after a wash cycle. This proposal was based on analysis of shipment-weighted RMC data for clothes washers submitted by AHAM and a distribution analysis of RMC data for clothes washer models listed in the December 22, 2008 California Energy Commission (CEC) directory. 75 FR 37594, 37599 (June 29, 2010). In response to comments from interested parties on the June 2010 TP SNOPR, DOE determined that an initial clothes dryer RMC of 57.5 percent more accurately represents the moisture content of laundry loads after a wash cycle for the purposes of clothes dryer testing. As discussed in section III.5.b, this RMC is derived from the 47-percent shipment-weighted RMC for clothes washers, but was derived without applying an RMC correction factor as required by the DOE clothes washer test procedure. For these reasons, DOE revises the initial clothes dryer RMC from 70 percent to 57.5 percent in today's final rule.

Clothes Dryer Automatic Cycle Termination

In the June 2010 TP SNOPR, DOE proposed to revise its clothes dryer test procedure to include definitions of and provisions for testing both timer dryers and automatic termination control dryers using methodology provided in Australia/New Zealand (AS/NZS) Standard 2442.1: 1996, "Performance of household electrical appliances—Rotary clothes dryers, Part 1: Energy consumption and performance" (AS/NZS Standard 2442.1) and AS/NZS Standard 2442.2: 2000, "Performance of household electrical appliances—Rotary clothes dryers, Part 2: Energy labeling requirements" (AS/NZS Standard 2442.2). 75 FR 37594, 37598 (June 29, 2010). DOE proposed to incorporate the testing methods from these international test standards, along with a number of clarifications, to measure the energy consumption for both timer dryers and automatic termination control dryers. The measurement would account for the amount of over-drying energy consumption, that is, the energy consumed by the clothes dryer after the load reaches an RMC of 5 percent. 75 FR 37594, 37599 (June 29, 2010).

DOE conducted testing of representative clothes dryers using the automatic cycle termination test procedure proposed in the June 2010 TP SNOPR; however, the test results showed that all of the clothes dryers tested significantly over-dried the DOE test load to near bone dry. In addition, the measured EF values were significantly lower than EF values obtained using the existing DOE test procedure, and the test data indicated that clothes dryers equipped with automatic termination controls were less efficient than timer dryers. DOE believes the test procedure amendments for automatic cycle termination proposed in the June 2010 TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems using the test load specified in the DOE test procedure. DOE believes that clothes dryers with automatic termination sensing control systems, which infer the RMC of the load from the properties of the exhaust air such as temprature and humidity, may be designed to stop the cycle when the consumer load has a higher RMC than the RMC obtained using the proposed automatic cycle termination test procedure in conjunction with the existing test load.[12] Manufacturers have indicated, however, that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the test load as currenty specified. In addition, DOE presented data in the May 1981 TP Final Rule from a field use survey conducted by AHAM as well as an analysis conducted by the National Bureau of Standards (now known as the National Institute of Standards and Technology (NIST)) of field test data on automatic termination control dryers. Analysis of this data showed that clothes dryers equipped with an automatic cycle termination feature consume less energy than timer dryers by reducing over-drying. 46 FR 27324 (May 19, 1981).

For the reasons discussed above, DOE believes the test procedure amendments for automatic cycle termination proposed in the June 2010 TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems. As a result, DOE is not adopting the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR. 75 FR 37594, 37598–99 (June 29, 2010). If data is made available to develop a test procedure that accurately measures the energy consumption of clothes dryers equipped with automatic termination controls, DOE may consider revised amendments in a future rulemaking.

[12] To investigate this, DOE conducted additional testing using a test load similar to that specified in AHAM Standard HLD–1–2009, which consists of cotton bed sheets, towels, and pillow cases. For tests using the same automatic cycle termination settings as were used in the testing described earlier (*i.e.*, normal cycle setting and highest temperature setting, the alternate test load was dried to 1.7 to 2.2 percent final RMC, with an average RMC of 2.0 percent. In comparison, the same clothes dryer under the same cycle settings dried the DOE test load to 0.3 to 1.2 percent RMC, with an average RMC of 0.7 percent. Thus, DOE concluded that the proposed automatic cycle termination control test procedures may not stop at an appropriate RMC when used with the current test load.

DOE received comments in response to the June 2010 TP SNOPR that it should revise the definition of "automatic termination control" in the current clothes dryer test procedure. Commenters felt the definition should more clearly account for electronic controls by specifying that a preferred automatic termination control setting can also be indicated by any other visual indicator (in addition to a mark or detent). DOE agrees this clarification should be added and is amending the definition of "automatic termination control" in the clothes dryer test procedure to include it.

DOE also received comments stating that the field-use factor for clothes dryers with automatic cycle termination applied in the per-cycle energy consumption calculation excludes sensing technologies that do not meet the definitions of "temperature sensing control" or "moisture sensing control," which are narrowly defined to require that the control system use either a temperature sensor that monitors the exhaust air or a moisture sensor contained within the drum. DOE believes the definition of "automatic termination control" more broadly applies to any sensing system that monitors either the dryer load temperature or its moisture content and that this definition would not limit the emergence of any new sensor technologies that monitor the moisture content or temperature in other ways from applying the field use factor for automatic cycle termination. For these reasons, DOE amends the test procedure to specify that the field use factor applies to clothes dryers that meet the requirements for the definitions of "automatic termination control."

Other Changes

For clothes dryers, DOE also revises the detergent specifications for test cloth preconditioning to update the detergent specified in the test procedure, eliminates an unnecessary reference to an obsolete industry clothes dryer test standard, and amends the test conditions for gas clothes dryers to specify the required gas supply pressure.

DOE also received comments related to clothes dryers from interested parties on issues not addressed in the June 2010 TP SNOPR. Commenters suggested that DOE clarify the provisions for the measurement of drum capacity to specify that the clothes dryer's rear drum surface be supported on a platform scale to "prevent deflection of the drum surface * * *" instead of "prevent deflection of the dryer." As discussed in section III.C.10.e, DOE agrees with these comments and adopts that provision in today's final rule. In addition, DOE received comments in response to the June 2010 TP SNOPR that it should expressly state the equations for EF and CEF in the test procedure to provide optimal clarity for the regulated industry. DOE agrees with comments that the equations for EF and CEF should be included in 10 CFR part 430, subpart B, appendix D1 for completeness. Therefore, DOE amends the clothes dryer test procedure in today's final rule to include those calculations and to clarify in 10 CFR part 430.23(d)(2) and (3) that the EF and CEF must be determined in accordance with the appropriate sections in 10 CFR part 430, subpart B, appendix D1.

For room air conditioners, DOE updates the references in its current room air conditioner test procedure to incorporate the most recent ANSI and ASHRAE test standards—ANSI/AHAM RAC–1–R2008, "Room Air Conditioners," (ANSI/AHAM RAC–1–R2008) and ANSI/ASHRAE Standard 16–1983 (RA 2009) "Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners" (ANSI/ASHRAE Standard 16–1983 (RA 2009)). DOE has also determined that the 750 annual operating hours specified by the current DOE test procedure is representative of current usage patterns, based upon its interpretation of data from the 2005 RECS. Therefore, DOE is not amending the annual usage hours specified by the current DOE test procedure for room air conditioners.

As noted in section I, EPCA requires that DOE determine to what extent, if any, test procedure amendments would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard. In determining the amended energy conservation standard, DOE must measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use (as applicable) of a representative sample of covered products that minimally comply with the existing standard. (42 U.S.C. 6293(e)(2)) Under 42 U.S.C. 6295(gg)(2)(C), EPCA provides that amendments to the test procedures that include standby mode and off mode energy consumption will not determine compliance with previously established standards. (U.S.C. 6295(gg)(2)(C))

These amended clothes dryer and room air conditioner test procedures are effective 30 days after the publication of today's final rule in the **Federal Register**. Because the amendments to the test procedures for measuring standby mode and off mode energy consumption do not alter the existing measures of energy consumption or efficiency for clothes dryers and room air conditioners, the amendments do not affect a manufacturer's ability to comply with current energy conservation standards. Manufacturers will not be required to use the amended test procedures' standby mode and off mode provisions until the mandatory compliance date of any amended clothes dryer and room air conditioner energy conservation standards. All representations related to standby mode and off mode energy consumption of both clothes dryers and room air conditioners made 180 days after the publication of today's final rule must be based upon the standby and off mode requirements of the amended test procedures. (42 U.S.C. 6293(c)(2)) DOE examines how each of the amendments to the active mode provisions in its clothes dryer and room air conditioner test procedures in today's final rule will affect the measured efficiency of products in section IV.

III. Discussion

A. Products Covered by the Test Procedure Changes

Today's amendments to DOE's clothes dryer test procedure cover both electric and gas clothes dryers, DOE defines a clothes dryer to mean a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation, with blower(s) driven by an electric motor(s) and either gas or electricity as the heat source.

Porticos Inc. (Porticos) commented in response to the June 2010 TP SNOPR that DOE's definition for an electric clothes dryer excludes every possible alternative from consideration. Porticos stated that any alternate innovative clothes dryer technology, such as microwave, radio-frequency, vacuum, desiccant, and vapor-compression, would not meet the current electric clothes dryer definition, and direct comparisons would not be possible. Porticos commented that a better definition would be "an electrical appliance for drying clothes" and that any more limiting verbiage serves only to exclude new entrants from the marketplace. (Porticos, No. 23 at p. 1) Porticos also commented that DOE should reexamine the test procedures to remove any explicit or implicit reference to a particular technology or

approach to clothes drying. (Porticos, No. 23 at p. 2)

DOE notes that the definition of a clothes dryer in the CFR does not prohibit other products (that is, those that do not fall under the definition of a clothes dryer) from being introduced to the market. For example, spin dryers or drying cabinets that do not use a heat source, forced air circulation, or a tumble-type drum are currently commercially available. Under the product definition suggested by Porticos, DOE notes that blow dryers, fans, or heat lamps could be considered covered products. DOE is also not aware of any commercially available microwave, radio-frequency, vacuum, desiccant, or vapor-compression clothes dryers. As a result, no data is available by which DOE could develop standards for such dryers. For these reasons, DOE is not revising the definition of a clothes dryer in today's final rule.

DOE's regulations define a room air conditioner as a consumer product which is powered by a single-phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating. It does not include packaged terminal air conditioners.[13] This definition and the amendments discussed below cover room air conditioners designed for single- or double-hung windows with or without louvered sides and with or without reverse cycle, as well as casement-slider and casement-only window-type room air conditioners. DOE is not changing the definition for room air conditioners in today's final rule.

B. Clothes Dryer and Room Air Conditioner Standby Mode and Off Mode Test Procedures

1. Incorporating by Reference IEC Standard 62301 for Measuring Standby Mode and Off Mode Power in Clothes Dryers and Room Air Conditioners

As noted in the December 2008 TP NOPR, DOE considered, pursuant to EPCA, the most current versions of IEC Standard 62301 and IEC Standard 62087 for measuring power consumption in standby mode and off mode. (42 U.S.C. 6295(gg)(2)(A)) 73 FR 74639, 74643–44 (December 9, 2008).[14] DOE noted that IEC Standard 62301 provides for measuring standby power in electrical appliances, including clothes dryers and room air conditioners, and, therefore, is applicable to the proposed amendments to the clothes dryer and room air conditioner test procedures. 73 FR 74643–44 (December 9, 2008).

DOE proposed in the December 2008 TP NOPR to incorporate by reference into the DOE test procedures for clothes dryers and room air conditioners specific clauses from IEC Standard 62301 for measuring standby mode and off mode power: from section 4 ("General conditions for measurements"): paragraph 4.2, "Test room"; paragraph 4.4, "Supply voltage waveform"; and paragraph 4.5, "Power measurement accuracy"; as well as from section 5 ("Measurements"); paragraph 5.1, "General"; and paragraph 5.3, "Procedure." DOE also proposed to reference these same provisions in the DOE test procedure for room air conditioners, as well as section 4, paragraph 4.3, "Power supply." 73 FR 74639, 74644 (December 9, 2008).

In the December 2008 TP NOPR, DOE noted that EPCA (42 U.S.C. 6295(gg)(2)(A)) requires that in developing any amended test procedures, DOE consider the most current version of IEC Standard 62301. The IEC is currently developing an updated version of this standard, IEC Standard 62301 Second Edition. 73 FR 74639, 74644 (December 9, 2008). At the time of publication of the December 2008 TP NOPR, however, IEC Standard 62301 was the "current version, which DOE was required by EPCA to consider. DOE incorporated sections from IEC Standard 62301 in the proposed amendments to the test procedure in the December 2008 TP NOPR. 73 FR 74639, 74644 (December 9, 2008).

DOE did not receive any objections to the proposed testing methods and procedures referenced in IEC Standard 62301 in response to the December 2008 TP NOPR. As a result, the June 2010 TP SNOPR did not affect DOE's proposal in the December 2008 TP NOPR to incorporate by reference the clauses presented above from IEC Standard 62301. 75 FR 37594, 37602 (June 29, 2010).

DOE anticipated, based on review of draft versions of IEC Standard 62301 Second Edition, that the revisions to IEC Standard 62301 could include different mode definitions. DOE received information, however, that IEC Standard 62301 Second Edition would not be available until late 2010. To allow for consideration of standby and off mode power consumption in the concurrent energy conservation standards rulemaking, DOE proposed in the June 2010 TP SNOPR the new mode definitions from the most recent draft version of IEC Standard 62301 Second Edition, IEC Standard 62301 CDV. The definitions of standby mode, off mode, and active mode in IEC Standard 62301 CDV expand upon the EPCA mode definitions and provide additional guidance as to which functions are associated with each mode. 75 FR 37594, 37602 (June 29, 2010). The comments received by IEC on IEC Standard 62301 CD2, and the resulting amended mode definitions proposed in IEC Standard 62301 CDV, demonstrate significant participation of interested parties in the development of definitions that represent a substantial improvement over those in IEC Standard 62301. *Id.* These definitions are discussed in detail in Section III.B.2.

In response to the June 2010 TP SNOPR, AHAM, Alliance Laundry Systems (ALS), and Whirlpool Corporation (Whirlpool) commented in support of referencing the most recent draft version of IEC Standard 62301 Second Edition, designated as IEC Standard 62301 FDIS, for test methods and mode definitions rather than IEC Standard 62301 First Edition and IEC Standard 62301 CDV. (AHAM, Public Meeting Transcript, No. 20 at pp. 18, 26–27; AHAM, No. 27 at p. 2; ALS, No. 24 at p. 1; Whirlpool, No. 27 at p. 1)

AHAM and Whirlpool commented that IEC Standard 62301 FDIS will soon be formally adopted by IEC, and it contains a number of clarifications to the definitions and test procedures not present in IEC Standard 62301 CDV. According to AHAM and Whirlpool, this will allow for optimum international harmonization, giving clarity and consistency to the regulated community and decreasing testing burden. (AHAM, No. 31 at p. 2; Whirlpool, No. 27 at p. 1) Additionally, AHAM commented that no technical edits can be made to the standard after the FDIS version, so most countries allow a legal reference to this version. (AHAM, Public Meeting Transcript, No. 20 at pp. 14–15)

AHAM commented that IEC Standard 62031 FDIS incorporates comments from energy efficiency advocates,

[13] DOE's regulations define a packaged terminal air conditioner as a wall sleeve and a separate encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability energy.

[14] DOE notes that IEC Standard 62087 specifies methods of measuring the power consumption of TV receivers, videocassette recorders (VCRs), set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not include measurement for the power consumption of electrical appliances such as clothes dryers and room air conditioners. Therefore, IEC Standard 62087 is not applicable to the amendments to the clothes dryer and room air conditioner test procedures.

including the addition of an uncertainty power measurement section that would limit the possibility for different measurement results from different test labs. (AHAM, Public Meeting Transcript, No. 20 at pp. 16, 18, 26–27) AHAM also noted that IEC Standard 62301 FDIS includes a new sampling measurement method and an average reading measurement method. (AHAM, Public Meeting Transcript, No. 20 at pp. 13–18) AHAM commented that if DOE chooses not to adopt the IEC Standard 62301 FDIS, AHAM supports the use of IEC Standard 62301 CDV as the main referenced document. (AHAM, No. 31 at p. 2) Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), Southern California Edison (SCE), and Natural Resources Defense Council (NRDC) (hereafter "the California Utilities/NRDC"), stated in a jointly filed comment that they support harmonization with international standards and support the use of the definitions and test procedures in IEC Standard 62301 CDV. (California Utilities/NRDC, No. 33 at p. 2)

According to publicly available information, the IEC currently anticipates that the final version of IEC Standard 62301 Second Edition will likely be published in early 2011. Therefore, the second edition is not available for DOE's consideration or incorporation by reference. DOE is aware that there are significant differences between IEC Standard 62301 First Edition and IEC Standard 62301 FDIS, which is the latest draft version of IEC Standard 62301 Second Edition. DOE notes that these changes in methodology were first introduced only at the IEC Standard 62301 FDIS stage. These changes have not been the subject of significant comment from interested parties, nor has DOE had the opportunity to conduct a thorough analysis of those provisions. Consequently, the merits of these latest changes have not been fully vetted to demonstrate that they are preferable to the existing methodological provisions in the current version of the IEC standard. For these reasons, DOE has decided to base the test procedure amendments (other than the mode definitions, which are discussed in Section III.B.2) on the provisions of IEC Standard 62301 First Edition. DOE based the mode definitions on the language from IEC Standard 62301 CDV to address specific concerns raised by interested parties, as discussed above in this section. As discussed in section III.B.2, DOE notes that the mode definitions in IEC Standard 62301 CDV are essentially the same as the definitions provided in IEC Standard 62301 FDIS, with only minor editorial changes.

For the reasons discussed above and in the December 2008 NOPR and June 2010 SNOPR, DOE amends its test procedures for clothes dryers and room air conditioners in today's final rule to incorporate by reference the clauses from IEC Standard 62301 First Edition and the mode definitions from IEC Standard 62301 CDV. 73 FR 74639 (December 9, 2008); 75 FR 37594, 37602 (June 29, 2010). DOE may consider incorporating by reference clauses from IEC Standard 62301 Second Edition when that version has been published.

2. Determination of Modes To Be Incorporated

December 2008 TP NOPR

In the December 2008 TP NOPR, DOE proposed to incorporate into the clothes dryer and room air conditioner test procedure the definitions of "active mode," "standby mode," and "off mode" specified by EPCA. 73 FR 74639, 74644 (December 9, 2008). EPCA defines "active mode" as "the condition in which an energy-using product —

(I) Is connected to a main power source;

(II) has been activated; and

(III) provides 1 or more main functions."

(42 U.S.C. 6295(gg)(1)(A)(i))

EPCA defines "standby mode" as "the condition in which an energy-using product—

(I) Is connected to a main power source; and

(II) offers 1 or more of the following user-oriented or protective functions:

(aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.

(bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions."

(42 U.S.C. 6295(gg)(1)(A)(iii)) This definition differs from IEC Standard 62301 First Edition, which defines standby mode as the "lowest power consumption mode which cannot be switched off (influenced) by the user and that may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions." The EPCA definition permits the inclusion of multiple standby modes.

EPCA defines "off mode" as "the condition in which an energy-using product—

(I) Is connected to a main power source; and

(II) is not providing any standby mode or active mode function." [15]

(42 U.S.C. 6295(gg)(1)(A)(ii))

DOE recognized, however, that the EPCA definitions for "active mode," "standby mode," and "off mode" were developed to be broadly applicable for many energy-using products. For specific products with multiple functions, these broad definitions could lead to certain features being considered part of standby mode or off mode instead of active mode depending on the interpretation of the meaning of "main functions." 73 FR 74639, 74644–45 (December 9, 2008). As a result, DOE further proposed in the December 2008 TP NOPR to amend the clothes dryer and room air conditioner test procedures to clarify the range of main functions that would be classified as active mode functions and clarify standby and off mode definitions as follows:

For clothes dryers—

"Active mode" means a mode in which the clothes dryer is performing the main function of tumbling the clothing with or without heated or unheated forced air circulation to remove moisture from the clothing and/or remove or prevent wrinkling of the clothing;

"Inactive mode" means a standby mode other than delay start mode or cycle finished mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or provides continuous status display;

"Cycle finished mode" means a standby mode that provides continuous status display following operation in active mode;

"Delay start mode" means a standby mode that facilitates the activation of active mode by timer; and

[15] DOE notes that some features that provide consumer utility, such as displays and remote controls, are associated with standby mode and not off mode. A clothes dryer or room air conditioner is considered to be in "off mode" if it is plugged in to a main power source, is not being used for an active function such as drying clothing or providing cooling, and is consuming power for features other than a display, controls (including a remote control), or sensors required to reactivate it from a low power state. For example, a clothes dryer with mechanical controls and no display or continuously-energized moisture sensor, but that consumes power for components such as a power supply when the unit was not activated, would be considered to be in off mode when not providing an active function. For room air conditioners, a unit with mechanical controls and no display or remote control but with a power supply that consumes energy could be considered to be in off mode while not providing an active function.

"Off mode" means a mode in which the clothes dryer is not performing any active or standby function. 73 FR 74645.

For room air conditioners—

"Active mode" means a mode in which the room air conditioner is performing the main function of cooling or heating the conditioned space, or circulating air through activation of its fan or blower, with or without energizing active air-cleaning components or devices such as ultraviolet (UV) radiation, electrostatic filters, ozone generators, or other air-cleaning devices;

"Inactive mode" means a standby mode other than delay start mode or off-cycle mode that facilitates the activation of active mode by remote switch (including remote control) or internal sensor or provides continuous status display;

"Delay start mode" means a standby mode in which activation of an active mode is facilitated by a timer;

"Off-cycle mode" means a standby mode in which the room air conditioner: (1) Has cycled off its main function by thermostat or temperature sensor; (2) does not have its fan or blower operating; and (3) will reactivate the main function according to the thermostat or temperature sensor signal; and

"Off mode" means a mode in which a room air conditioner is not performing any active or standby function. 73 FR 74645.

June 2010 TP SNOPR and Today's Final Rule—Active Mode.

As discussed in section III.B.1, DOE proposed in the June 2010 TP SNOPR to amend the DOE clothes dryer and room air conditioner test procedures to define active mode as a mode that "includes product modes where the energy using product is connected to a mains power source, has been activated and provides one or more main functions" 75 FR 37594, 37603 (June 29, 2010). The definition of active mode proposed in the June 2010 TP SNOPR is the same as the definition proposed for the December 2008 TP NOPR, with minor editorial changes to conform with the definition in IEC Standard 62301 CDV. 73 FR 74639, 74644 (December 9, 2008). DOE noted that IEC Standard 62301 CD2 provided additional clarification that "delay start mode is a one off user initiated short duration function that is associated with an active mode." (IEC Standard 62301 CD2, section 3.8) IEC Standard 62301 CDV removed this clarification; however, in response to comments on IEC Standard 62301 CD2 that led to IEC Standard 62301 CDV, IEC states that delay start mode is a one off function of limited duration.[16] DOE inferred this to mean that delay start mode would not be considered a standby mode, although no conclusion is made as to whether it would be considered part of active mode. 75 FR 37594, 37603 (June 29, 2010). Delay start mode is discussed later in this section.

As discussed above in section III.B.1, the California Utilities/NRDC commented that it supports the use of the mode definitions in IEC Standard 62301 CDV. (California Utilities/NRDC, No. 33 at p. 2) Also discussed above in section III.B.1, AHAM and Whirlpool supported the use of the mode definitions in IEC Standard 62301 FDIS. (AHAM, Public Meeting Transcript, No. 20 at p. 18; AHAM, No. 31 at p. 2; Whirlpool, No. 27 at p. 1) DOE notes that the definition of active mode in IEC Standard 62301 FDIS is essentially the same as the definition provided in IEC Standard 62301 CDV, with only minor editorial changes. For the reasons stated above, DOE is adopting in today's final rule the active mode definition proposed in the June 2010 TP SNOPR.

In the June 2010 TP SNOPR, DOE did not change the additional clarifications discussed above for the range of main functions that would be classified as active mode functions, which were proposed in the December 2008 TP NOPR. 75 FR 37594, 37603 (June 29, 2010). DOE did not receive any comments objecting to the clarifications for the range of main functions that would be classified as active mode functions for each product. Therefore, for the reasons stated above, DOE adopts the amendments to clarify the range of main functions that would be classified as active mode functions as proposed in the December 2008 TP NOPR. *Id.*

For clothes dryers, DOE also investigated in the June 2010 TP SNOPR whether certain operating cycles providing a steam function should be covered under active mode, and whether measurement of energy consumption for such cycles should be incorporated into the DOE clothes dryer test procedure. 75 FR 37594, 37603 (June 29, 2010). The current DOE test procedure does not contain any provisions that would account for the energy and water use of steam cycles. DOE's analysis of a preliminary market survey of products available on the market conducted for the June 2010 TP SNOPR suggests that, at this time, steam cycles represent a very small fraction of overall product use nationwide. DOE also stated that it is unaware of energy and water consumption or consumer usage data with respect to steam. For these reasons, DOE did not propose amendments to include measurement of steam cycles for clothes dryers in the June 2010 TP SNOPR. *Id.* DOE did not receive any comments regarding the determination to not include measurement of steam cycles for clothes dryers. For these reasons, DOE is not amending its clothes dryer test procedure to include measurement of steam cycles.

June 2010 TP SNOPR and Today's Final Rule—Standby Mode

As discussed in section III.B.1, DOE proposed in the June 2010 SNOPR to amend the DOE test procedure for clothes dryers and room air conditioners to define standby mode based on the definitions provided in IEC Standard 62301 CDV. 75 FR 37604. DOE proposed to define standby mode as a mode that "includes any product modes where the energy using product is connected to a mains power source and offers one or more of the following user oriented or protective functions which may persist for an indefinite time: [17]

- To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, timer;
- Continuous function: information or status displays including clocks;
- Continuous function: sensor-based functions." *Id.*

DOE also proposed an additional clarifiction that "a timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.*, switching) and that operates on a continuous basis." *Id.* This defintion was developed based on the definitions provided in IEC Standard 62301 CDV, and expands upon the EPCA mode definitions to provide additional clarifications as to which functions are associated with each mode.

ALS supported DOE's proposed definition of standby mode. (ALS, No.

[16] "Compilation of comments on 59/523/CD: IEC 62301 Ed 2.0: Household electrical appliances—Measurement of standby power." August 7, 2009. p. 6. IEC Standards are available online at *http://www.iec.ch.*

[17] The actual language for the standby mode definition in IEC Standard 62301 CDV describes "* * * user oriented or protective functions which usually persist" rather than "* * * user oriented or protective functions which may persist for an indefinite time." DOE notes, however, that section 5.1 of IEC Standard 62301 CDV states that "a mode is considered persistent where the power level is constant or where there are several power levels that occur in a regular sequence for an indefinite period of time." DOE believes that the proposed language, which was originally included in IEC Standard 62301 CD2, encompasses the possible scenarios foreseen by section 5.1 of IEC Standard 62301 CDV without unnecessary specificity.

24 at p. 1) Whirlpool commented that DOE should reference IEC 62301 FDIS for the standby mode definition. (Whirlpool, No. 27 at p. 1) AHAM commented that DOE should define a timer function under the standby mode definition to exclude limited duration situations where the appliance is in a higher power state, for example in delay start mode. (AHAM, Public Meeting Transcript, No. 20 at pp. 35–36) DOE notes that the definition of standby mode in IEC Standard 62301 FDIS is essentially the same as the definition provided in IEC Standard 62301 CDV, with only minor editorial changes. DOE also notes the definition of standby mode specifies that it must be a mode that may persist for an indefinite time, which would exclude limited duration situations. Therefore, DOE does not believe that any additional clarification in the definition of standby mode is necessary. For these reasons, DOE is adopting in today's final rule the standby mode definition proposed in the June 2010 TP SNOPR. 75 FR 37594, 37604 (June 29, 2010).

DOE stated in the June 2010 TP SNOPR that given these proposed definitions, delay start mode and cycle-finished mode for clothes dryers and delay start mode and off-cycle mode for room air conditioners are not modes that persist for an indefinite time, and would therefore not be considered as part of a standby mode. 75 FR 37604. DOE's analysis of annual energy use in specific clothes dryer and room air conditioner modes presented in the December 2008 TP NOPR showed that delay start mode and cycle-finished mode for clothes dryers, and delay start mode and off-cycle mode for room air conditioners, each represent a negligible portion (0.1 percent or less) of the annual energy use for those products. 73 FR 74639, 74647, 74649 (December 9, 2008). Therefore, an integrated energy efficiency metric for either clothes dryers or room air conditioners would not be measurably affected by the exclusion of the energy use in any of these modes. Further, DOE stated in the June 2010 TP SNOPR that the benefit of incorporating the energy use of these modes into the overall energy efficiency metric is outweighed by the burden that would be placed on the manufacturers to measure power consumption in each of these modes. For these reasons, DOE did not propose amendments to the test procedures to define delay start, cycle finished, and off-cycle modes or to measure power consumption in delay start mode for either product, cycle finished mode for clothes dryers, and off-cycle mode for room air conditioners in the June 2010 TP SNOPR. DOE included in the proposed clothes dryer and room air conditioner test procedures amendments in the June 2010 TP SNOPR provisions for measuring energy consumption only in the inactive mode and off mode. 75 FR 37594, 37604 (June 29, 2010).

The California Utilities/NRDC, AHAM, ALS, and Whirlpool agreed that delay start and cycle finished modes for clothes dryers would not be considered standby modes. (California Utilities/NRDC, No. 33 at p. 2; AHAM, No. 31 at p. 3; Whirlpool, No. 27 at p. 1; ALS, No. 24 at p. 1) AHAM and Whirlpool added that delay start and cycle finished modes should instead be considered part of active mode. (AHAM, No. 31 at p. 3; Whirlpool, No. 27 at p. 1) Whirlpool also commented that any function begun by the user when initiating the operating mode includes all power consumed until the full conclusion of that operation. (Whirlpool, No. 27 at p. 1)

DOE continues to believe that delay start, cycle finished, and off-cycle modes for clothes dryers and room air conditioners are not modes that persist for an indefinite time and, therefore, would not be considered standby modes. For the reasons discussed above, DOE continues to believe that the benefit of incorporating the energy use of these modes into the overall energy efficiency is outweighed by the burden that would be placed on the manufacturers to measure power consumption in each of these modes. As discussed in section III.B.4, however, DOE determined that the power consumption of clothes dryers and room air conditioners operating in such modes approximates the power levels in inactive/off modes. Therefore, DOE amends the test procedure in today's final rule to specify that all non-active mode hours be allocated to the inactive and off modes for both clothes dryers and room air conditioners. Thus, the amended test procedure accounts for the energy use in delay start, cycle finished, and off-cycle modes. For these reasons, DOE is not adopting amendments to the test procedures to define delay start, cycle finished, and off-cycle modes or to measure power consumption in delay start mode for either product, cycle finished mode for clothes dryers, and off-cycle mode for room air conditioners.

In the June 2010 TP SNOPR, DOE noted that it received comments from interested parties in response to the December 2008 TP NOPR that the as-shipped factory or "default" settings should be used for standby and off mode testing. 75 FR 37594, 37605 (June 29, 2010). DOE stated in the June 2010 TP SNOPR that provisions for setting up the appliance for standby mode and off mode testing should be specified in the test procedure. However, DOE stated that setting up the appliance in accordance with manufacturer's instructions or in the as-shipped factory or "default" settings would allow manufacturers to ship appliances set in a low power mode that consumers may switch out of during typical standby or off mode use. Therefore, DOE proposed in the June 2010 TP SNOPR that the appliance be set up with the settings that produce the highest power consumption level, consistent with the particular mode definition under test, for standby and off mode testing. *Id.*

AHAM, Whirlpool, and ALS objected to the proposal that the clothes dryer be set up at the highest energy consumption level consistent with the particular standby or off mode. They felt such an approach does not reflect consumer use, increases test burden to determine such settings, and lacks conformity, consistency, and repeatability across manufacturers. AHAM, Whirlpool, and ALS commented that the clothes dryer should instead be set up in factory or "default" cycle settings, and that this procedure is consistent with consumer usage and will result in repeatable, reproducible results. AHAM and Whirlpool stated that should there be no indicators for the default settings, the appliance should be tested as shipped. AHAM, Whirlpool, and ALS stated that such an approach would ensure uniformity among the different laboratories that may run the test. They also stated that DOE's proposal would introduce unnecessary variability into the test and add to the test burden because manufacturers would need to run several tests on every model to determine which cycle is the highest-energy cycle. (AHAM, No. 31 at pp. 4–5; Whirlpool, No. 27 at p. 1; ALS, No. 24 at pp. 1–2) Whirlpool added that repeatable results are of increasing importance for verification processes. (Whirlpool, No. 27 at p. 1)

AHAM commented that incentivizing manufacturers to ship products with the lowest power settings is a better way to save energy than shipping with the highest power settings, because most consumers do not change the settings. (AHAM, Public Meeting Transcript, No. 20 at p. 56) AHAM stated that products may have provisions for the consumer to add or delete product functions that alter the as-shipped standby energy mode, and that the power consumption in these user-selected modes may exceed the power consumption in the

lowest-power consumption mode. AHAM stated that the user must be informed as to how to make these selections and that the selection(s) will override the lowest-power consumption mode. According to AHAM, testing the appliance in the factory settings or "default" settings provides a clear and simple way to define standby mode and allow new functions that may be developed to be added to the appropriate mode without requiring the test procedure be revised. (AHAM, No. 31 at p. 3)

The California Utilities/NRDC supported DOE's proposed approach to use the settings that produce the highest power consumption for standby and off mode testing. They felt this approach would remove a potential opportunity for "gaming" appliance testing and would ensure that the standby mode and off mode testing would measure the highest energy-consuming combination of modes. The California Utilities/NRDC stated that there is no data that indicates that the factory default settings are uniform, or that they are typically used by consumers. In addition, the California Utilities/NRDC stated that DOE's proposed approach would standardize the standby mode and off mode testing among manufacturers, because how a factory default setting is used during testing may not be consistent from manufacturer to manufacturer. (California Utilities/NRDC, No. 33 at p. 2) Appliance Standards Awareness Project (ASAP) also commented that using the default settings for testing would give manufacturers an incentive to ship products in a very low-power mode that consumers may never use because they can easily adjust the settings. (ASAP, Public Meeting Transcript, No. 20 at p. 55)

DOE agrees with AHAM, Whirlpool, and ALS that the proposed provisions for testing standby and off mode using the settings that produce the highest power consumption level consistent with the particular mode definition under test would not be representative of consumer use. If manufacturers were to ship products in a very low-power mode, DOE does not believe that consumers would likely modify the settings so that the product is in the highest power settings, but would instead use what would have been the as-shipped factory or "default" settings during typical standby or off mode use. DOE agrees that, because newer products offer more consumer related features and thus more display or settings configurations, requiring laboratories to determine the settings that produce the highest power consumption levels would make it more difficult to ensure that test results are repeatable. DOE notes that section 5.2 of IEC Standard 62301, "Selection and preparation of appliance or equipment," includes provisions for installing and setting up the appliance as specified by manufacturers instructions. Section 5.2 of IEC Standard 62301 also specifies that if no instructions are given, the appliance shall be tested at factory or default settings, and where there are no indications for such settings, the appliance shall be tested as supplied. DOE believes that section 5.2 of IEC Standard 62301 clarifies the installation requirements for standby mode and off mode energy consumption testing and provides additional guidance regarding specifications for test setup that would result in a measure of standby and off mode energy consumption that best replicates actual consumer usage. For these reasons, DOE is incorporating by reference section 5.2 of IEC Standard 62301 for standby and off mode testing in today's final rule.

June 2010 TP SNOPR and Today's Final Rule—Standby Mode or Active Mode, Network Mode

For the June 2010 TP SNOPR, DOE also considered whether it should adopt amendments for network mode. 75 FR 37594, 37605 (June 29, 2010). Section 3.7 of IEC Standard 62301 CDV defines network mode as a mode category that "includes any product modes where the energy using product is connected to a main power source and at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active." Section 3.7 of IEC Standard 62301 CDV also provides a note stating, "Where a network function is provided but is not active and/or not connected to a network, then this mode is not applicable. A network function could become active intermittently according to a fixed schedule or in response to a network requirement. A 'network' in this context includes communication between two or more separate independently powered devices or pieces of equipment. A network does not include one or more controls, which are dedicated to a single piece of equipment. Network mode may include one or more standby functions." However, DOE stated in the June 2010 TP SNOPR that it is unaware of any clothes dryers or room air conditioners currently available on the market that incorporate a networking function. Further, DOE stated that it is unaware of any data regarding network mode that would enable it to determine appropriate testing procedures and mode definitions for clothes dryers and room air conditioners. In particular, DOE stated that it is unaware of data and methods for the appropriate configuration of networks; whether network connection speed or the number and type of network connections affects power consumption; or whether wireless network devices may consume power differently when the device is looking for a connection as opposed to when the network connection is actually established. DOE stated that it is also unaware of how the energy consumption for clothes dryers and room air conditioners in a network environment might be affected by their product design, user interaction, or network interaction. For example, DOE is unaware of what affects might result should the network function become active intermittently according to a fixed schedule or in response to a network requirement. For these reasons, the proposed amendments in the June 2010 TP SNOPR did not include network mode. *Id.*

AHAM commented that there are not enough products currently available on the market from which to gather data regarding network mode. AHAM stated that, in the event DOE decides to address network mode, AHAM does not support including network mode in standby or off mode. AHAM commented that network mode and the energy use associated with "Smart Appliances" [18] should be treated as a distinctive energy use that enhances electrical grid system efficiencies that save energy and reduce carbon emissions, adding that this is consistent with IEC Standard 62301 FDIS. AHAM also commented that when sufficient data exists, AHAM would be willing to work with DOE to define where and how to address network mode. (AHAM, No. 31 at p. 4) AHAM also added that if network mode is considered part of standby mode, it would be a major difficulty in the development of "Smart Appliances" and the "Smart Grid." [19] (AHAM, Public Meeting Transcript, No. 20 at pp. 38–39)

Whirlpool commented that network mode will become a vital mode in the future development of appliances capable of interacting with the Smart Grid, but that such products do not exist today outside of development laboratories. Whirlpool urged DOE to

[18] A "Smart Appliance" is a product equipped with network mode capabilities.

[19] A "Smart Grid" is an automated electric power system that monitors and controls electrical grid activities and is capable of real-time two-way digital communications between utilities and consumers. Information on Smart Grid is available online at *http://www.oe.energy.gov/smartgrid.htm.*

retain network mode as a separate mode as distinct from any other mode. Whirlpool urged that no standard or test procedure be adopted for this mode until manufacturers have sufficient quantities of Smart Grid models in production that comprehensive testing and measurement can take place. (Whirlpool, No. 27 at pp. 1–2)

The American Council for an Energy-Efficient Economy (ACEEE), ASAP, and NRDC stated in a jointly filed comment (hereafter the "Joint Efficiency Advocates Comment") that if network mode is a mode the appliance would be in at all times, it should be classified as standby; if it is an intermittent or user-activated condition, it should be considered active mode. The Joint Efficiency Advocates Comment suggested that DOE's definition of network mode be aligned with the IEC definition and recommended creating a test method for network mode. This test method would be similar to the standby test method, but network connectivity would be enabled. The Joint Efficiency Advocates Comment stated that units could be tested without actually connecting to a network; simply enabling the network capabilities should be enough to test energy consumption while in a simulated networking state. The Joint Efficiency Advocates Comment recommended that DOE consider incorporating network mode into energy consumption ratings as the market for network-enabled devices developed. In the meantime, network mode should be tested on available appliances, and that research and analysis should be conducted on predicted or actual consumer usage in advance of a future revision to the test procedure. (Joint Efficiency Advocates Comment, No. 28 at p. 3)

DOE notes that, in the absence of data on the operation and functionality of network mode, it is unable to define appropriate testing conditions and procedures for accurately measuring the energy use of clothes dryers and room air conditioners capable of functioning in network mode. This lack of data also prevents DOE from evaluating how these products will develop in the future. Also, because DOE does not have sufficient data on the operation and functionality of network mode, it is not making a determination as to whether network mode would be included as part of standby or active mode. DOE may consider amendments to the clothes dryer and room air conditioner test procedures when products capable of functioning in network mode are in production and commercially available. At that time, comprehensive analysis can determine appropriate testing conditions and procedures for accurately measuring network mode energy use.

June 2010 TP SNOPR and Today's Final Rule—Off Mode

As discussed in section III.B.1, DOE proposed in the June 2010 TP SNOPR to amend the DOE test procedure for clothes dryers and room air conditioners to define off mode based upon the definition in IEC Standard 62301 CDV. DOE proposed to define off mode as a mode category which "includes any product modes where the energy using product is connected to a mains power source and is not providing any standby mode or active mode function and where the mode may persist for an indefinite time.[20] An indicator that only shows the user that the product is in the off position is included within the clasification of off mode." This defintion was developed based on the definitions provided in IEC Standard 62301 CDV, and expands upon the EPCA mode definitions to provide additional clarifications as to which functions are associated with each mode. 75 FR 37594, 37605 (June 29, 2010).

AHAM commented that the off mode definition proposed in the June 2010 TP SNOPR, which is based on IEC Standard 62301 CDV, is identical to the definition included in IEC Standard 62301 FDIS. (AHAM, Public Meeting Transcript, No. 20 at p. 41) For the reasons stated above, DOE is adopting in today's final rule the off mode definition proposed in the June 2010 TP SNOPR. 75 FR 37594, 37605 (June 29, 2010).

DOE also stated in the June 2010 TP SNOPR that under the proposed mode definitions, a clothes dryer or room air conditioner equipped with a mechanical on/off switch that can disconnect power to the display, control components, or both would be considered as operating in the off mode when the switch is in the "off" position, provided that no other standby or active mode functions are energized. DOE also stated that an energized LED or other indication that only shows the user the product is in the off position would be considered part of off mode under the proposed definition, provided that no other standby or active mode functions were energized. If energy is consumed by the appliance in the presence of a one-way remote control, however, the unit would be operating in standby mode pursuant to EPCA (42 U.S.C. 6295(gg)(1)(A)(iii)). DOE clarified that the unit would be operating in standby mode if energy is consumed in the presence of a remote control that facilitates the activation or deactivation of other functions (including active mode). 75 FR 37594, 37605–06 (June 29, 2010).

AHAM and Whirlpool commented that they do not support including one-way remote control energy in the definition of standby mode. AHAM and Whirlpool stated that although EPCA defines standby mode to include activation by remote control, one-way remotes do not meet the intent of the statute. AHAM and Whirlpool further commented that when a standard remote powers a product "off," the remote actually powers the product down, not off, such that it can be turned on again via remote control, and that this would be classified as a standby mode under the EPCA standby mode definition. According to AHAM and Whirlpool, a one-way remote turns the product completely off such that it cannot be turned on again by the remote. Therefore, a one-way remote does not put the product into a standby mode and should not be incorporated into standby mode. (AHAM, No. 31 at p. 3; AHAM, Public Meeting Transcript, No. 20 at pp. 32–33; Whirlpool, No. 27 at p. 1) AHAM added that there are currently few, if any, one-way remotes in the United States. AHAM stated that including one-way remotes in the off mode instead of in the standby mode will encourage manufacturers to design products with one-way remotes, which could result in decreased energy use. (AHAM, No. 31 at p. 3) AHAM also noted that a number of other governments and organizations consider one-way remotes as exempt from standby mode because such remotes save power. AHAM stated that DOE should take the same approach. (AHAM, Public Meeting Transcript, No. 20 at pp. 33–34)

DOE notes the definition of standby mode proposed in the June 2010 TP SNOPR states that standby mode includes user-oriented or protective functions to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer. DOE believes that if the product is consuming energy to power an infrared sensor used to receive signals from a remote control (while not operating in the active mode), such a function would be considered part of standby mode, regardless of whether the remote is classified as "one-way" or "two-way." This is because the function to facilitate the deactivation of another mode by

[20] As with the definition for standby mode, IEC Standard 62301 CDV qualifies off mode as one that "* * * usually persists" rather than one that "* * * may persist for an indefinite time." For the same reasons as discussed for standby mode, DOE is proposing the latter definition.

remote switch (including remote control), internal sensor, or timer is still active. However, if a "one-way" remote control powers the product down, including turning off any infrared sensors to receive signals from a remote control, the product would be operating in the off mode once it is powered down, given that no other standby mode functions within the product are energized. Depending on whether the product is capable of operating in both a standby mode and off mode or just the off mode, the annual hours associated would be allocated as appropriate, as discussed in section III.B.4.

DOE also notes that section 3.9 of IEC Standard 62301 CDV provides a definition of "disconnected mode," which is "the status in which all connections to mains power sources of the energy using product are removed or interrupted." IEC Standard 62301 CDV also adds a note that common terms such as "unplugged" or "cut off from mains" also describe this mode and that this mode is not part of the low power mode category. DOE believes there would be no energy use in a "disconnected mode" and therefore is not adopting a definition or testing methods for such a mode in the DOE test procedure for clothes dryers or room air conditioners in today's final rule.

3. Adding Specifications for the Test Methods and Measurements for Clothes Dryer and Room Air Conditioner Standby Mode and Off Mode Testing

DOE proposed in the December 2008 TP NOPR to establish test procedures for measuring all standby and off modes associated with clothes dryers and room air conditioners. 73 FR 74639, 74645 (December 9, 2008). As discussed in section III.B.2, DOE believes that the mode identified as inactive mode in the December 2008 TP NOPR is the only significant standby mode for clothes dryers and room air conditioners. This section discusses product-specific clarifications of the procedures of IEC Standard 62301 when used to measure standby and off mode energy use for clothes dryers and room air conditioners.

a. Clothes Dryers

DOE understands that displays on clothes dryers may reduce power consumption by automatically dimming or powering down after a certain period of user inactivity. For those clothes dryers for which the power input in inactive mode varies in this fashion during testing, DOE proposed in the December 2008 TP NOPR that that the test be conducted after the power level has dropped to its lower-power state. 73 FR 74639, 74645 (December 9, 2008).

As part of the residential clothes dryer energy conservation standards rulemaking preliminary analyses, DOE conducted standby mode and off mode testing on 11 representative residential clothes dryers. All of the units with electronic controls automatically dimmed or powered down after a period of user inactivity. Table III.1 shows the measured duration of the higher-power state for clothes dryers in DOE's test sample. DOE observed during this testing that the higher-power state in inactive mode may persist for approximately 5–7 minutes of user inactivity after the user interface display has been energized for all products tested.

TABLE III.1—CLOTHES DRYER STANDBY MODE TESTING: DURATION OF HIGHER-POWER STATE

Product class	Test unit	Control type	Automatic power-down?	Duration of higher-power state (min)
Vented Electric, Standard	1	Electromechanical	N	
	2	Electromechanical	N	
	3	Electronic	Y	5
	4	Electromechanical	N	
	5	Electromechanical	N	
Vented Electric, Compact (120 V)	6	Electromechanical	N	
Vented Gas	7	Electromechanical	N	
	8	Electronic	Y	5
	9	Electronic	Y	5
	10	Electronic	Y	7
	11	Electronic	Y	7

Paragraph 5.3.1 of section 5.3 of IEC Standard 62301 specifies, for products in which the power varies by not more than 5 percent from a maximum level during a period of 5 minutes, that the user wait at least 5 minutes for the product to stabilize and then measure the power at the end of an additional time period of not less than 5 minutes. Paragraph 5.3.2 of IEC Standard 62301 contains provisions for measuring average power in cases where the power is not stable. In such cases, it requires a measurement period of no less than 5 minutes, or one or more complete operating cycles of several minutes or hours. Based on its testing results shown in Table III.1, however, DOE noted that some clothes dryers may remain in the higher-power state for the duration of a 5-minute stabilization period and 5-minute measurement period, and then drop to the lower-power state that is more representative of inactive mode. In contrast to IEC Standard 62301, IEC Standard 62301 CDV specifies for each testing method that the product be allowed to stabilize for at least 30 minutes prior to a measurement period of not less than 10 minutes. DOE stated in the June 2010 TP SNOPR that this clarification would allow sufficient time for displays that automatically dim or power down after a period of user inactivity to reach the lower-power state prior to measurement. DOE stated that based on its observation of the automatic power-down time periods during its testing, the 30-minute stabilization and 10-minute measurement periods provide a clearer and more consistent testing procedure than the corresponding times specified in IEC Standard 62301. A testing procedure using these stabilization and measurement periods would result in representative measurements among products that may have varying times before the power drops to a low level. 75 FR 37594, 37607 (June 29, 2010).

DOE also noted in the June 2010 TP SNOPR that allowing a test period of "not less than" or "at least" a specified amount of time, as provided in both IEC

Standard 62301 and IEC Standard 62301 CDV, may result in different test technicians testing the same product for different periods of time. To ensure the testing procedures for standby and off mode are clear and consistent such that different test technicians test the product using the same procedures, DOE proposed the stabilization period be 30 to 40 minutes, and the test period be 10 minutes. *Id.*

ALS and AHAM supported DOE's proposal to require a stabilization period of 30 minutes and a test period of 10 minutes for clothes dryers. (ALS, No. 24 at p. 1; AHAM, No. 31 at p. 4) AHAM commented that the purpose of the stabilization period is to reach a steady-state condition with a power state that may last for an indefinite period of time. AHAM stated that IEC Standard 62301 includes provisions to wait to reach the lowest power state without specifying a time to allow an accurate measurement for all products, so that all products are tested in the same manner. AHAM noted that this will result in some power consumption in the higher energy state not being measured, but this amount is likely to be small due to the small amount of time products spend in this mode. (AHAM, Public Meeting Transcript, No. 20 at pp. 45–48) AHAM also commented that a note in section 3.4 of IEC Standard 62301 FDIS states that a transition between modes would not be considered a mode, and that none of the 123 countries involved with the IEC process commented on this note. (AHAM, Public Meeting Transcript, No. 20 at pp. 48–49)

DOE agrees with AHAM's comments that any transition between modes would not be considered a mode. Therefore, DOE does not intend to include the measurement of energy consumption for any stabilization or transition phases when the product is powering down to a lower-power state. For the reasons stated above, DOE adopts in today's final rule the requirement that the stabilization period be 30 to 40 minutes and the test period be 10 minutes, as proposed in the June 2010 TP SNOPR. 75 FR 37594, 37607 (June 29, 2010).

DOE proposed in the December 2008 TP NOPR to adopt the test room ambient temperature of 73.4 ± 9 °F specified by IEC Standard 62301 for standby mode and off mode testing. 73 FR 74639, 74645–46 (December 9, 2008). This test room ambient temperature is slightly different from the ambient temperature currently specified for DOE's drying performance tests of clothes dryers (75 ± 3 °F). However, the proposed test room ambient temperature conditions would permit manufacturers who opt to test active, standby, and off modes in the same test room to use the current ambient temperature requirements for drying tests, because the latter temperatures are within the limits specified by IEC Standard 62301. Alternatively, the proposed temperature specifications would allow a manufacturer who opts to conduct standby mode and off mode testing separately from drying tests more flexibility in ambient temperature.

In comments submitted on the June 2010 TP SNOPR, AHAM, ALS, and Whirlpool supported the proposed test room ambient temperature for clothes dryer standby and off mode testing. (AHAM, No. 31 at p. 4; ALS, No. 24 at p. 1; Whirlpool, No. 27 at p. 2) For the reasons stated above; and in the absence of any comments on this proposal, DOE adopts the test room ambient temperature of 73.4 ± 9 °F specified by IEC Standard 62301 for standby mode and off mode testing.

b. Room Air Conditioners

A room air conditioner with a temperature display may use varying amounts of standby power depending on the digit(s) being displayed. DOE proposed in the December 2008 TP NOPR to require that test room temperature be maintained at 74 ± 2 °F, and that the temperature control setting be 79 °F. 73 FR 74639, 74646 (December 9, 2008). These conditions differ from the cooling performance testing conditions in the current DOE room air conditioner test procedure. The cooling performance test conditions are specified as 80 °F on the indoor side of the test chamber and 95 °F on the outdoor side. In addition, the cooling performance test conditions do not specify a temperature control setting. DOE proposed the different test room conditions in the December 2008 TP NOPR because such conditions would assure a consistent display configuration, and thus a representative power consumption, for all room air conditioners under test, particularly during the off-cycle operation defined in the December 2008 TP NOPR as a standby mode. 73 FR 74646.

As part of the room air conditioner energy conservation standards rulemaking preliminary analyses, DOE conducted standby mode and off mode testing on representative room air conditioners. During its preliminary tests, DOE determined that room air conditioner displays among the units it tested do not provide any user information in inactive mode. In addition, DOE determined that the displays among the units it tested provide indication of time delay or time until start rather than temperature when the air conditioners are in delay start mode. As a result, DOE stated in the June 2010 TP SNOPR that the proposed test chamber ambient conditions would be relevant only for off-cycle mode. DOE also stated that if the test procedure were limited to measurement of inactive mode as the single standby mode and an off mode as discussed in section III.B.2, the proposed close tolerance on ambient temperature would not be required. 75 FR 37594, 37608 (June 29, 2010). DOE therefore proposed in the June 2010 TP SNOPR to provide flexibility in the room air conditioner test procedure amendments by allowing standby mode and off mode testing either in a test chamber used for measurement of cooling performance or in a separate test room that meets the specified standby mode and off mode test conditions. The proposed amendments to the room air conditioner test procedure in the June 2010 TP SNOPR specify maintaining the indoor test conditions at the temperature required by section 4.2 of IEC Standard 62301 if tested in a cooling performance test chamber. The proposed amendments also specify maintaining the room ambient test conditions at the temperature required by section 4.2 of IEC Standard 62301 if tested in a separate test room. Further, if the unit is tested in the cooling performance test chamber, the proposed amendments in the June 2010 TP SNOPR allow the manufacturer to maintain the outdoor test conditions either as specified for the DOE cooling test procedure or according to section 4.2 of IEC Standard 62301 for standby and off mode testing. DOE also noted that the indoor temperature conditions required by the DOE cooling performance test procedure fall within the temperature range specified by section 4.2 of IEC Standard 62301. *Id.*

AHAM supported DOE's proposed test room ambient temperature for room air conditioner standby and off mode testing. (AHAM, No. 31 at p. 4) ASAP questioned whether DOE has conducted any testing to determine if there are any differences in the power measurements between the two temperature conditions. (ASAP, Public Meeting Transcript, No. 20 at p. 60) DOE is not aware of any data indicating that the ambient temperature would affect the measured standby or off mode power. For the reasons stated above, DOE is adopting in today's final rule the test room ambient temperature proposed in the June 2010 TP SNOPR for room air conditioner standby and off mode

testing. 75 FR 37594, 37608 (June 29, 2010).

Similar to clothes dryers, DOE proposed in the December 2008 TP NOPR (73 FR 74639, 74646 (December 9, 2008)) that standby and off modes for room air conditioners, other than delay start mode, be tested with a stabilization period of no less than 5 minutes and a measurement period of no less than 5 minutes for units with stable power, consistent with paragraph 5.3.1 of section 5.3 of IEC Standard 62301. In cases where the power was unstable, the provisions of paragraph 5.3.2 would apply, in which the measurement period would be no less than 5 minutes or one or more complete operating cycles. DOE stated in the June 2010 TP SNOPR that it does not have any information or data that would suggest that a 30-minute stabilization period followed by a 10-minute measurement period would produce more representative or consistent standby and off mode power measurements than the times proposed in the December 2008 TP NOPR. 75 FR 37594, 37608 (June 29, 2010).

DOE also noted, however, that allowing a test period of "not less than" or "at least" a specified amount of time, as provided in IEC Standard 62301, may result in different test technicians testing the same product for different periods of time. To ensure that the testing procedures for standby and off mode are clear and consistent, such that different test technicians are testing the product using the same procedures, DOE proposed in the June 2010 TP SNOPR to require that the stabilization period be 5 to 10 minutes, and the test period be 5 minutes. 75 FR 37594, 37608 (June 29, 2010).

AHAM supported DOE's proposed stabilization period for room air conditioners. (AHAM, No. 31 at p. 4) For the reasons stated above, DOE adopts the requirement that the stabilization period be 5 to 10 minutes and the test period be 5 minutes, as proposed in the June 2010 TP SNOPR. 75 FR 37594, 37608 (June 29, 2010).

4. Calculation of Energy Use Associated With Standby Modes and Off Mode

Measurements of power consumption associated with each standby and off mode for clothes dryers and room air conditioners are expressed in W. The annual energy consumption in each of these modes for a clothes dryer or room air conditioner is the product of the power consumption in W and the time spent in that particular mode.

a. Clothes Dryers

Energy use for clothes dryers is expressed in terms of total energy use per drying cycle. As discussed in section III.D.3, DOE has determined that it is technically feasible to incorporate measures of standby and off mode energy use into the overall energy-use metric. (42 U.S.C. 6295(gg)(2)(A)) Therefore, DOE has examined standby and off mode energy consumption in terms of annual energy use apportioned on a per-cycle basis. Energy used during a drying cycle (active mode) is directly measured in the DOE test procedure, although adjustments are made to the directly measured energy to account for differences between test and field conditions.

DOE proposed in the December 2008 TP NOPR to adopt a similar approach for measuring energy consumption during standby and off modes for clothes dryers. Specifically, to measure energy consumption during standby and off modes for clothes dryers, DOE proposed in the December 2008 TP NOPR to adopt the current 140 hours associated with drying (that is, the active mode) and to associate the remaining 8,620 hours of the year with the standby and off modes. Table III.2 presents the comparison of the approximate wattages and annual energy use associated with all modes that DOE proposed in the December 2008 TP NOPR. 73 FR 74639, 74647–48 (December 9, 2008).

TABLE III.2—DOE ESTIMATE OF ANNUAL ENERGY USE OF CLOTHES DRYER MODES

Mode	Hours	Typical power *W*	Annual energy use *kilowatt-hours (kWh)*
Active	140	6,907	967.
Delay Start	*34	3	0.1.
Cycle Finished	**429	3	1.
Off and Inactive	†8,157	0.5 to 3	4 to 24.

*5 minutes per cycle × 416 cycles per year.
** 5 percent of remaining time (0.05 × (8,760 − 140 − 34) = 429).
†95 percent of remaining time (0.95 × (8,760 − 140 − 34) = 8,157).

DOE reviewed comments from interested parties on the December 2008 TP NOPR and stated in the June 2010 TP SNOPR that under the proposed definitions of standby and off modes, the allocation of annual hours to inactive and off modes is appropriate. DOE also stated that the June 2010 TP SNOPR did not affect DOE's proposal in the December 2008 TP NOPR for this allocation of hours. 75 FR 37594, 37609 (June 29, 2010).

In the December 2008 TP NOPR, DOE also proposed an alternative simplified methodology for allocating annual hours. 73 FR 74639, 74648 (December 9, 2008). The comparison of annual energy use of different clothes dryer modes shows that delay start and cycle finished modes represent a negligible percentage of total annual energy consumption. In addition, for clothes dryers currently on the market, power levels in these modes are similar to those for off/inactive modes. Therefore, DOE proposed that all of the non-active hours (which total 8,620) would be allocated to the inactive and off modes. 73 FR 74648. As discussed in section III.B.2, DOE determined in the June 2010 TP SNOPR that delay start and cycle finished modes are not standby modes according to the proposed definitions. Because the power consumption of clothes dryers operating in such modes approximates the power levels in off/inactive modes, DOE stated in the June 2010 TP SNOPR that it would be more appropriate under a simplified approach to allocate the hours associated with delay start and cycle finished modes to off/inactive modes. Therefore, and because DOE did not propose amendments to the clothes dryer test procedure to measure delay start and cycle finished power consumption given the negligible power consumption in these modes, DOE proposed in the June 2010 TP SNOPR to maintain the estimate of 8,620 hours as the non-active hours that would be allocated to inactive and off modes for clothes dryers. 75 FR 37594, 37601 (June 29, 2010).

ALS objected to retaining the allocation of clothes dryer hours proposed in the June 2010 TP SNOPR. ALS stated that the estimates were based on 416 cycles per year and supported a revision to the hours so that they are consistent with DOE's proposed 283 cycles per year and other proposed cycle definition changes. (ALS, No. 24 at p. 2) DOE notes that the estimate of delay start mode hours developed in the December 2008 TP NOPR was based on the number of cycles per year in the existing test procedure (that is, 416 cycles per year). DOE estimated in the December 2008 TP NOPR that 5 minutes per cycle are spent in delay start mode. 73 FR 74639, 74647 (December 9, 2008). Under the amended test procedure in today's final rule, the number of cycles per year is revised from 416 to 283 cycles per year. Thus, DOE now estimates that clothes dryers would be in delay start mode approximately 24 hours per year. DOE also notes that the estimate for active mode hours presented in the December 2008 TP NOPR was fixed based on the number of such hours specified in the existing test procedure (140 hours). 73 FR 74646–7. DOE acknowledges that its estimate of the number of cycles per year has decreased. As discussed later in this section, DOE notes that other proposed amendments in today's final rule, including the changes to the initial RMC, test load size, and specified water temperature for test load preparation, may also affect cycle time and the number of active mode hours per year. DOE is not aware, however, of any data indicating that the number of active mode hours has changed and, if so, what a more accurate number might be. Therefore, DOE is not proposing amendments to the number of active mode hours. In the December 2008 TP NOPR DOE estimated 5 percent of the remaining hours (that is, not including active mode hours and delay start mode hours) would be associated with cycle finished mode and 95 percent associated with inactive/off modes (73 FR 74647). This would result in revised values of 430 hours for cycle finished mode and 8,166 hours for inactive/off modes. DOE acknowledges that the estimates for hours in each standby and off mode would change based on the number of annual clothes dryer cycles. Because DOE is not proposing to measure delay start and cycle finished modes for clothes dryers, however, and is instead allocating those hours to inactive/off modes (as discussed in section III.B.2), the aforementioned revisions to the standby and off mode hours would not change the total hours allocated to inactive/off mode because the number of active mode hours is fixed.

ALS commented that DOE must also take into account the active mode cycle length change if DOE accepts commenters' support for testing the complete cycle including cool-down in the automatic termination test cycle. DOE's studies indicated that the cool-down in the automatic termination test cycle would be required to be tested on 100 percent of clothes dryers on the market. ALS commented that the Whirlpool-supplied estimate presented in the June 2010 TP SNOPR indicates an active drying cycle length of 20 minutes, which ALS stated is far too short if cool-down period is included. (ALS, No. 24 at p. 2) AHAM also questioned whether including the cool-down period would change the number of hours allocated to each mode in the calculations. (AHAM, Public Meeting Transcript, No. 20 at pp. 99–100) AHAM further commented that it could be difficult to assign a typical time to cool-down mode because there are significant differences between clothes dryers in the amount of time spent in this mode. (AHAM, Public Meeting Transcript, No. 20 at pp. 100–101) AHAM also commented, however, that cycle times are very dependent on the initial RMC used and that reducing the initial RMC value and accounting for cool-down may end up equaling out to the current 140 hours. (AHAM, Public Meeting Transcript, No. 20 at pp. 103–104)

As discussed in section III.C.2, DOE is not adopting the amendments to the clothes dryer test procedure to better account for automatic cycle termination that were proposed in the June 2010 TP SNOPR. Therefore, DOE is not amending the test procedure to include the cool-down period as part of any automatic cycle termination tests. For this reason, DOE does not believe the estimates for the annual hours spent in each mode should be revised on the basis of the inclusion of a cool-down period. With regard to AHAM's comments concerning the reduction in initial RMC and the effect on cycle times, DOE addresses how that amendment, along with the other amendments in today's final rule, affect the clothes dryer cycle time later in this section.

ALS objected to DOE's proposal of 429 hours of "cycle finished" mode. ALS commented that while clothes dryers may include an option alerting the user that the cycle has finished via an alert signal emitting periodically for up to an hour, ALS does not believe a user would avoid responding to the alert for an hour each and every cycle. According to ALS, most users will attend their dried garments within only a few minutes after the end of the drying cycle, because users want to complete their laundry chores as quickly as they can. Additionally, ALS commented that users would utilize this feature for only one third of clothes dryer cycles if cycle finished mode is an option. Therefore, ALS stated that "cycle finished mode" hours should be no more than one third of the "active mode" hours. ALS further suggested that DOE conduct consumer studies on user habits for "cycle finished" mode. (ALS, No. 24 at p. 2)

DOE analysis suggests that a cycle finished mode feature (that is, a status display following operation in active mode indicating to the user that the cycle is complete) is activated by default at the end of the drying cycle for most clothes dryers. For this reason, DOE believes consumers use the cycle finished mode feature for more than one third of clothes dryer cycles. In addition, DOE does not have any consumer usage data suggesting that most consumers attend to their laundry within only a few minutes after the end of the drying cycle. In the absence of such data, DOE maintains for today's final rule its estimate from the December 2008 TP NOPR that cycle finished mode represents 5 percent of the remaining time outside of active mode and delay start mode. This estimate was based on a household survey conducted in 2000 in Australia. 73 FR 74639, 74647 (December 9, 2008). DOE is not aware of any other consumer usage data regarding cycle finished mode hours. DOE also notes it is not proposing to measure delay start and cycle finished modes for clothes dryers and is instead allocating those hours to inactive/off modes, as discussed in section III.B.2. Therefore, any revisions to the number of cycle finished mode hours would not change the total hours allocated to inactive/off mode.

In the December 2008 TP NOPR, DOE proposed to allocate the number of hours for the combined off and inactive modes entirely to either off mode or standby mode, as appropriate, if only one of these modes is possible for the clothes dryer. DOE noted in the October 2008 TP NOPR that information to guide allocation of the hours for clothes dryers that have both inactive and off modes is currently unavailable. DOE is aware of two operational scenarios: (1) A clothes dryer reverts to an off mode after a specified time in inactive mode; or (2) a clothes dryer stays in inactive mode unless the user switches the appliance back to off mode. DOE does not have information regarding the percentage of clothes dryers being sold

that fall into these categories. Because of this limitation, DOE proposed in the October 2008 TP NOPR to allocate half of the hours determined for off/inactive modes to each of the two modes. 73 FR 74648. Because DOE did not receive any comments or additional data regarding allocation of hours in response to the December 2008 TP NOPR, the SNOPR did not affect DOE's proposal in the December 2008 TP NOPR for the allocation of hours between inactive mode and off mode.

The Joint Efficiency Advocates Comment suggested that DOE conduct research to determine how inactive and off mode hours are commonly divided up in practice for clothes dryers. The Comment stated that off mode usage may differ depending on the mode's "user-friendliness," but that this is not accounted for in the current test procedure. According to the Joint Efficiency Advocates Comment, very few consumers would take advantage of a "hidden" feature such as a small switch on the back of the unit. Therefore, crediting 50 percent of non-active mode hours to off mode would allow manufacturers to take advantage of the energy rating benefit simply by providing the off-mode option, regardless of how apparent or user-friendly the option was to the consumer. (Joint Efficiency Advocates Comment, No. 28 at p. 3)

DOE is unaware of any available data for the allocation of those hours. DOE requested data on the annual hours for various modes, including the split between standby and off modes in the NOPR (73 FR 74639, 74654) and the June 2010 TP SNOPR (75 FR 37594, 37643), but it did not receive any information. Therefore, in the absence of data indicating otherwise, DOE is amending the test procedure in today's final rule to allocate half of the hours determined for off/inactive modes to each of the two modes, for those products capable of functioning in both modes. If data is made available that indicates a different allocation of hours between inactive and off mode, DOE may consider revising this allocation.

DOE recognizes that the analysis of the number of annual hours allocated to each clothes dryer mode is based, in part, on the number of annual use cycles. As discussed in section III.C.5.a, DOE believes that the average number of annual cycles is currently 283 rather than the 416 cycles specified in the current DOE clothes dryer test procedure. DOE stated in the June 2010 TP SNOPR, however, that it does not have any information on whether active mode cycle times may have changed accordingly. 75 FR 37594, 37610 (June 29, 2010). It is possible that the smaller number of use cycles may correspond to the same amount of clothing being dried in larger load sizes and thus, potentially, longer drying times. In the absence of any data supporting this assumption, however, DOE proposed in the June 2010 TP SNOPR the same allocation of hours for inactive mode and off mode that were proposed in the December 2008 TP NOPR, even though DOE proposed fewer annual use cycles in the June 2010 TP SNOPR. *Id.*

The California Utilities/NRDC generally supported DOE's calculation method for standby and off mode for clothes dryers and method of allocation of yearly clothes dryer hours to standby and off modes proposed in the June 2010 TP SNOPR. However, the California Utilities/NRDC urged DOE to reconsider its allocation of 140 hours to active mode for clothes dryers, particularly in light of DOE's proposed adoption of 283 annual use cycles. The California Utilities/NRDC stated that if DOE assumes 140 active mode hours per year and 283 cycles per year, this translates to an average cycle time of about 30 minutes, but that DOE has not provided any data to support such an assumption. (California Utilities/NRDC, No. 33 at p. 2)

The California Utilities/NRDC also stated that if DOE relies on Whirlpool's value of 20 minutes per cycle, then under the new test procedure, the number of active mode hours would be 94 hours per year (283 cycles/year × 20 minutes/cycle). The California Utilities/NRDC stated that there is also evidence to indicate the average length of a clothes dryer cycle may be higher than 20 minutes, and that therefore the assumption of 140 hours should be adjusted upwards. The California Utilities/NRDC added that the report by Eco's Consulting (ECOS) (prepared for NRDC) summarizes results for four clothes dryers tested under a variety of cycles, which showed an average recorded cycle length of 46.5 minutes, corresponding to 219 annual hours (assuming 283 cycles per year). The California Utilities/NRDC noted that these cycles do not all represent the typical DOE load, but they represent a wide variety of potential consumer loads and modes of operation which may be indicative of in-field conditions. (California Utilities/NRDC, No. 33 at pp. 2–3) The Joint Efficiency Advocates Comment similarly stated that according to the ECOS report for NRDC, the average cycle length is 49.5 minutes for clothes dryers with automatic termination controls, which corresponds to 233 hours spent in active mode per year. The Joint Efficiency Advocates Comment recommended basing the number of hours spent in active mode annually on the cycle length multiplied by the average number of cycles per year. (Joint Efficiency Advocates Comment, No. 28 at p. 4)

The Joint Efficiency Advocates Comment and the California Utilities/NRDC both commented that DOE should try to obtain data from AHAM or manufacturers on average clothes dryer cycle length and average yearly hours. (Joint Efficiency Advocates Comment, No. 28 at p. 4; California Utilities/NRDC, No. 33 at p. 3) The Joint Efficiency Advocates Comment also added that DOE should test a representative sample of clothes dryers to develop an accurate estimate of average cycle length, which could then be multiplied by the revised number of cycles per year to calculate the annual active mode hours. (Joint Efficiency Advocates Comment, No. 28 at p. 4)

Whirlpool commented that 140 active mode hours is reasonably consistent with consumer use and practices, and was not opposed to the continuing with this known and well-understood estimate. (Whirlpool, No. 27 at p. 2)

DOE first notes that it is not relying on the 20 minutes per cycle estimate provided by Whirlpool, for which the testing procedure is not specified, to estimate the annual active mode hours. DOE notes that the estimate of 46.5 minutes per cycle, as suggested by the California Utilities/NRDC and based on data from the ECOS report, uses automatic termination cycles with clothes loads composed of cotton towels with initial RMCs ranging from 70 to 100 percent. As discussed below in section III.C.5.b, DOE amends the test procedure to change the initial RMC to 57.5 percent, which will result in a cycle time shorter than that estimated by the California Utilities/NRDC because less moisture must be removed during the drying cycle. DOE also notes that the Joint Efficiency Advocates Comment's estimate of 49.5 minutes per cycle was also based on data from the ECOS report. The estimate differs from the California Utilities/NRDC's estimate because it included data from an air dry cycle with a length of 120 minutes, which would not be appropriate for developing an estimate of clothes dryer cycle time. This is because an air dry cycle would not be representative of consumer use. Based on the amendment to the number of annual use cycles, DOE notes that the cycle length would be approximately 30 minutes (140 annual active mode hours/283 active mode cycles per year). DOE is unaware, however, of consumer usage data

indicating that the annual active mode hours have changed. For these reasons, DOE is not amending the test procedure in today's final rule to revise the number of active mode hours per year.

In summary, DOE is amending the clothes dryer test procedure in today's final rule to calculate clothes dryer energy use per cycle associated with inactive and off modes by: (1) Calculating the product of wattage and allocated hours for inactive and off modes, depending on which of these modes are possible; (2) summing the results; (3) dividing the sum by 1,000 to convert from watt-hours (Wh) to kilowatt-hours (kWh); and (4) dividing by 283 cycles per year. The 8,620 hours for off/inactive modes shall be allocated entirely to either off mode or inactive mode, as appropriate, if only one of these modes is possible for the clothes dryer. If both modes are possible, the hours shall be allocated to each mode equally as discussed in this section, and each shall be allocated 4,310 hours.

b. Room Air Conditioners

In the December 2008 TP NOPR, DOE stated it was not aware of reliable data for hours spent in different standby and off modes in room air conditioners. Therefore, DOE estimated the annual hours for standby and off modes and the relative magnitude of annual energy use in standby and off modes in an example for a representative 8,000 Btu/hour (Btu/h), 9 EER unit that has delay start, off-cycle, and inactive modes. 73 FR 74639, 74648–49 (December 9, 2008). DOE's estimates of annual energy use in each mode are shown in Table III.3.

TABLE III.3—DOE ESTIMATE OF ANNUAL ENERGY USE OF ROOM AIR CONDITIONER MODES FOR A REPRESENTATIVE UNIT WITH 8,000 BTU/H CAPACITY AND 9 EER

Mode	Hours	Typical power (W)	Annual energy use (kWh)
Active Cooling	750	889	667.
Delay Start	90	2	0.2.
Off-Cycle	440	2	0.9.
Off and Standby	4,850	0.5 to 2	2.5 to 10.

In the December 2008 TP NOPR, DOE also proposed an alternative simplified methodology. Similar to the analysis for clothes dryers, comparing annual energy use of different room air conditioner modes shows that delay start and off-cycle modes represent a small percentage of annual energy use in the active mode, and that the power consumption in those standby modes is distinct from but comparable to those for off/inactive modes. Thus, DOE proposed adopting an alternative approach allocating the non-active hours as if the room air conditioner has only the inactive standby mode. A total of 5,115 hours would be allocated to the standby and off modes ($8{,}760 \times 0.75 - 750 - 705 = 5{,}115$).[21] 73 FR 74639, 74649 (December 9, 2008). For these reasons, and because DOE did not propose amendments to the room air conditioner test procedure to measure delay start and off-cycle power consumption given the negligible power consumption in these modes, DOE proposed in the June 2010 TP SNOPR allocating 5,115 non-active hours to inactive and off modes for room air conditioners. In addition, for the same reasons as discussed for delay start and cycle finished modes for clothes dryers, DOE stated in the June 2010 TP SNOPR that the delay start and off-cycle hours for room air conditioners should be allocated to inactive and off modes even though it has determined that delay start and off-cycle modes are not standby modes. 75 FR 37594, 37610–11 (June 29, 2010).

The California Utilities/NRDC supported DOE's proposed calculation method for standby mode and off mode annual hours for room air conditioners. They added that lacking new data on typical room air conditioner operation in standby and off modes, DOE's proposed method of allocating hours to standby and off modes is appropriate. (California Utilities/NRDC, No. 33 at p. 3)

The Joint Efficiency Advocates Comment and ACEEE both commented that the 705 fan-only mode hours presented in the June 2010 TP SNOPR should be accounted for in the energy consumption calculations. (Joint Efficiency Advocates Comment, No. 28 at pp. 2–3; ACEEE, Public Meeting Transcript, No. 20 at pp. 73–74) The Joint Efficiency Advocates Comment stated that fan-only active mode could be tested by duplicating the existing cooling-mode test method with the exception of running the compressor. The Joint Efficiency Advocates Comment further stated that there is no data to support the assumption that consumers generally run their room air conditioners in fan-only mode for 705 hours a year. Although the Joint Efficiency Advocates cannot find any data on the number of hours typically used in fan-only mode, they commented that the lack of data indicates that this mode is not used as commonly as assumed in the June 2010 TP SNOPR. The Joint Efficiency Advocates Comment stated that because of DOE's allocation, their second recommendation is that the 705 hours be reallocated in such a way as to represent the current consumer usage of fan-only mode. The Joint Efficiency Advocates Comment also noted that due to the lack of data on the use of this mode, DOE should perform additional research and data collection. If no data collection is able to be performed, DOE should reallocate these hours to active cooling and/or inactive modes, which would reflect the lack of data supporting the average consumer use of any fan-only mode. (Joint Efficiency Advocates Comment, No. 28 at pp. 2–3)

The California Utilities/NRDC stated that fan-only operation should be included in active mode, but that it is not clear whether fan-only mode is accounted for in the proposed active mode test procedure. The California Utilities/NRDC stated that if fan-only mode is considered a portion of active mode, and if energy use in fan-only mode is measured in the current test procedure, then the number of hours in active mode should be revised to include fan-only mode. The California Utilities/NRDC stated that if fan-only mode is considered separate from active mode, and DOE allocates a portion of yearly hours to fan-only mode, then DOE must account for the energy use in this mode and incorporate it into its

[21] Multiplying by 0.75 eliminates hours associated with unplugged hours, assumed for half of the hours of the year for half of room air conditioners as described in the December 2008 TP NOPR (73 FR 74639, 74648 (Dec. 9, 2008)); 750 = Cooling (active mode) hours; 705 = Fan-only (active mode) hours.

calculation of CEER. The California Utilities/NRDC requested that DOE clarify its approach towards fan-only mode, provide a test procedure to measure or otherwise account for fan-only energy use, and incorporate the energy use of this mode in the CEER. (California Utilities/NRDC, No. 33, at pp. 3–4)

Earth Justice (EJ) commented that not measuring energy consumption when operating in fan-only mode would violate EPCA's minimum standards for test procedures (42 U.S.C. § 6293(b)(3)) EJ commented that by proposing to ignore energy consumption in fan-only mode, DOE has proposed to ignore nearly half the active mode operating hours of room air conditioner units. EJ added that because fan-only mode accounts for such a large percentage of total active mode operating hours, a test procedure that ignores fan-only operation would not depict "a representative average use cycle or period of use" for room air conditioners. (EJ, No. FDMS D0039 at p. 2)

DOE understands that a fan-only active mode could include two different kinds of modes: (1) A mode in which the room air conditioner does not turn off the fan when the thermostat automatically cycles the compressor off during cooling mode; and (2) a user-selected "ventilation" mode that does not include the cooling. DOE recognizes that the energy use associated with fan-only mode is not insignificant. As noted in the December 2008 TP NOPR, however, DOE is not aware of any reliable consumer usage data for hours spent in different room air conditioner modes, including fan-only mode. 73 FR 74639, 74648 (December 9, 2008). DOE requested data in the December 2008 TP NOPR on the estimate of hours for different room air conditioner modes, but did not receive any such data. DOE notes that developing a test procedure to accurately measure the contribution of fan-only active mode would require additional testing and analysis to determine appropriate testing conditions and measurement methods for both types of fan-only modes described above. In addition, field use surveys of consumer usage patterns over multiple cooling seasons and a climate-based load analysis to develop an estimate of fan-only mode hours that is representative of consumer use would need to be conducted. DOE may consider amendments to address fan-only active mode in a future rulemaking as data becomes available. DOE welcomes information on appropriate testing procedures for accurately measuring fan-only active mode and data on consumer usage habits.

Typically, room air conditioners with remote control can be controlled whenever they are plugged in; hence, these units do not have provision for an off mode in addition to inactive mode. However, if a room air conditioner allows the user to switch off remote control operation, such a product would be capable of both off and inactive modes. DOE notes that information to guide allocation of the hours for room air conditioners that have both inactive and off modes is currently unavailable. For these units, DOE proposed in the December 2008 TP NOPR that the off/inactive hours be allocated equally to the off and inactive modes for such a product. Otherwise, for units that are capable of operation in only off or inactive mode, DOE proposed that all of the hours be allocated to the appropriate mode. 73 FR 74649. In the absence of comments on or additional data regarding allocation of hours, the June 2010 TP SNOPR did not affect DOE's proposal in the December 2008 TP NOPR for the allocation of hours between inactive mode and off mode. 75 FR 37594, 37611 (June 29, 2010).

Similar to the comment noted above for clothes dryers, the Joint Efficiency Advocates Comment suggested that DOE conduct research to determine how consumers allocate inactive and off mode hours for room air conditioners. The Joint Efficiency Advocates Comment stated they are concerned that off-mode usage may be affected by the mode's "user-friendliness," but that this is not accounted for in the current test procedure. (Joint Efficiency Advocates Comment, No. 28 at p. 3)

DOE requested consumer usage data on the split of hours between inactive mode and off mode if both modes are possible for a product but did not receive any data. In the absence of data indicating that an equal split of hours is not representative of consumer usage habits, DOE adopts in today's final rule the allocation of inactive/off mode hours proposed in the June 2010 TP SNOPR. The number of hours will be allocated equally to the inactive and off modes for a product capable of both modes. If data are made available indicating a different number of hours spent in inactive and off modes, DOE may consider amending the test procedure.

In summary, DOE amends the room air conditioner test procedure in today's final rule to calculate room air conditioner annual energy use associated with inactive and off modes by: (1) Calculating the products of wattage and allocated hours for inactive and off modes, depending on which of these modes is possible; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. The 5,115 hours for off/inactive modes shall be allocated entirely to either off mode or inactive mode, as appropriate, if only one of these modes is possible for the room air conditioner. If both modes are possible, the hours shall be allocated to each mode equally as discussed in this section, and each shall be allocated 2,557.5 hours.

5. Measures of Energy Consumption

The DOE test procedures for clothes dryers and room air conditioners currently provide for the calculation of several measures of energy consumption. For clothes dryers, the test procedure incorporates various measures of per-cycle energy consumption, including: (1) Total per-cycle electric dryer energy consumption; (2) per-cycle gas dryer electrical energy consumption; (3) per-cycle gas dryer gas energy consumption; and (4) total per-cycle gas dryer energy consumption expressed, which includes both the electrical and gas energy consumption for gas clothes dryers. 10 CFR part 430, subpart B, appendix D, sections 4.1–4.6 The test procedure also provides an EF, which is equal to the clothes load in pounds divided either by the total per-cycle electric dryer energy consumption or by the total per-cycle gas dryer energy consumption expressed in kWh. 10 CFR 430.23(d) For room air conditioners, the test procedure calculates annual energy consumption in kWh and an EER. 10 CFR 430.23(f)

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs that the test procedures for all covered products be amended pursuant to section 323 to include standby mode and off mode energy consumption, with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless DOE determines that—(i) the current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case DOE must prescribe a separate standby mode and off mode energy-use test procedure for the covered product, if technically feasible.

In the December 2008 TP NOPR, DOE explored whether the existing measures of energy consumption for clothes dryers and room air conditioners can be combined with standby mode and off mode energy use to form a single metric. DOE tentatively determined in the

December 2008 TP NOPR that it is technically feasible to integrate standby mode and off mode energy consumption into the overall energy consumption metrics for clothes dryers and room air conditioners. 73 FR 74639, 74650 (December 9, 2008). For the reasons presented in the December 2008 TP NOPR, DOE proposed integrated metrics addressing active, standby, and off modes for clothes dryers and room air conditioners, as discussed below.

a. Clothes Dryers

In the December 2008 TP NOPR, DOE proposed to establish the following measures of energy consumption for clothes dryers that integrate energy use of standby and off modes with active mode energy use of the products. "Per-cycle integrated total energy consumption expressed in kWh" would be defined as the sum of per-cycle standby and off mode energy consumption and either total per-cycle electric dryer energy consumption or total per-cycle gas dryer energy consumption expressed in kWh, depending on which type of clothes dryer is involved. "Integrated energy factor" (IEF) would be defined as the (clothes dryer test load weight in lb)/(per-cycle integrated total energy in kWh). 73 FR 74639, 74650 (December 9, 2008).

b. Room Air Conditioners

In the December 2008 TP NOPR, DOE proposed to establish the following measures of energy consumption for room air conditioners that integrate energy use of standby and off modes with active mode energy use of the products. "Integrated annual energy consumption" would be defined as the sum of annual energy consumption and standby and off mode energy consumption. "Integrated energy efficiency ratio" (IEER) would be defined as (cooling capacity in Btu/hr × 750 hours average time in cooling mode)/(integrated annual energy consumption × 1,000 Wh per kWh). *Id.*

DOE noted in the June 2010 TP SNOPR that the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Standard 340/360–2007, "Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment," (AHRI Standard 340/360) and the ASHRAE Standard 90.1–2007, "Energy Standard for Buildings Except Low-Rise Residential Buildings," (ASHRAE 90.1) both published in 2007, included an IEER metric. This metric, also named "Integrated Energy Efficiency Ratio," is meant to rate the part-load performance of the air-conditioning equipment under test. 75 FR 37594, 37612 (June 29, 2010). Manufacturers of the equipment covered by these standards currently list IEER ratings in their product literature and in the AHRI certified product directory. This IEER metric does not integrate standby mode and off mode energy use, unlike the IEER metric that was proposed in the December 2008 TP NOPR. The IEER metric used in AHRI Standard 340/360 and ASHRAE 90.1 was established prior to the IEER proposed in this rulemaking. Therefore, DOE proposed for the June 2010 TP SNOPR to revise the name of the integrated metrics incorporating standby mode and off mode energy use to "combined" metrics for both clothes dryers and room air conditioners. *Id.*

DOE has received no comments objecting to this proposal. Therefore, for the reasons stated above, DOE incorporates into the DOE test procedures the "per-cycle combined total energy consumption expressed in kWh" and "combined energy factor" (CEF) for clothes dryers and "combined annual energy consumption" and "combined energy efficiency ratio" (CEER) for room air conditioners in today's final rule as proposed in the June 2010 TP SNOPR. *Id.*

In the June 2010 TP SNOPR, DOE did not propose to amend the annual energy cost calculations in 10 CFR 430.23 for clothes dryers and room air conditioners to include the cost of energy consumed in standby and off modes. The Joint Efficiency Advocates Comment stated that DOE should include standby and off mode energy costs in the annual energy cost calculation in order to better represent actual energy costs. The Joint Efficiency Advocates Comment noted that minimum and maximum energy costs prescribed for the EnergyGuide label will need to be revised when new energy conservation standards go into effect. They suggested that the energy consumed in standby and off modes should be able to be incorporated into the revised minimum and maximum energy costs. (Joint Efficiency Advocates Comment, No. 28 at p. 4)

EPCA states that any amended test procedures shall be reasonably designed to produce test results that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product. (42 U.S.C. 6293(b)(3)) EPCA also directs DOE to amend its test procedures to include measures of standby mode and off mode energy consumption and to integrate such energy consumption into a single energy descriptor for that product. If that is technically infeasible, DOE must prescribe a separate standby mode and off mode energy-use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) As discussed in section I, EPCA requires that all representations related to standby mode and off mode energy use or efficiency or cost of energy consumed of both clothes dryers and room air conditioners made 180 days after today's final rule be based upon the standby and off mode requirements of the amended test procedures. (42 U.S.C. 6293(c)(2)) Additionally, EPCA requires that any revisions to the labels for room air conditioners include disclosure of the estimated annual operating cost (determined in accordance with DOE's test procedures prescribed under section 6293 of EPCA), unless the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. (42 U.S.C. 6294(c)(1)) DOE understands that the FTC would develop any revised labeling requirements for referencing a revised annual energy cost calculation that integrates the cost of energy consumed in standby and off modes.

For these reasons, DOE agrees with interested parties that the annual energy cost calculations in 10 CFR 430.23 for clothes dryers and room air conditioners should be amended to include the cost of energy consumed in standby and off modes. Therefore, DOE amends the clothes dryer test procedure to revise the estimated annual operating cost calculation to integrate standby and off mode energy use, and to require that the estimated annual operating cost be obtained by multiplying the average number of annual use cycles by the sum of the per-cycle active mode energy consumption and the per-cycle standby and off mode energy consumption and by the representative average unit cost of electrical energy, natural gas, or propane, as appropriate, in dollars per kWh or Btu, as provided by DOE. Similarly, DOE amends the room air conditioner test procedure to revise the annual energy cost calculation to integrate standby and off mode energy use, and to require that the annual energy cost be obtained by multiplying the combined annual energy consumption by the representative average unit cost of electrical energy in dollars per kWh, as provided by DOE.

C. Clothes Dryer and Room Air Conditioner Active Mode Test Procedures

1. Correction of Text Describing Energy Factor Calculation for Clothes Dryers

DOE proposed in the December 2008 TP NOPR to correct errors in specific references used in the current DOE test procedure. 73 FR 74639, 74650 (December 9, 2008). In particular, the reference to sections 2.6.1 and 2.6.2 of 10 CFR part 430, subpart B, appendix D in the calculation of EF for clothes dryers found at section 430.23(d)(2) should refer instead to sections 2.7.1 and 2.7.2. Section 2.6 provides instructions for the test clothes to be used in energy testing of clothes dryers, whereas section 2.7 provides instructions on test loads. The EF of clothes dryers is measured in lb of clothes per kWh. Because the EF calculation requires the weight of the test load, DOE proposed in the December 2008 TP NOPR to correct these references in 10 CFR 430.23(d)(2). DOE did not receive any comments opposing this correction. Therefore, for the reasons stated above, DOE adopts the correction as proposed in the December 2008 TP NOPR.

2. Automatic Cycle Termination for Clothes Dryers

DOE considered amendments to the clothes dryer test procedure to accurately measure the benefits of automatic cycle termination. DOE considered industry and international clothes dryer test procedures and conducted testing and analysis to develop proposed amendments to the definitions of product types, test load preparation, the test measurement cycle and settings, and the calculation of results.

October 2007 Framework Document

In the October 2007 Framework Document, DOE stated that it believes that the clothes dryer test procedure may not adequately measure the benefits of automatic cycle termination, in which a sensor monitors either the exhaust air temperature or moisture in the drum to determine the length of the drying cycle. (Framework Document, STD No. 1 at p. 5) The calculation of EF in the current clothes dryer test includes a field use scaling factor applied to the per-cycle drying energy consumption to account for the over-drying energy consumption associated with different termination technologies. Gas or electric clothes dryers with time termination control (in other words, those clothes dryers equipped with only a timer to determine the end of a drying cycle) are assigned an field use of 1.18. Clothes dryers with automatic termination are assigned an field use of 1.04. DOE established the 1.18 field use factor for clothes dryers with time termination control in the September 1977 TP Final Rule based on analysis of data from a field use survey conducted by Oklahoma Gas and Electric Company involving 64 homes as well as data provided by AHAM on the measured energy consumption per-cycle under the DOE test procedure to account for the differences between the energy consumption measurements derived from laboratory test procedures and those obtained from actual consumer use. 42 FR 46145, 46146 (September 14, 1977). DOE established the field use factor of 1.04 for clothes dryers with automatic termination in the May 1981 TP Final Rule based on analysis of data from a field use survey conducted by AHAM involving 72 homes as well as an analysis conducted by NIST of field test data on automatic termination control dryers. Analysis of this data showed that clothes dryers equipped with an automatic cycle termination feature consume less energy than timer dryers by reducing over-drying. 46 FR 27324 (May 19, 1981). Based on these field-use factors, clothes dryers with automatic cycle termination control are determined to reduce energy consumption by 12 percent compared to a similar clothes dryer with time termination control, which consume more energy due to over- or under-drying. (Under-drying can result in consumers running an additional drying cycle.) Currently, the test procedure specifies a single field use factor for clothes dryers equipped with automatic termination. However, it does not distinguish between the type of sensing control system (for example, temperature-sensing or moisture-sensing controls) and the sophistication and accuracy of the control system.

Consideration of Industry and International Clothes Dryer Test Procedures

DOE proposed in the June 2010 TP SNOPR that the benefit of automatic cycle termination should be accurately measured to account for any over- or under-drying. Therefore, DOE considered potential amendments to the DOE test procedure to account for automatic cycle termination. For the June 2010 TP SNOPR, DOE investigated industry and international clothes dryer test procedures for measuring the effectiveness of automatic cycle termination and conducted limited testing to analyze over-drying energy consumption and the applicability of such procedures to the DOE clothes dryer test procedure. 75 FR 37594, 37613 (June 29, 2010). DOE reviewed AHAM's most recently update to its industry test standard, AHAM HLD–1–2009, "Household Tumble Type Clothes Dryers" (AHAM Standard HLD–1–2009). The update contains provisions for measuring the over-drying energy consumption for clothes dryers that use automatic cycle termination and provides separate testing procedures timer dryers. DOE also reviewed the international test standards EN Standard 61121 [22] and AS/NZS Standard 2442.1, both of which address methods for testing clothes dryers with automatic termination sensor technologies. 75 FR 37594, 37613 (June 29, 2010).

DOE stated in the June 2010 TP SNOPR that it believes that AHAM Standard HLD–1–2009 does not provide an appropriate method for comparing the amount of over-drying for a timer dryer to that of an automatic termination-sensing dryer. This is because the timer dryer test allows only for drying the test load to as low as 4-percent RMC, whereas the automatic cycle termination test allows for drying the test load to any value below 6-percent RMC, including lower than 4-percent RMC. 75 FR 37613–14. If the automatic termination control dryer were to dry the test load to a value lower than 4-percent, the measured energy consumption may be greater than the energy consumption measured for the same clothes dryer using the timer dryer test cycle which only measures the energy required to dry the load to 4-percent RMC. However, as discussed above in this section, DOE believes that automatic termination control dryers reduce energy consumption compared to timer dryers based on analysis of data from the AHAM field use survey and analysis of field test data conducted by NIST. 46 FR 27324 (May 19, 1981).

DOE also stated in the June 2010 NOPR that although EN Standard 61121 provides test methods to use for both timer dryers and automatic termination control dryers, it does not provide any methodology to measure the energy consumed over- or under-drying the test load beyond a certain RMC for each type of clothes dryer. The provisions in EN Standard 61121 require the test load be dried to the same allowable range for both timer dryers and automatic termination dryers. According to the test procedures in EN Standard 61121, if the

[22] EN Standard 61121 is used by European Union (EU) member countries. DOE believes this test standard is functionally equivalent to IEC Standard 61121, which is used by China, among other countries. Both test procedures contain identical testing methods and procedures.

test load for either a timer dryer or an automatic termination control dryer is dried to the same RMC, the clothes dryers consume the same amount of energy and would be rated as using the same amount of energy in real-world use. 75 FR 37594, 37614 (June 29, 2010). However, for the same reasons discussed above in this section, DOE believes that automatic termination control dryers reduce energy consumption compared to timer dryers.

DOE stated in the June 2010 TP SNOPR that AS/NZS Standard 2442 provides testing methods and procedures that account for the amount of over-drying beyond a specified RMC associated with automatic termination control dryers by measuring any additional energy consumed drying the test load beyond the specified RMC. DOE also stated that AS/NZS Standard 2442 effectively takes into consideration the accuracy of different automatic termination sensor technologies by not providing a fixed field use factor in the energy consumption calculation for automatic cycle termination. Because the test procedure measures the energy consumed drying the test load beyond the specified RMC, a clothes dryer with an accurate automatic termination sensor technology that dries the clothes load to close to the specified RMC would consume less energy than a clothes dryer with a sensor technology that dries the load well beyond the specified RMC (that is, close to bone dry). DOE also stated that it believes that the testing methods provide an accurate and representative method for comparing the energy consumption between timer dryers and automatic termination control dryers by providing methods for measuring energy use that account for over-drying for both types of clothes dryers. For these reasons, DOE proposed to amend the DOE test procedure for clothes dryers to incorporate the individual test procedures for timer dryers and automatic termination control dryers in AS/NZS Standard 2442, with modifications as appropriate for the DOE test procedure. 75 FR 37594, 37615 (June 29, 2010).

After the June 2010 TP SNOPR was published, AHAM, ACEEE, NRDC, Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), ASAP, Northwest Power and Conservation Council (NPCC), Northeast Energy Efficiency Partnerships (NEEP), Consumer Federation of America (CFA), and National Consumer Law Center (NCLC) (hereafter the "Joint Petitioners") jointly submitted the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances," (Joint Petitioners, No. 25, hereinafter the "Joint Petition") and the "Joint Stakeholders Comments On The Supplementary Notice Of Proposed Rulemaking On Test Procedures For Clothes Dryers And Room Air Conditioners" (Joint Petitioners, No. 30). The Joint Petitioners, AHAM, the Joint Efficiency Advocates Comment, and the California Utilities/NRDC supported DOE's proposal to account for the effectiveness of automatic termination controls. (Joint Petitioners, No. 25 at p. 14; Joint Petitioners, No. 30 at p. 5; AHAM, No. 31 at p. 5; Joint Efficiency Advocates Comment, No. 28 at p. 1; California Utilities/NRDC, No. 33 at p. 4) The Consumers Union (CU) concurred with this comment. (CU, No. 29 at pp. 1–2, 3) The Joint Efficiency Advocates Comment added that data presented by DOE show that over-drying energy consumption can be significant (as much as 0.6 kWh per cycle). (Joint Efficiency Advocates Comment, No. 28 at p. 1; California Utilities/NRDC, No. 33 at p. 4) The Joint Petitioners and AHAM commented that if DOE decides to adopt the AS/NZS Standard 2442 as proposed, they request that DOE identify the specific sections it is adopting. (Joint Petitioners, No. 30 at p. 6; AHAM, No. 31 at p. 6)

Product Definitions

Based on the definitions in EN Standard 61121 and AS/NZS Standard 2442, DOE proposed in the June 2010 TP SNOPR to define "timer dryer" as "a dryer which can be preset to carry out at least one sequence of operations to be terminated by a timer, but may also be manually controlled." It also proposed to define "automatic termination control dryer" as "a dryer which can be preset to carry out at least one sequence of operations to be terminated by means of a system assessing, directly or indirectly, the moisture content of the load. An automatic termination control dryer with supplementary timer shall be tested as an automatic termination control dryer." 75 FR 37594, 37615 (June 29, 2010).

AHAM suggested that the definition of a timer dryer may need to specify that it is a clothes dryer that "does not include any automatic termination function." AHAM commented that almost any automatic termination dryer is also going to have a timer function because of consumer demands, and this extra explanation would make it clear that it refers to only a timer dryer. (AHAM, Public Meeting Transcript, No. 20 at pp. 84, 85–86) AHAM also commented that the last sentence of the automatic termination dryer definition should be modified and used to clarify the timer dryer definition. (AHAM, Public Meeting Transcript. No. 20 at p. 86) ALS also commented that it offers a product with both an automatic termination function and a timer function that uses only electromechanical controls. (ALS, Public Meeting Transcript, No. 20 at p. 81)

As discussed later in this section, DOE is not adopting in today's final rule the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR. Therefore it is not adopting the definitions for timer dryer and automatic termination dryer presented above. DOE agrees, however, that the reference to timer dryers in the test procedure (in the application of field use factors in section 4, "Calculation of Derived Results From Test Measurements") should clarify that clothes dryers with time termination control systems do not include any automatic termination control functions. DOE also believes the reference to clothes dryers with automatic control systems in the application of the field use factors should clarify that clothes dryers with automatic control systems that also have a supplementary timer control receive the 1.04 field use factor. For these reasons, DOE amends section 4 of the clothes dryer test procedure to specify that the field use factor equals 1.18 for clothes dryers with time termination control systems only, without any automatic termination control functions and 1.04 for clothes dryers with automatic control systems that meet the requirements of the definition for automatic control systems in 1.4, 1.14 and 1.18, including those that also have a supplementary timer control.

The Joint Petitioners and AHAM also commented that DOE should revise section 1.11 of 10 CFR 430 subpart B, appendix D. The amendment would more clearly account for electronic controls by specifying that a preferred automatic termination control setting (that is, a setting recommended by manufacturers) can also be indicated by a visual indicator (in addition to the mark or detent), and would read "* * * mark, visual indicator or detent which indicates a preferred * * *" (Joint Petitioners, No. 25 at p. 14; Joint Petitioners, No. 30 at p. 8; AHAM, No. 31 at p. 11) DOE agrees a clarification should be added to the definition of "automatic termination control" that a mark, detent, or other visual indicator which indicates a preferred automatic termination control setting must be present if the dryer is to be classified as having an automatic termination

control. Therefore, DOE amends this definition in today's final rule to make this revision.

NRDC commented that most new clothes dryers have both automatic and timer termination functions, so the test procedure should test both of these drying modes rather than only the automatic termination mode. (NRDC, Public Meeting Transcript, No. 20 at pp. 86–87) The Joint Petitioners and AHAM commented that for clothes dryers that have both an automatic termination control cycle and a timer cycle, only the auto-termination cycle should be tested. (Joint Petitioners, No. 30 at p. 6; AHAM, No. 31 at p. 5) Whirlpool commented that testing the automatic termination control cycle is most appropriate, as it represents the vast majority of actual consumer use. Although the majority of consumers also want a timed dry cycle, they use it only about 10 percent of the time. (Whirlpool, No. 27 at p. 3) DOE is not aware of any consumer usage data indicating that timed dry cycles on a clothes dryer with automatic termination controls are used by consumers for a significant portion of their annual use cycles. In addition, as discussed below, DOE is not adopting in today's final rule the amendments to better account for automatic cycle termination proposed in the June 2010 TP SNOPR. For these reasons, DOE is not amending the test procedure to measure both automatic termination control and timed dry cycles for products capable of both methods.

Test Load Preparation

In the June 2010 TP SNOPR, DOE proposed to amend sections 2.7.1, "Compact size dryer load," and 2.7.2, "Standard size dryer load" of the DOE test procedure for clothes dryers, which contain provisions for test load preparation. The amendment would add at the end of both sections the following requirement: "Make a final mass adjustment, such that the moisture content is 47 percent ±0.33 percent by adding water uniformly to the load in a very fine spray." 75 FR 37594, 37615 (June 29, 2010). The ±0.33 percent allowable RMC range is equivalent to the allowable range specified in AS/NZS Standard 2442.1 (190 percent ±0.02 kg of the bone dry weight) for a 7-lb test load. DOE believes the specified range produces repeatable EF measurements. Allowing a larger allowable range in RMC would increase the range in the moisture required to be dried during the test cycle and result in increased variability in the measured EF. DOE also proposed that the procedure for dampening and extracting water from the test load specified in the current test procedure be changed. The test procedure would be changed to require that the moisture content of the test load be between 42 and 47 percent of the bone-dry weight of the test load, and would serve as an initial preparation step prior to the final mass adjustments to obtain a test load with an RMC of 47 percent proposed above in this paragraph. DOE noted that it proposed to use a nominal initial RMC of 47 percent based on the proposed amendment to change the initial RMC from 70 percent to 47 percent, as discussed in section III.C.5.b. DOE noted in the June 2010 TP SNOPR that if it does not adopt this proposed amendment to change the nominal initial RMC, it would instead propose an amendment stating to first prepare the test load to 65- to 70-percent RMC and make adjustments to the moisture content to get 70-percent ±0.33-percent initial RMC. 75 FR 37594, 37615 (June 29, 2010). DOE did not receive any comments on this alternate proposal.

In the June 2010 TP SNOPR, DOE noted that section 2.7 of the existing clothes dryer test procedure regarding test load preparation requires that the test load be agitated in water whose temperature is 100 ° F ± 5 ° F. DOE recognizes that some residential clothes washers may use a default cold rinse cycle at the end of the wash cycle, which sections 2.6.1.2.1 and 2.6.3.1 of the current DOE clothes washer test procedure specify to be 60 ° F ± 5 ° F. DOE stated in the June 2010 TP SNOPR that it does not have any data indicating whether a different water temperature for clothes dryer test load preparation would be more representative of current consumer usage habits, but that if consumer usage data is made available that indicates a 60 ° F ± 5° F water temperature is more representative of consumer usage, DOE may adopt an alternate approach specifying a 60 ° F ± 5 ° F water temperature for test load preparation in section 2.7 of the DOE clothes dryer test procedure. In addition, DOE stated that it is unaware of how changes to the water temperature for clothes dryer test load preparation would affect the measured efficiency as compared to the existing test procedure. *Id.*

ALS, the California Utilities/NRDC, and the Joint Efficiency Advocates Comment all stated that the water temperature for clothes dryer test load preparation should be changed to be representative of existing national consumer usage. (ALS, No. 24 at p. 4; California Utilities/NRDC, No. 33 at p. 5; Joint Efficiency Advocates Comment, No. 28 at pp. 1–2)

ALS commented that the water temperature for clothes dryer test load preparation has been lowered in response to clothes washer energy conservation standard changes. Manufacturers have eliminated most warm rinses and offer the user the option of using all cold rinses. ALS stated that it is reasonable to assume that today, most clothes loads placed in a clothes dryer are from clothes washers that use cold rinse. Therefore, ALS supported revising the clothes dryer test procedure to utilize the 60 ° F ± 5 ° F water temperature specified in the DOE clothes washer test procedure for the cold water supply for the preparation of the clothes dryer test load. (ALS, No. 24 at p. 4; ALS, Public Meeting Transcript, No. 20 at p. 91)

The California Utilities/NRDC also stated that lower rinse temperatures may be more representative of consumer habits based on both anecdotal evidence and consumer data. The California Utilities/NRDC stated that 2003 California Residential Appliance Saturation Survey (RASS)[23] provides data on general consumer preferences on cold, warm, and hot wash cycles (no data was available for rinse cycles). The data show there is a general trend among consumers to prefer warm and cold wash cycles over hot cycles. Data cited by the California Utilities/NRDC from the 2003 California RASS on this topic are presented in Table III.4. According to the California Utilities/NRDC, although the data do not specify cycle temperatures or final rinse temperatures, the data may indicate a consumer preference for cooler wash and rinse cycles. The California Utilities/NRDC also stated that a 60 ° F ± 5 ° F preparation temperature would be better aligned and harmonize with the cool rinse temperature specified by the clothes washer test procedure. (California Utilities/NRDC, No. 33 at pp. 5–6)

[23] KEMA, Inc. *2009 California Residential Appliance Saturation Study.* 2010. California Energy Commission; Sacramento, CA. Publication number: CEC–200–2010–004–ES. For more information visit: *http://www.energy.ca.gov/appliances/rass/.*

TABLE III.4—2003 CALIFORNIA RASS SURVEY DATA ON CLOTHES WASHER CYCLE SELECTIONS (PROVIDED IN COMMENTS BY THE CALIFORNIA UTILITIES/NRDC)

	Cold wash cycles	Warm wash cycles	Hot wash cycles
Cycles per Week (weighted average)	1.80	2.32	0.94
Cycles per Year (weighted average)	93.7	120.8	49.0
Percent of Cycles Chosen	36	46	19

The Joint Efficiency Advocates Comment stated that the 2005 RECS gathered information about the rinse water temperature that consumers usually use. The Joint Efficiency Advocates Comment noted that, of respondents that used a clothes washer in their home, 78.5 percent said they used cold water for the rinse cycle. The Joint Efficiency Advocates Comment also noted that in the current clothes washer test procedure, temperature use factors indicate that warm rinse is assumed to be used only 27 percent of the time. The Joint Efficiency Advocates Comment stated that anecdotal evidence shows that that some clothes washers are now being manufactured without a warm rinse option. In addition, detergent manufacturers support consumers' increasing use of cold wash and cold rinse temperatures, as evidenced by the recent introduction of detergents specifically optimized for these conditions. The Joint Efficiency Advocates Comment encouraged DOE to change the water temperature for test load preparation to reflect these consumer usage indicators. The Joint Efficiency Advocates Comment also stated that, at the very least, the test procedure should align with the temperatures used in the clothes washer test procedure. According to the Joint Efficiency Advocates Comment, the washer test procedure assumes that a cold rinse is used the majority of the time. Therefore, alignment could be achieved by requiring a cold rinse (60 °F ±5 °F) be used for the clothes dryer test load preparation. (Joint Efficiency Advocates Comment, No. 28 at pp. 1–2)

Whirlpool commented that the current load temperature is well documented and well understood by manufacturers and independent test laboratories. Whirlpool stated that any migration to a different temperature would require time consuming "round-robin" testing to determine the impact that such a new temperature would have on the EF calculation. Whirlpool commented that such testing is not compatible with DOE's timeframe for this rulemaking nor would it add value proportional to the burden required to reformulate EF. (Whirlpool, No. 27 at pp. 2–3)

ALS commented that it does not have any data quantifying what impact a different test load temperature would have on the clothes dryer efficiency test results. ALS stated it is reasonable to expect that a colder temperature test load being placed in a dryer will require additional energy to achieve evaporation for the moisture from the clothes. ALS suggested that DOE test existing clothes dryers to assess the impact of the load preparation water temperature change from 100 °F to 60 °F. (ALS, No. 24 at p. 4; ALS; Public Meeting Transcript, No. 20 at p. 91) The Joint Efficiency Advocates Comment stated that the water temperature adjustment would likely have an effect on measured dryer energy use. This is because warmer rinse water, and hence higher initial load temperature, may result in faster drying times and lower energy use, especially if the dryer is equipped with moisture sensor technology. (Joint Efficiency Advocates Comment, No. 28 at p. 2)

DOE analyzed 2005 RECS data on the rinse water temperatures selected by consumers for clothes washer cycles. The usage data for consumers that use a clothes washer in the home, presented below in Table III.5, shows that 80 percent of wash cycles per year use a cold rinse.

TABLE III.5—2005 RECS CONSUMER USAGE DATA ON CLOTHES WASHER RINSE CYCLES TEMPERATURE SELECTIONS

	Average cycles per year	Average usage factor
Hot Rinse	5.176	0.018
Warm Rinse	53.638	0.182
Cold Rinse	235.711	0.800

Because the DOE clothes washer test procedure assumes a warm rinse temperature use factor of 27 percent, and the 2005 RECS data shows that 80 percent of clothes washer cycles use cold water for the rinse cycle, DOE believes that the cold water rinse cycle is more representative of typical consumer use. (DOE also notes that it sought comment on the warm rinse temperature use factor in the recent proposal to amend the test procedure for residential clothes washers because it received consumer usage survey data from a manufacturer which indicate that, for one clothes washer model with no cold rinse option on the cycle recommended for cotton clothes and a default cold rinse on all other cycles, users participating in the survey reported using warm rinse for 1.6 percent of all cycles. 75 FR 57556, 57571 (Sept. 21, 2010)) For this reason, DOE amends the clothes dryer test procedure to change the water temperature for clothes dryer test load preparation to 60 °F ± 5 °F.

DOE tested 13 representative clothes dryers to evaluate the repeatability and reproducibility of this amendment to the water temperature for clothes dryer test load preparation. DOE tested these units according to the current DOE clothes dryer test procedure, except that the water temperature for clothes dryer test load preparation was changed to 60° ±5 °F. For the ventless clothes dryer test units, DOE used the proposed testing method for ventless dryers presented in section III.C.3. As shown below in Table III.6, the test-to-test variation in measured EF with 60 °F ± 5 °F test load water temperature ranged from 0 percent to 4.1 percent, with an average of 1.5 percent. Therefore, DOE believes that the amendments to the water temperature for clothes dryer test load preparation produce repeatable test results.

TABLE III.6—DOE REPEATABILITY TESTING FOR 60° ±5 °F WATER TEMPERATURE FOR TEST LOAD PREPARATION

Test unit	EF *lb/kWh*			Test-to-test variation %
	Test 1	Test 2	Test 3	
Vented Electric Standard:				
Unit 1	3.00	3.00	3.00	0.0
Unit 2	3.01	3.07	3.06	2.0
Unit 3	3.10	3.10	3.09	0.3
Unit 5	3.18	3.17	.....	0.3
Unit 6	3.04	2.92	.....	4.1
Vented Gas:				
Unit 7	2.74	2.70	.....	1.5
Unit 9	2.68	2.61	.....	2.7
Unit 10	2.81	2.73	.....	2.9
Unit 11	2.77	2.78	2.82	1.8
Vented Electric Compact (240V):				
Unit 12	2.95	2.94	.....	0.3
Unit 13	2.86	2.84	2.82	1.4
Ventless Electric Compact (240V):				
Unit 15	2.22	2.23	.....	0.5
Ventless Electric Combo Washer-Dryer:				
Unit 16	1.94	1.98	1.96	2.1

Test Cycle

In the June 2010 TP SNOPR, DOE also proposed to amend section 3.3, "Test cycle," in the DOE test procedure for clothes dryers to include testing procedures specific to timed dryers and dryers with automatic termination controls.

For timer dryers, the clothes dryer would be operated at the maximum temperature setting and, if equipped with a timer, at the maximum time setting. The load would be dried to 5–6 percent RMC without the dryer advancing into cool-down. The timer would be reset if necessary. If the load is not dried to within the specified range, the test would not be considered valid. The procedure would then be repeated, but instead the test load would be dried to 4–5 percent RMC. As discussed later in this section, DOE proposed to use the results from the two proposed tests cycles (corresponding to 5–6 and 4–5 percent final RMCs) to interpolate the value of the per-cycle energy consumption required to dry the test load to exactly 5-percent RMC. 75 FR 37594, 37615 (June 29, 2010). DOE requested comment in the June 2010 TP SNOPR on whether using the maximum temperature setting is representative of current consumer usage habits. DOE also requested comment on whether multiple temperature settings should be evaluated and averaged, and if so, how testing multiple temperature settings would affect the measured efficiency as compared to the existing DOE clothes dryer test procedure. That procedure measures the clothes dryer only at the maximum temperature setting. *Id.*

AHAM stated that DOE should not adopt amendments to the temperature setting provisions in the current test procedure because there is no justification or evidence to support such a change. (AHAM, No. 31 at p. 6) Whirlpool commented that testing and averaging multiple cycles and settings, while perhaps more reflective of consumer behavior, would dramatically increase the test burden on manufacturers, and that the substantial increase in cost would not be justified by a better result. Whirlpool added that testing and averaging of multiple cycles and settings would introduce opportunities for error and circumvention while reducing repeatability and consistency. (Whirlpool, No. 27 at p. 3) ALS also supported setting the temperature at the "maximum" temperature setting option available on the dryer. (ALS, No. 24 at p. 5) DOE agrees that the benefit of testing multiple temperature settings would be outweighed by the burden on manufacturers to test multiple settings. In addition, DOE agrees that including requirements to test multiple settings could potentially create problems with developing a consistent test procedure that covers all products. This is because various manufacturers offer different settings on their clothes dryers, and test technicians would be required to determine the appropriate settings for testing. For these reasons, DOE is not amending the test procedure in today's final rule to require the testing of multiple temperature settings and averaging results.

ALS stated that, for clothes dryers with only a timed dry cycle, the time should be set at the maximum setting. ALS commented that it has no data regarding what time setting consumers utilize most often. ALS believes, however, that consumers using a timed dry cycle tend to select a maximum amount of time to be assured that their load is dry at end of the cycle. (ALS, No. 24 at p. 4) ALS also commented that the "full time cycle including cool-down period" should be included for timer dryers as well as for automatic cycle termination dryers. According to ALS, the benefits for timer dryers are as follows: (1) Test accuracy is improved because it avoids the variability of technician judgment on when to stop the test; (2) burden is reduced on manufacturers and test labs, because no interpolation or test "re-run" is required; and (3) all the energy consumed in a dryer cycle is accounted for, and is representative of the manner in which consumers utilize the dryer in their homes. (ALS, No. 24 at p. 5)

DOE does not have any data indicating that the maximum time setting would be most representative of consumer usage habits. In addition, some manufacturers offer a wide range of timed dry settings for different types of loads, and these may require varying periods to dry. Therefore, using the maximum time setting could result in energy consumption that may not be representative of consumer use. DOE also does not believe it would be appropriate to include the cool-down period as part of the time dry test cycle because the current clothes dryer test procedure requires a timed dry cycle using the maximum time setting and maximum temperature setting and drying the load to a specified RMC, at which point the test cycle is stopped. DOE believes that to specify a timed dry cycle that includes the cool-down

period to achieve a target final RMC would add significant testing burden on test technicians to determine the appropriate time setting. It would also be very difficult to ensure that testing results are repeatable and reproducible because different timed dry cycle lengths, and thus different lengths of cool-down period, may be selected to dry a test load to the same final RMC. For these reasons, DOE is not amending the timed dry test cycle to include the cool-down period in today's final rule.

For dryers with automatic termination controls, as discussed in the June 2010 TP SNOPR, DOE tested a representative gas clothes dryer to evaluate test methods for automatic termination control dryers as part of the energy conservation standards rulemaking preliminary analyses. DOE conducted this additional testing to determine the effects of proposed amendments that would require the selection of program settings that provide the maximum drying temperature and maximum dryness level (that is, lowest final RMC). Table III.7 below shows the results from this testing compared to the results of testing the same gas clothes dryer according to the current DOE test procedure. 75 FR 37594, 37615–16 (June 29, 2010).

TABLE III.7—DOE AUTOMATIC CYCLE TERMINATION TEST RESULTS

Initial RMC (%)	Test	Final RMC %	Per-cycle energy consumption kWh
70	Automatic Cycle Termination	0.6	3.018
	Current DOE	*3.3	*2.462
56	Automatic Cycle Termination	0.6	2.559
	Current DOE	*3.7	*2.001
47	Automatic Cycle Termination	0.5	2.252
	Current DOE	*3.4	*1.754

*Current DOE test procedure normalizes the per-cycle energy consumption equation to represent the energy consumption required to dry the test load to 4-percent RMC. In addition, the current DOE test procedure multiplies the per-cycle energy consumption by a fixed field-use factor of 1.04 to account for energy consumption due to over-drying.

DOE noted that for all of the test runs, using the maximum temperature and dryness level settings resulted in the test load being dried to near bone dry (0.4-percent to 0.7-percent RMC). Using the data of the estimated RMC of the test load measured continuously during the test cycle, DOE also observed that for all of the test runs, the estimated RMC of the test load was below 1 percent by the time the heater began cycling on/off.[24] The increased amount of over-drying resulted in per-cycle energy consumption that was higher than the value obtained using the current DOE test procedure, which uses a fixed field use factor to account for over-drying energy consumption. DOE stated that different manufacturers may target different final RMCs for their highest dryness level setting. Based on analysis of the test results for this gas clothes dryer unit, DOE stated that the highest dryness level setting may be intended to dry the clothes load to near bone dry, beyond the target RMC of the DOE test procedure, and would not be appropriate for the proposed test cycle. For this reason, DOE did not propose that the highest dryness level be specified for the test cycle. DOE stated in the June 2010 TP SNOPR that a "normal" drying program would be more representative of consumer usage habits and would more likely dry the clothes load to the target range specified in the DOE clothes dryer test procedure. 75 FR 37616.

Based on the results of this additional testing, DOE proposed in the June 2010 TP SNOPR an approach in which, for automatic termination control dryers, a "normal" program would be selected for the test cycle to be most representative of consumer usage. Where the drying temperature can be chosen independently of the program, it would be set to the maximum to provide a clear and consistent method. DOE notes that "medium" or "low" temperature settings may not be consistent among different manufacturers. When the heater switches off for the final time at the end of the drying cycle (that is, immediately before the cool-down period begins) the dryer would be stopped. If the final RMC is greater than 5 percent, the tests would be invalid and a new run shall be conducted using the highest dryness level setting. Any test cycle in which the final RMC is 5 percent or less would be considered valid. DOE also proposed that for automatic termination control dryers, the cycle setting selected for the test be recorded. This would include settings such as the drying mode, dryness level, and temperature level. DOE also requested comment on whether multiple cycles and settings should be tested and how the results from those multiple tests should be evaluated. *Id.*

Bosch and Siemens Home Appliance Group (BSH) expressed concern over using the phrase "normal program" because no manufacturer offers a program called "normal," and the term "normal" is ambiguous. BSH added that it would be very difficult to achieve reproducibility from test lab to test lab. (BSH, Public Meeting Transcript, No. 20 at pp. 93–94) AHAM agreed with BSH regarding the use of "normal" program, noting that clothes washers have transitioned from a normal cycle to specifying settings based on fabric type. (AHAM, Public Meeting Transcript, No. 20 at pp. 94–95) AHAM also recommended that DOE contact manufacturers of dryer usage materials, such as fabric softeners, who may have some survey data regarding usage factors or the most commonly selected program to avoid the terminology of "normal program." (AHAM, Public Meeting Transcript, No. 20 at p. 95) ALS supported revising the "test cycle" definition to account for the fact that most dryers no longer utilize the term "normal cycle" on their controls. ALS supported using the same test cycle definition the DOE clothes washer test procedure utilizes—"the cycle recommended by the manufacturer for washing cotton or linen clothes"—but modified to specify "for drying" instead of "for washing." (ALS, No. 24 at p. 4)

ALS commented that it supports testing only one cycle (the cycle recommended by the manufacturer for drying cotton and linen clothes) for the following reasons: (1) Manufacturers provide other cycles for consumers, but many of these other cycles are used infrequently because consumers tend to utilize a favorite cycle such as an automatic termination cycle, or a default cycle that they can easily initiate and

[24] Towards the end of an automatic termination cycle, a clothes dryer heater generally turns on and off multiple times to limit the amount of heat applied to the air entering the drum.

that doesn't require further manipulation; (2) it would be difficult if not impossible to develop any data or a consensus for the weighting factors to apply to the other cycles if multiple cycles were tested; (3) the burden on manufacturers and test labs to test multiple cycles out-weighs any benefit; and (4) the test cycle for cotton and linen clothes, at maximum temperature setting, will assess one of the most energy-intensive cycles on clothes dryers, so there is no need to further complicate the test procedure to assess if other cycles are more energy intensive. (ALS, No. 24 at p. 5) ALS also commented that dryers with automatic cycle termination should have the temperature for the test set at the "maximum" temperature setting option available on the dryer. This is because the test cycle should be "the cycle recommended by the manufacturer for drying cotton and linen clothes" and as such would normally be a high-temperature heat setting. (ALS, No. 24 at p. 5) Whirlpool stated that consumers dry a variety of fabrics using a variety of clothes dryer cycles. While no one cycle reflects this diverse consumer behavior, performing the energy test at the maximum temperature on the normal cycle is a straightforward means of representing the highest-cost consumer use of the product. Whirlpool commented that, because of the well-established history with this approach, a change in the test procedure to test multiple cycles would not be warranted. Whirlpool further stated that any change would require extensive round-robin testing to determine the impact of the new test temperatures on the EF calculation. (Whirlpool, No. 27 at p. 3)

The California Utilities/NRDC stated that DOE's proposal to test a "normal" drying program is reasonably appropriate. The California Utilities/NRDC stated that they lack additional consumer information on typical cycles and settings, and being aware of a potentially large testing burden of many different types of dryer tests, they support DOE's proposal to test at "normal" or "default" operation. (California Utilities/NRDC, No. 33 at p. 4) The California Utilities/NRDC noted that manufacturers expressed concern regarding the use of the term "normal" cycle, so it is important that this term be clarified or defined to prevent a possible loophole in the test procedure. The California Utilities/NRDC suggested that DOE collect data from manufacturers concerning the conditions of operation for a "normal" dryer cycle to confirm that such cycles are reasonably consistent among manufacturers. Alternatively, DOE could use that data to define a range of operating conditions for a normal cycle, or request that manufacturers suggest such a definition. (California Utilities/NRDC, No. 33 at p. 4)

Evaluation of Proposed Amendments for Automatic Cycle Termination

As discussed above, DOE conducted testing to evaluate the proposed amendments to the clothes dryer test procedure. As part of this testing, DOE tested nine clothes dryers as specified by the amendments to the test procedure for automatic cycle termination proposed in the June 2010 TP SNOPR. The testing consisted of running the dryer on a "normal" automatic termination setting and stopping the dryer when the heater switches off for the final time (immediately before the cool-down period begins). Three identical tests were conducted for each clothes dryer unit, and the results were averaged. The results of this testing, presented below in Table III.8, showed that the tested clothes dryers had a measured EF between 12.4 percent and 38.8 percent lower than the EF measured according to the current DOE clothes dryer test procedure. DOE also noted that all of tested units dried the test load to final RMCs well below the target RMC of 5 percent, ranging from 0.4 percent to 1.4 percent RMC, with an average of 0.8 percent. DOE also noted that even if the field use factor of 1.18 for a timer dryer is applied to the measured EF for a clothes dryer equipped with automatic cycle termination using the current DOE clothes dryer test procedure, this EF would still be more than the EF measured under the automatic cycle termination test procedure amendments proposed in the June 2010 TP SNOPR. (Applying the field use factor in this way adds the fixed estimate of over-drying energy consumption associated with time termination control dryers.)

TABLE III.8—DOE CLOTHES DRYER AUTOMATIC CYCLE TERMINATION TESTS

Test unit	Current DOE test procedure EF *lb/kWh**	Current DOE test procedure w/modified field use factor **EF *lb/kWh*	Proposed automatic cycle termination test procedure		
			EF *lb/kWh*	Percent change	Final RMC (%)
Vented Electric Standard:					
Unit 3	3.20	2.82	2.59	− 19.1	1.0
Unit 4	3.28	2.89	2.59	− 21.2	0.6
Vented Gas:					
Unit 8	2.83	2.50	2.42	− 14.5	0.4
Unit 9	2.85	2.51	2.38	− 16.3	0.9
Unit 11	2.98	2.63	2.40	− 19.5	0.9
Vented Electric Compact 240V:					
Unit 12	3.19	2.81	2.64	− 17.3	0.5
Unit 13	2.93	2.59	2.27	− 22.7	1.4
Vented Electric Compact 120V:					
Unit 14	3.23	2.85	1.98	− 38.8	0.7
Ventless Electric Compact 240V:					
Unit 15	2.37	2.09	2.07	− 12.4	1.1

*Tests use the appropriate field use factor of 1.04 for clothes dryers with automatic termination.
**Field use factor changed from the nominal 1.04 for clothes dryers with automatic termination to 1.18, which is nominally for timer dryers.

These results showed significantly higher measured energy use for clothes dryers tested under the DOE test procedure with the proposed automatic cycle termination amendments. DOE evaluated possible reasons for this difference, and concluded that given the test load specified in the current DOE test procedure,[25] the proposed automatic cycle termination control procedures may not adequately measure clothes dryer performance. As discussed above in this section, DOE believes that, although automatic termination control dryers may be measured as having a lower efficiency than a comparable dryer with only time termination control if tested according to the proposed test procedure, automatic termination control dryers may in fact be drying the clothing to approximately 5-percent RMC in real world use. DOE believes that automatic termination control dryers reduce energy consumption (by reducing over-drying) compared to timer dryers based on analysis of the AHAM field use survey and analysis of field test data conducted by NIST. 46 FR 27324 (May 19, 1981).

For these reasons, DOE believes the test procedure amendments for automatic cycle termination proposed in the June 2010 TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems. Therefore, DOE is not adopting in today's final rule the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR. 75 FR 37594, 37616 (June 29, 2010). If data is made available to develop a test procedure that accurately measures the energy consumption of clothes dryers equipped with automatic termination controls, DOE may consider revised amendments in a future rulemaking.

ALS commented that an automatic cycle termination-equipped dryer that produces a final RMC of greater than 5 percent should be required to have additional test cycle runs. The insufficiently dried load would be placed back into the dryer for an extra cycle, and the extra-cycle energy added to the first test cycle results, until the final RMC is 5 percent or less. ALS commented that this extra cycle energy would be a significant penalty and incentive to keep manufacturers from creating automatic cycle termination systems that essentially tried to achieve a low energy consumption value while not achieving consumer-acceptable final RMC levels. ALS also believes that this method represents what consumers tend do when a load is not sufficiently dried at the end of the cycle—put the load back into the dryer and run another dry cycle on the same setting. (ALS, No. 24 at p. 3) The California Utilities/NRDC supported DOE's proposal to require a re-test at the "highest energy consuming setting" in the case of a dryer failing to reach 5-percent RMC or less under a normal drying program. (California Utilities/NRDC, No. 33 at p. 4)

For the reasons discussed above, DOE is not adopting in today's final rule the amendments proposed in the June 2010 TP SNOPR to better account for automatic cycle termination. Therefore, additional specifications for such an approach are not relevant.

Dry Clothes Load Testing

CU commented that an additional test using a dry clothes load should be included as part of the test procedure to assess how well a sensor detects that a clothes load has been dried to terminate the cycle. CU commented that it tested products using a 12-lb dry clothes load (less than 5 percent initial RMC) of mixed cottons with the dryer at normal/cotton, highest heat, and maximum dryness level settings. CU observed notable differences in the performance of different types of dryers (that is, those with thermostatic control and those with moisture sensors). CU noted that units with moisture sensors stopped within a reasonable time, but units with just a thermostat continued running, sometimes 20 times longer than a dryer with a moisture sensor. CU noted that one dryer with the moisture sensor ran an average of 3 minutes before shutting off, and in 3 tests, it averaged 162 Wh per test. Another dryer with a thermostat ran for an average of about 60 minutes, and in 3 tests, it averaged 2,335 Wh per test. In addition, CU observed significant variation among dryers with moisture sensors and those with thermostats, and stated it should not be assumed that these results represent performance for all dryers of either type. (CU, No. 29 at pp. 2–3)

DOE does not believe running a dry clothes load would be representative of consumer usage. It also does not believe that the amount of time a clothes dryer operates with such a clothes load would necessarily be representative of the effectiveness of a sensor system in detecting final RMC for an initially damp clothes load. Further, DOE is not aware of how an energy efficiency metric would be established that considers the energy consumption of a dry clothes load test cycle. Therefore, DOE is not adopting any provisions for measuring the energy consumption of a dry clothes load test cycle in today's final rule.

Evaluation of Automatic Termination Technologies

DOE noted in the June 2010 TP SNOPR that it conducted preliminary automatic cycle termination tests to analyze the various automatic termination technologies found in DOE's sample of selected dryers. DOE selected the AHAM 8-lb test load[26] instead of the 7-lb load specified in the DOE test procedure for standard-size clothes dryers. It did so to lengthen the test cycle times and better evaluate the function of the dryer controls as the test load approached low RMCs. DOE also noted that the independent test lab conducting the clothes dryer tests used a data acquisition system to monitor estimated RMC of the test load continuously during the test cycle. The automatic termination tests conducted by DOE consisted of running the test cycle in a user-programmable automatic termination mode and allowing the dryer to self-terminate the drying cycle using the various automatic termination sensor technologies. DOE monitored the energy consumption and estimated RMC of the test load during the test cycle from the starting time at 70-percent initial RMC to the time when the heater last cycled off (that is, immediately before the cool-down period). The specific focus was on analyzing the amount of over-drying energy consumed drying the test load to less than 5-percent RMC.[27] 75 FR 37594, 37617 (June 29, 2010).

Figure III.1 shows the over-drying energy consumption versus the final RMC for a number of different units tested, and, in some cases, different cycle settings.[28] The data show that over-drying the test load to lower final RMCs requires higher energy consumption, with a slightly exponential trend likely because it becomes more difficult to remove the final small amounts of moisture remaining in the test load. DOE noted in the June 2010 TP SNOPR that it did not observe any relationship between the type of automatic cycle termination

[25] The DOE clothes dryer test load is comprised of 22 in x 34 in pieces of 50/50 cotton/polyester-blend cloth.

[26] The AHAM 8-lb test load is made up of the following mixed cotton items, which are intended to represent clothes items regularly laundered: 2 sheets, 1 table cloth, 2 shirts, 3 bath towels, 2 "T" shirts, 2 pillow cases, 3 shorts, 1 wash cloth, 2 handkerchiefs.

[27] As noted in the June 2010 TP SNOPR, DOE applied a correction factor to the test data to account for the fact that the automatic cycle termination tests used the AHAM 8-lb test load instead of the DOE 7-lb test load.

[28] DOE noted that some of the tested units stopped the test cycle at or higher than 5-percent RMC, thereby not producing over-drying.

sensor technology used and the amount of over-drying. DOE also noted, however, that these tests were conducted using different testing methods than the methods proposed in the June 2010 TP SNOPR (that is, various automatic cycle termination settings). Therefore, DOE was unable to determine whether one type of sensor technology is more accurate, and thus more effective at preventing over-drying. 75 FR 37618.

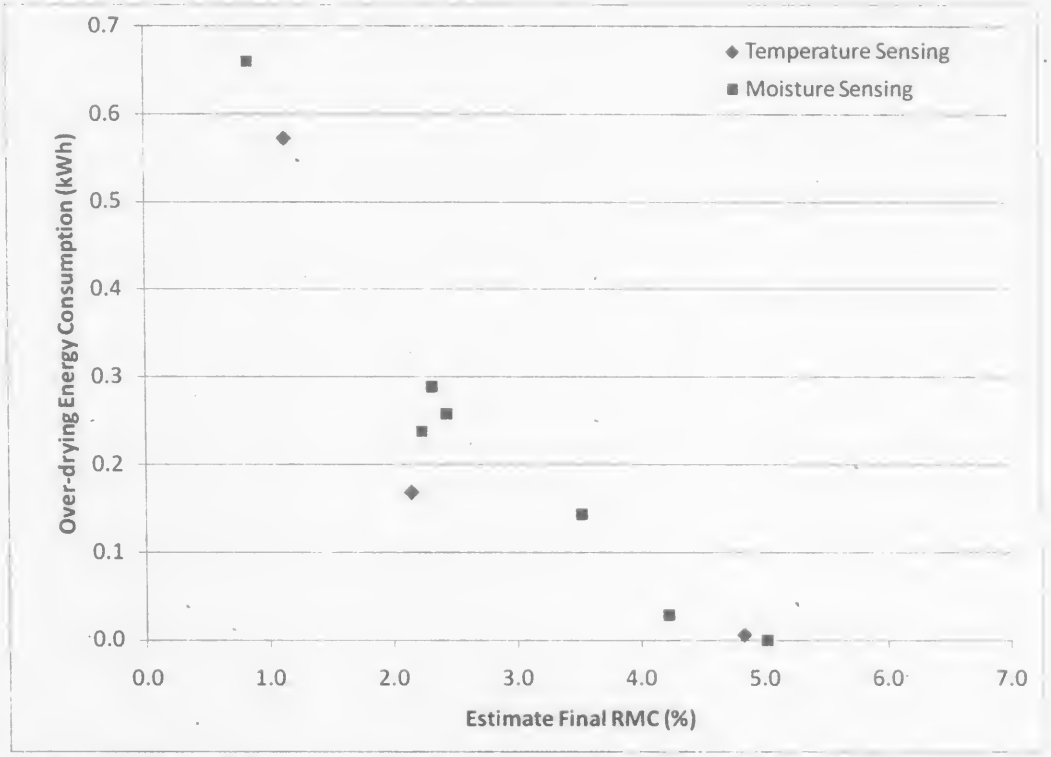

Figure III.1 Automatic Cycle Termination Test Over-Drying Energy Consumption versus Estimated Final RMC

Porticos commented that DOE considered only two possible methods for automatic cycle termination (moisture and temperature sensing). Porticos commented that these may be the only practical alternatives in a vented, forced-convection tumble dryer, but that alternate drying technologies may enable alternate methods of determining when the drying cycle should be terminated. Ignoring this possibility penalizes any appliance that attempts to deploy a different technology. (Porticos, No. 23 at p. 1)

DOE agrees that the test procedure should not exclude alternate sensing technologies used for automatic cycle termination controls. DOE notes section 3.5 of the test procedure, "Test for automatic termination field use factor credits," specifies that the field use factor for automatic cycle termination would apply only to clothes dryers that meet the requirements for the definitions of "temperature sensing control" or "moisture sensing control." The test procedure defines "temperature sensing control" a system that monitors the exhaust air temperature to automatically terminate the dryer cycle. The test procedure also defines "moisture sensing control" as a system that uses a moisture sensing element within the drum that monitors the amount of moisture in the clothes to automatically terminate the dryer cycle. DOE also notes the test procedure defines "automatic termination control" as a control system with a sensor that monitors either the dryer load temperature or its moisture content and with a controller that automatically terminates the drying process. DOE believes that this definition would not limit the emergence of any new sensor technologies that monitor the moisture content or temperature in other ways from applying the field use factor for automatic cycle termination. For these reasons, DOE amends section 3.5 of the test procedure to specify that the field use factor applies to clothes dryers that meet the requirements for the definitions of "automatic termination control."

Target Final RMC

DOE also noted in the June 2010 TP SNOPR that AS/NZS Standard 2442 specifies the maximum allowable final RMC for automatic termination control dryers as 6 percent. DOE, however, stated that it is unaware of any data indicating that a final RMC of 6 percent would be representative of current consumer usage habits. DOE also noted that using 5-percent RMC, as proposed in today's June 2010 TP SNOPR, would remain within the range specified by the current DOE test procedure, which specifies 2.5- to 5-percent final RMC. *Id.*

The Joint Petitioners and AHAM commented that a final RMC of 5 percent is appropriate. (Joint Petitioners, No. 30 at p. 6; AHAM, No. 31 at p. 6)) ALS stated that the test load final RMC should be no greater than 5 percent. ALS stated that if the test cycle continued to measure all of the energy including cool-down, manufacturers

would adopt their own methods to ensure that they do not over-dry the test load. (ALS, No. 24 at p. 3) As discussed above, DOE is not adopting the amendments to better account for automatic cycle termination proposed in the June 2010 TP SNOPR. For these reasons, DOE is not amending the test procedure to revise the final RMC.

Cool-Down Period

DOE also noted in the June 2010 TP SNOPR that there are at least two ways to terminate the drying cycle during the test: (1) Termination before cool-down, or (2) termination at the end of the selected test cycle, including cool-down. 75 FR 37594, 37616 (June 29, 2010). Section 4.2 of AS/NZS Standard 2442.1 requires that, for automatic termination control dryers, the programmed test cycle be run until immediately before the cool-down period begins. Similarly, section 4.5.1 of AHAM–HLD–1–2009 requires that the automatic termination control dryer test cycle not be permitted to advance into the cool-down period. Alternatively, section 9.2.1 of EN Standard 61121 requires that the selected test cycle program be allowed to run until completion, including the cool-down period. In the June 2010 TP SNOPR, DOE proposed amendments for automatic cycle termination based on the provisions in AS/NZS Standard 2442 because it provides a more representative comparison of the energy consumption between automatic termination control dryers and timer dryers than EN Standard 61121. In addition, the proposed amendments to stop the test cycle immediately before the cool-down period would harmonize DOE test methods with AS/NZS Standard 2442 and AHAM–HLD–1–2009. *Id.* DOE stated, however, that it was considering the alternative method of section 9.2.1 of EN Standard 61121. DOE recognizes that manufacturers may design products to use the residual heat during the cool-down period (that is, immediately after the heater has switched off for the final time) to continue to dry the clothes load while slowly spinning the drum to achieve a desired RMC.[29] DOE recognizes that including the cool-down period may make it possible for some manufacturers to design dryers that attain the desired RMC with lower total energy consumption. DOE noted that this potential for energy efficiency improvement would not be captured by the test methods proposed in the June 2010 TP SNOPR. To capture this real-world energy savings potential associated with the additional drying using residual heat during the cool-down period, DOE stated in the June 2010 TP SNOPR that it could adopt an alternate approach to include the measurement of the cool-down period as part of the proposed automatic cycle termination test methodology. Under this alternate approach, section 3.3.2 of the test procedure for automatic termination control dryers, instead of specifying that "when the heater switches off for the final time, immediately before the cool-down period begins, stop the dryer," would specify to "run the clothes dryer until the programmed cycle has terminated." DOE also noted that inclusion of the cool-down period under the proposed test method would not affect the ability to compare energy consumption test results between automatic termination control dryers and timer dryers in DOE's clothes dryer test procedure. DOE further stated in the June 2010 TP SNOPR that it is unaware of data showing the effects of including the cool-down period on the measured efficiency as compared to the existing test procedure. 75 FR 37616–17.

The Joint Petitioners, AHAM, Whirlpool and ALS commented that, although they generally promote harmonization with international standards, they do not agree that AS/NSZ Standard 2442 provides the best methods and procedures to account for the amount of over-drying associated with automatic termination control dryers beyond a specified RMC. The Joint Petitioners, AHAM, Whirlpool, ALS, the California Utilities/NRDC, and EJ commented that the test procedure should measure the full cycle, including cool-down period, which is more representative of consumer usage because it includes all of the energy use in a cycle. The Joint Petitioners, AHAM, Whirlpool and ALS stated that such an approach is reproducible and repeatable because it does not require any "guesswork" as to when the cool-down will begin. The approach is also less burdensome because it does not require the manufacturers to determine the point immediately before cool-down for each model. (Joint Petitioners, No. 30 at p. 5; AHAM, No. 31 at p. 5; Whirlpool, No. 27 at pp. 2, 3; ALS, No. 24 at p. 3; ALS, Public Meeting Transcript, No. 20 at pp. 97–98; California Utilities/NRDC, No. 33 at pp. 4–5; EJ, No. FDMS D0039 at pp. 1–2)

ALS also commented that the "default" cool-down should be set if the dryer has selectable cool-down time period options. (ALS, No. 24 at p. 6) AHAM commented that the "as-shipped" (that is, "default") cool-down settings should be included in active mode because this approach is more representative of actual consumer usage. (AHAM, No. 31 at p. 6)

The Joint Efficiency Advocates Comment stated that excluding the cool-down period results in a portion of the energy consumed by a drying cycle not being measured by the test procedure. In addition, the Joint Efficiency Advocates Comment stated that including the cool-down period could provide manufacturers with an additional option for reducing energy consumption. (Joint Efficiency Advocates, No. 28 at p. 3) ALS and BSH supported including the cool-down period in the test procedure. They feel manufacturers may optimize the point where the heating is stopped and the residual heat in the load is used during cool-down to complete the drying process to achieve consumer-accepted final moisture retention levels, while avoiding "over drying" loads and potentially wasting energy. (ALS, No. 24 at p. 3; BSH, Public Meeting Transcript, No. 20 at p. 98) EJ commented that a test procedure that ignores the additional drying functionality provided by cool-down mode reduces manufacturers' incentive to provide this energy-saving feature. (EJ, No. FDMS D0039 at pp. 1–2)

Whirlpool requested that DOE complete further analysis to adjust EF within the test procedure to account for the inclusion of the cool-down portion of the cycle. Whirlpool stated that failure to adjust the EF requirements will inadvertently result in requirements becoming too stringent. Whirlpool commented that it can infer that the cool-down portion of the cycle consumes little energy when compared to the drying portion as it is relatively short and uses only motor energy, not heating element energy. (Whirlpool, No. 27 at pp. 2, 3) Whirlpool also commented that the additional energy consumed during cool-down period does not follow linear relationship with the RMC of the test load. Whirlpool stated that it does not have sufficient data to fully address how this would be reflected in total energy consumption. Whirlpool commented that if DOE were to make a specific request to AHAM for such data, Whirlpool would be willing to gather and supply information to AHAM for aggregation and submittal to DOE. (Whirlpool, No. 27 at p. 5) ALS commented that it has no data to submit to DOE at this time on how the proposed added cool-down period energy consumption would impact the measured energy efficiency of existing

[29] The clothes dryer would also consume energy to spin the drum during the cool-down period that is currently not accounted for by the DOE test procedure.

clothes dryers, and suggested that DOE conduct tests to determine the impact. (ALS, No. 24 at p. 6) The California Utilities/NRDC similarly commented that they do not have specific data on the impacts this cool-down period has on dryer per-cycle energy use and calculated EF. However, they stated that although the impacts may be small, DOE should, for the purposes of completeness and reproducibility, consider including the energy use of the cool-down portion of the cycle into the active mode test procedure. The California Utilities/NRDC stated that DOE should revise the energy conservation standards to reflect this test procedure change. (California Utilities/NRDC, No. 33 at pp. 4–5)

As discussed above, DOE is not adopting the amendments to better account for automatic cycle termination proposed in the June 2010 TP SNOPR. For this reason, DOE is not amending the test procedure to include the cool-down period for automatic termination test cycles. If DOE considers potential amendments for automatic cycle termination in a future rulemaking, it may consider provisions that account for the cool-down period.

Calculation of Revised Results From Automatic Cycle Termination Test Measurements

In the June 2010 TP SNOPR, DOE also proposed to revise section 4, "Calculation of Derived Results from Test Measurements," of the DOE test procedure. DOE proposed to revise the field use factors in the current DOE test procedure to more appropriately account for automatic termination control dryers' over-drying energy consumption. DOE proposed that a field use factor of 1.0 (instead of the 1.04 currently provided) would be specified for automatic termination control clothes dryers, so that any over-drying energy consumption would be added directly to the drying energy consumption to decrement EF. If the proposed test methods were used, an automatic termination control dryer that is able minimize over-drying by drying the test load to close to 5-percent RMC would achieve a higher measured efficiency than if it over-dried the test load to an RMC of less than 5 percent. The lower amount of energy consumed over-drying the test load would be included in the per-cycle energy consumption, and would result in a reduction in the measured EF. For timer dryers, DOE proposed to use the per-cycle energy consumption measurements from the two proposed tests cycles discussed above in this section (corresponding to 5–6 and 4–5 percent final RMCs) to interpolate the value of the per-cycle energy consumption required to dry the test load to exactly 5-percent RMC. The 1.18 field use factor in the current DOE test procedure would then be applied to account for the over-drying energy consumption of timer dryers. 75 FR 37594, 37617 (June 29, 2010).

As discussed above in this section, DOE noted in the September 1977 TP Final Rule that the 1.18 field use factor in the calculation of EF for timer dryers was based on analysis of data from a field use survey conducted by Oklahoma Gas and Electric Company involving 64 homes as well as data provided by AHAM on the measured energy consumption per-cycle under the DOE test procedure to account for the differences between the values derived from the laboratory test procedures and those obtained from actual consumer use. 42 FR 46145, 46146 (September 14, 1977). DOE stated in the June 2010 TP SNOPR that it was unaware of any data or studies indicating the 1.18 field use factor for timer dryers used to account for over- or under-drying test loads in real-world use is inaccurate and not currently representative of consumer usage. For this reason, DOE did not propose to revise the 1.18 field use factor for timer dryers in the June 2010 TP SNOPR but requested data and comment on whether this value is appropriate. *Id.*

AHAM, the Joint Petitioners, the California Utilities/NRDC, and ALS supported DOE's proposal to change the field use factor from 1.04 to 1.0 for automatic termination control dryers and not revise the 1.18 field use factor for timer dryers. (AHAM, No. 31 at p. 6; Joint Petitioners, No. 30 at p. 6; California Utilities/NRDC, No. 33 at p. 5; ALS, No. 24 at p. 3)

As discussed above, DOE is not adopting in today's final rule the amendments to better account for automatic cycle termination proposed in the June 2010 TP SNOPR. For the reasons stated above, DOE is not amending the test procedure in today's final rule to include the revisions to the energy use calculations or the field use factors proposed in the June 2010 TP SNOPR. If DOE considers potential amendments for automatic cycler termination in a future rulemaking, it may consider such revisions to the energy use calculations and field use factors.

3. Test Procedure for Ventless Clothes Dryers

DOE noted in the October 2007 Framework Document that a potential limitation of the clothes dryer test procedure had been identified for ventless dryers, which include condensing clothes dryers and combination washer/dryers. (Framework Document, STD No. 1 at p. 5) Ventless clothes dryers do not vent exhaust air to the outside as a conventional clothes dryer does. Instead, they typically use ambient air in a heat exchanger to cool the hot, humid air inside the appliance, thereby condensing out the moisture. Alternatively, cold water can be used in the heat exchanger to condense the moisture from the air in the drum.[30] In either case, the dry air exiting the drum is reheated and recirculated in a closed loop. Thus, rather than moisture-laden exhaust air that vents outside, ventless clothes dryers produce a wastewater stream that can be either collected in an included water container or discharged down the household drain. The process of condensing out the moisture in the recirculated air results in higher energy consumption than a conventional clothes dryer, however, and it can significantly increase the ambient room temperature.

Manufacturers of condensing clothes dryers have, in the past, applied for waivers from the DOE test procedure for these products on the basis that the test procedure did not contain provisions for ventless clothes dryers. See, *e.g.*, 74 FR 66334 (December 15, 2009); 75 FR 13122 (Mar. 18, 2010). The current test procedure requires using an exhaust restrictor to simulate the backpressure effects of a vent tube in an installed condition. Condenser dryers do not have exhaust vents because they recirculate rather than exhaust the process air.

In the October 2007 Framework Document, DOE stated that it intended to analyze ventless clothes dryers as a separate product class, recognizing the unique utility that ventless clothes dryers offers to consumers. That utility is the ability to be installed in conditions in which vented clothes dryers would be precluded due to venting restrictions. DOE considered two product classes for ventless clothes dryers: (1) Ventless electric compact (240V) clothes dryers; and (2) electric combination washer/dryers.

In this final test procedure rule, DOE adopts amendments to measure the energy use of ventless clothes dryers, as discussed in more detail below.

[30] This is a typical approach for combination washer/dryers, which wash and dry a load in the same drum.

Effects of Clothes Dryers on HVAC Energy Use

In response to the October 2007 Framework Document, DOE received comments from AHAM that the energy calculations for ventless clothes dryers should take a more "holistic" approach than those for vented clothes dryers. That is because ventless clothes dryers can have an effect on energy use oustide of their system (that is, impacts on HVAC loads). 75 FR 37594, 37620–21 (June 29, 2010). EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE stated in the June 2010 TP SNOPR that accounting for the impacts of ventless clothes dryers on HVAC loads and thus on the energy use of a household would be inconsistent with the EPCA requirement that a test procedure measure the energy use of a covered product. DOE also noted that, while the test procedure for heat pump water heaters does not account for impacts to HVAC loads, DOE considered the effects of heat pump water heaters on house heating loads as part of the energy-use characterization in the rulemaking to establish energy conservation standards rulemaking for water heaters. For these reasons, DOE did not propose to amend its clothes dryer test procedure to account for the ambient space conditioning impacts in the June 2010 TP SNOPR, but stated that it would consider such impacts as part of the concurrent energy conservation standards rulemaking. 75 FR 37594, 37621 (June 29, 2010).

In response to the June 2010 TP SNOPR, the California Utilities/NRDC commented that DOE should consider HVAC impacts as part of the concurrent energy conservation standards rulemaking. They added that the ECOS report showed that space conditioning impacts due to clothes dryer intake air may be significant. (California Utilities/NRDC, No. 33 at pp. 8–9) The California Utilities/NRDC and the Super Efficient Dryer Initiative (SEDI) noted that the actual impacts will depend on many factors, such as climate, season, and location of the clothes dryer within the home. They stated DOE should thoroughly assess this aspect of clothes dryer operation and research opportunities for energy reduction. (California Utilities/NRDC, No. 33 at p. 9; SEDI, No. 34 at p. 2)

Porticos commented that the HVAC load from a vented clothes dryer is much higher than that of other household appliances. According to Porticos, a vented clothes dryer induces air infiltration equal to the exhaust airflow (up to 160 cubic feet per minute (cfm)), enough to completely empty a 1200 cubic foot (ft^3) home of all its conditioned air in 1 hour. (Porticos, No. 23 at p. 2) Porticos and SEDI both commented that there would be significant HVAC savings associated with switching from vented to ventless clothes dryers. (Porticos, No. 23 at p. 2; SEDI, No. 34 at p. 2) SEDI added that vented clothes dryers operate by drawing supply air from the volume of conditioned space within a house. The supply air is heated and used to dry the clothes. The air is then exhausted from the home. SEDI stated this process wastes both the heating energy put into that air by the dryer itself, but also the heating or cooling energy put into that air earlier by the home's HVAC system. (SEDI, No. 34 at p. 2) Porticos also added that ventless dryers tend to directly heat the living space rather than inducing air infiltration. (Porticos, No. 23 at p. 2) The California Utilities/NRDC commented that HVAC impacts may be mitigated through increased use of ventless dryers, or other technologies for vented dryers, such as an outside air intake port, which could provide a location to fit an intake air vent. The California Utilities/NRDC stated that it is important that DOE gather data on the HVAC impacts of clothes dryers to accurately assess the costs and savings impacts of such technologies. (California Utilities/NRDC, No. 33 at p. 9)

The California Utilities/NRDC commented that the test procedure would be a simple and convenient means for manufacturers to submit useful data to DOE on clothes dryer operation that impacts HVAC loads (namely intake air). Data on intake air could be gathered by requiring the measurement of intake air via a small sensor in the airstream during the test. The California Utilities/NRDC added that this information would be a valuable indication of the amount of airflow caused by clothes dryers, and could form the basis for subsequent DOE analysis. (California Utilities/NRDC, No. 33 at p. 9) Porticos recommended the following modifications to the test procedure to evaluate the effects of the clothes dryer on building energy consumption:

1. Directly measure the exhaust airflow (defined as zero for ventless appliances);
2. Directly measure the ambient heat-load represented by the appliance during operation (DOE might define this as zero for vented appliances);
3. Calculate the overall HVAC burden due to heat-burden and induced infiltration; and
4. Optionally, modify this figure to account for variations due to regional usage (a vented dryer might work quite well in a moderate climate, but less-so in colder climates). (Porticos, No. 23 at p. 2)

Porticos added that there is a precedent for addressing impacts external to the clothes dryer because existing DOE test procedures penalize clothes washers which do a poor job of spin-drying clothes, thus placing an excessive burden on the clothes dryer. *Id.*

SEDI commented that both the current and proposed clothes dryer test procedures ignore the HVAC impact of vented dryers, and will not provide DOE, or SEDI and other energy efficiency program providers, with the information necessary to estimate HVAC savings. SEDI commented that ideally, testing for all clothes dryers would include measurement of the energy content of the air expelled from the home during the drying cycle, which would be added to the energy directly consumed by the dryer itself. (SEDI, No. 34 at p. 2) SEDI supported the recommended modifications for measuring HVAC impacts submitted by Porticos. SEDI also recognized, however, that it may be extremely difficult to develop HVAC energy consumption algorithms for residential clothes dryers that are applicable across the United States. SEDI also recognized that pursuing this comprehensive approach could move DOE away from harmonization with international standards. SEDI commented that, at a minimum, DOE should adopt at least modifications 1 and 2 suggested by Porticos, presented above, but with the following change: "1. Directly measure the exhaust air volume (defined as zero for ventless appliances) during the entire drying cycle." SEDI commented that this change would enable the energy use of clothes dryers that have different rates of venting at different points during the drying cycle. In addition, if the volume of air vented by a clothes dryer from a home is measured, the HVAC impacts of that clothes dryer on the home could be estimated. (SEDI, No. 34 at p. 2)

DOE reiterates that accounting for the effects of clothes dryers on HVAC energy use is inconsistent with the EPCA requirement that a test procedure measure the energy efficiency, energy

use, or estimated annual operating cost of a covered product. (42 U.S.C. 6293(b)(3)) DOE acknowledges its clothes washer test procedure measures the RMC at the end of the wash cycle, but notes that in this case, the test procedure accounts directly for the additional energy use of a clothes washer to remove moisture from a clothes load. For these reasons, DOE is not revising the test procedure to account for HVAC energy use in today's final rule.[31]

The Joint Petitioners commented that DOE should create a ventless clothes dryer test procedure to define a baseline energy consumption level for this new product category. Such a procedure would include combination washer/dryers. (Joint Petitioners, No. 25 at p. 14; Joint Petitioners, No. 30 at p. 6) ALS also supported the addition of test procedures for ventless clothes dryers. (ALS, No. 24 at p. 6) SEDI also noted the importance of expanding the test procedure to accommodate ventless clothes dryers, such as the energy efficient heat pump clothes dryers now gaining market share in Europe. SEDI stated that DOE should develop a ventless clothes dryer test procedure as soon as possible, while taking care not to inadvertently discourage efforts to increase the energy efficiency of clothes dryers in North America. (SEDI, No. 34 at p. 2)

Ventless Clothes Dryer Test Procedure Amendments

In the June 2010 TP SNOPR, DOE examined an alternate test procedure for ventless clothes dryers that provided definitions for "conventional clothes dryers" and "condensing clothes dryers" and would require the exhaust simulator to be used only for vented clothes dryers. DOE conducted limited tests of ventless clothes dryers at an independent testing laboratory according to those amendments. DOE conducted three tests per unit on one ventless electric compact (240V) clothes dryer and one ventless combination washer/dryer. Table III.9 shows the test results. DOE observed no variation in EF from test to test of the proposed test procedure for the ventless electric compact (240V) dryer, and less than 2-percent variation in EF test-to-test for the ventless combination washer/dryer. Based on this testing, DOE stated in the June 2010 TP SNOPR that the alternate testing procedures appear to produce repeatable results. 75 FR 37594, 37621 (June 29, 2010).

TABLE III.9—DATA FROM DOE TESTING OF VENTLESS CLOTHES DRYERS FOR THE JUNE 2010 TP SNOPR

Test run	EF *(lb/kWh)*	
	Ventless electric compact (240 V)	Ventless combination washer/dryer
1	2.37	1.95
2	2.37	1.96
3	2.37	1.93

DOE also investigated testing conditions and methods for ventless or condensing clothes dryers specified in international test standards, including those used in Europe, China, Australia, and New Zealand. *Id.*

DOE evaluated EN Standard 61121, and identified as relevant the test procedures for condensing (ventless) clothes dryers, as well as certain test conditions that affect all clothes dryers. In particular, DOE noted that section 3 of EN Standard 61121, "Definitions and symbols," provides definitions for "air vented tumble dryer" and "condenser tumble dryer." DOE noted that section 6 of EN Standard 61121, "General," provides general conditions for measurements for both types of dryers, in particular for installation without an exhaust duct, as well as ambient temperature conditions. DOE noted that section 9 of EN Standard 61121, "Performance tests," provides the test procedures for performance tests for both types of dryers. DOE noted in the June 2010 TP SNOPR these test procedures provide greater specificity than the alternate test procedure discussed above. 75 FR 37621–22.

DOE also evaluated AS/NZS Standard 2442.1, which specifically includes condenser clothes dryers and the dryer function of combination washer/dryers. DOE noted that AS/NZS Standard 2442.1 provides definitions for vented and condenser clothes dryers that are essentially the same as those provided in EN Standard 61121. DOE also noted that AS/NZS Standard 2442.1 provides exhaust conditions for installation that are very similar to those provided in EN Standard 61121. 75 FR 37622.

In the June 2010 TP SNOPR, DOE also considered comments that Whirlpool submitted as part of the residential clothes dryer and room air conditioner energy conservation standards rulemaking, providing amendments to the DOE test procedure for clothes dryers to include methods for the testing of condensing dryers.[32] These suggested amendments were largely based on EN Standard 61121. DOE noted that Whirlpool suggested definitions for "exhausted" clothes dryers, "non-exhausted" clothes dryers, and "condensing" clothes dryers. Whirlpool also suggested provisions for the installation conditions for ventless clothes dryers, in particular for installation without an exhaust simulator. Whirlpool also suggested provisions for ventless clothes dryers for pre-conditioning, conditions for a condensation box and the condenser unit, as well as test measurement methods for ventless clothes dryers. 75 FR 37622–23.

DOE reviewed the definitions in EN Standard 61121 (section 3), AS/NZS Standard 2442.1 (section 1.4), and Whirlpool's proposed amendments to the DOE test procedure. DOE concluded that the proposed definitions of "conventional clothes dryer" and "condensing clothes dryer" are essentially the same as the international test standards definitions. DOE proposed to define "conventional clothes dryer" as "a clothes dryer that exhausts the evaporated moisture from the cabinet." It proposed to define "ventless clothes dryer" as "a clothes dryer that uses a closed-loop system with an internal condenser to remove the evaporated moisture from the heated air. The moist air is not discharged from the cabinet." DOE proposed to use the term "ventless" to reflect the actual consumer utility (that is, no external vent required) instead of "condensing" because of the possibility that vented dryers that also condense are also available on the market. 75 FR 37623. AHAM and ALS commented in support of the proposed definitions. (AHAM, No. 31 at p. 6; ALS, No. 24 at p. 6) Whirlpool commented that it supports substituting "ventless" for "condensing". (Whirlpool, No. 27 at p. 3) For the reasons stated above, DOE adopts the definitions of "conventional clothes dryer" and "ventless clothes dryer" proposed in the June 2010 TP SNOPR.

DOE evaluated the installation conditions detailed in EN Standard 61121 (section 6.1), AS/NZS Standard 2442.1 (section 3.4), and Whirlpool's

[31] DOE further notes that to accurately evaluate the HVAC impacts of clothes dryers it would need to determine the amount of heating and cooling being performed by the HVAC system, which would vary by region and time of year. In addition, to determine the amount of induced infiltration and heat-load caused by a clothes dryer, DOE would need to develop provisions for accurate and repeatable measurements, including: test equipment tolerances, position of measurement devices in either the exhaust or other locations, and determination of representative household air leakage rates. Such additional testing provisions for measuring the HVAC impacts would also increase the testing burden on manufacturers.

[32] Whirlpool, 2007. "U.S Department of Energy Test Procedure Change for Condensing Clothes Dryers." September 4, 2007. Docket No. EE–2007–BT–STD–0010, Comment Number 13.

proposed amendments to the DOE test procedure. DOE stated in the June 2010 TP SNOPR that the proposed amendments for the exhaust duct installation requirements, with clarifications added, are appropriate for testing ventless clothes dryers. 75 FR 37594, 37623 (June 29, 2010). DOE noted the proposed exhaust duct installation conditions remove the requirement for installing an exhaust simulator for a clothes dryer without an exhaust duct (that is, a ventless clothes dryer). The international test standards noted above also require that a clothes dryer without an exhaust duct be tested as such. Those standards, however, also provide additional conditions for a clothes dryer with an optional exhaust duct, stating that such a clothes dryer should be tested without the duct installed. DOE believes those installation conditions provide additional clarity and cover all possible clothes dryer configurations, as well as harmonizes with international test standards. Therefore, DOE proposed in the June 2010 TP SNOPR to amend section 2.1 of the DOE test procedure for clothes dryers, which covers installation conditions. The amendments qualify the requirement for an exhaust simulator so that it would apply only to conventional clothes dryers. The amendments added the clarification that ventless clothes dryers be tested without the exhaust simulator installed and, if a dryer is designed to operate with an optional exhaust duct, the dryer shall be tested without the duct installed. *Id.* AHAM, Whirlpool, and ALS supported the proposed exhaust duct installation conditions. (AHAM, No. 31 at p. 7; Whirlpool, No. 27 at p. 3; ALS, No. 24 at p. 6) In the absence of comments objecting to this proposal, DOE adopts the exhaust duct installation conditions proposed in the June 2010 TP SNOPR.

DOE also believes the provisions in EN Standard 61121 regarding a condensation box provides additional clarity that the test procedures are intended to cover all possible ventless clothes dryer configurations. For this reason, DOE proposed in the June 2010 TP SNOPR to revise section 2.1, "Installation," of the DOE test procedure for clothes dryers. The revision would add this requirement to the installation conditions: "if a manufacturer gives the option to use a ventless clothes dryer with or without a condensation box, the clothes dryer shall be tested with the condensation box installed." In addition, DOE proposed to amend the testing cycle measurement in section 3.3 to add that if the dryer automatically stops during a cycle because the condensation box is full of water, the test is stopped, and the test run is invalid. This requirement would ensure efficiency is measured consistently. 75 FR 37594, 37623 (June 29, 2010).

AHAM and Whirlpool both supported the proposed change to section 2.1 of the DOE test procedure. (AHAM, No. 31 at p. 7; Whirlpool, No. 27 at p. 3) For the reasons stated above, and in the absence of comments objecting to this proposal, DOE adopts in today's final rule the revisions to section 2.1, Installation of the DOE clothes dryer test procedure regarding a condensation box as proposed in the June 2010 TP SNOPR. 75 FR 37594, 37623 (June 29, 2010).

AHAM also commented that DOE should clarify that if the condensation box is full and the test is invalid, the re-testing should be conducted under the same installation conditions as the original test. Those conditions should be those provided in the manufacturer's use and care guide so that the test is representative of actual consumer use. (AHAM, No. 31 at p. 8) Whirlpool similarly recommended adding, for clarity, that if the condensation box is full and the test is invalid, that the box is to be emptied and the test re-run from the beginning. (Whirlpool, No. 27 at p. 4) DOE agrees that additional provisions should be included to clarify the procedure for retesting when the condensation box is full of water and the test is considered valid. DOE believes that Whirlpool's suggested revision provided explicit instructions as to the procedure for re-running the test cycle. For these reasons, DOE amends section 3.3 of the DOE clothes dryer test procedure to add that "if the dryer automatically stops during a cycle and because the condensation box is full of water, the test is stopped and the test run is invalid, in which case the condensation box shall be emptied and the test re-run from the beginning."

Also regarding installation conditions, DOE believes that Whirlpool's proposal to add a requirement that the condenser unit of the clothes dryer must remain in place and not be taken out of the clothes dryer for any reason between tests would clarify the test procedure and ensures that all manufacturers are testing products under the same conditions. For this reason, DOE proposed in the June 2010 TP SNOPR to add in section 2.1 of the DOE clothes dryer test procedure the provision that the condenser unit of the dryer must remain in place and not be taken out of the dryer between tests. 75 FR 37594, 37623 (June 29, 2010).

In the June 2010 TP SNOPR, Whirlpool supported the proposed amendment to require that the condenser unit remain in place and not be removed between tests, adding that this is for purposes of repeatability. Whirlpool commented that, if needed, the condenser unit should be cleaned prior to the first test run so it does not need to be cleaned during the test procedure. (Whirlpool, No. 27 at p. 4) ALS also commented in support of DOE's proposed amendments regarding the condenser unit. (ALS, No. 24 at p. 6) AHAM stated that there is no rationale for the proposed amendment requiring the condenser unit to remain in place and not be taken out of the clothes dryer for any reason between tests. AHAM commented that DOE should not include that provision. However, if it is included, it needs to be clarified. For example, the test procedure should state how many test runs are required. (AHAM, No. 31 at p. 7)

DOE agrees that the condenser unit may be cleaned prior to the first test run. DOE also believes that requiring the condenser unit to remain in place between tests ensures repeatability. As discussed later in this section, DOE is not amending the test procedure to require multiple test cycles. Because multiple test cycles may be necessary under certain conditions, however, such as a requirement that if the condensation box is full and must be emptied, the test would be re-run from the beginning. For these reasons, DOE amends section 2.1 of the clothes dryer test procedure regarding installation to add the provision the condenser unit of the dryer must remain in place and not be taken out of the dryer between tests, as proposed in the June 2010 TP SNOPR. 75 FR 37594, 37623 (June 29, 2010).

DOE stated in the June 2010 TP SNOPR that the methodology in the current DOE test procedure for conventional (vented) clothes dryers can be applied to ventless clothes dryers, with a number of clarifications added. Based on starting test conditions detailed in EN Standard 61121 (section 9.1) and Whirlpool's proposed amendments, DOE proposed to revise section 2.8 to provide a consistent and repeatable approach for ventless clothes dryers. 75 FR 37594, 37623 (June 29, 2010). DOE noted that this section, which addresses clothes dryer preconditioning, currently requires that before any test cycle is initiated the clothes dryer must be operated without a test load in the non-heat mode for 15 minutes or until the discharge air temperature varies less than 1 °F during a period of 10 minutes, whichever is longer. Because a ventless clothes dryer

does not have discharge air for which the temperature can be measured, DOE proposed in the June 2010 TP SNOPR to revise this section. The revision would require that, for ventless clothes dryers, the steady-state temperature must be equal to the ambient room temperature specified by section 2.2 of the existing DOE clothes dryer test procedure before the start of all test runs. This could be done by leaving the machine at ambient room conditions for at least 12 hours but not more than 36 hours between tests. DOE also proposed to revise section 2.8, "Test loads," of the DOE clothes dryer test procedure to add a qualification to the procedure for pre-conditioning that it applies only to vented clothes dryers. *Id.*

AHAM commented at the public meeting that DOE should remove the clause specifying a maximum time between tests because it did not have supporting information to define a maximum time between tests. (AHAM, Public Meeting Transcript, No. 20 at p. 120) AHAM later provided written comments revising these initial statements. It stated it supported the revisions to section 2.8 of the DOE test procedure proposed in the June 2010 TP SNOPR, including the specification that steady-state temperature for ventless clothes dryers may be achieved by leaving the machine at ambient room temperature between tests for at least 12 hours, but not more than 36 hours. (AHAM, No. 31 at pp. 7–8) Whirlpool and ALS also supported the revisions to section 2.8 of the DOE test procedure proposed in the June 2010 TP SNOPR. (Whirlpool, No. 27 at p. 4, ALS, No. 24 at p. 6) BSH questioned what method or procedure might be used to get the clothes dryer back to a testable state after a 36-hour break in testing. BSH also commented that, occasionally, there are breaks in testing that are longer than a day and a half; some breaks may last weeks. (BSH, Public Meeting Transcript, No. 20 at p. 119) DOE is not aware of any data providing a rationale for this 36-hour maximum time limit for leaving the machine at ambient room temperature between tests to achieve steady-state temperature. As a result, DOE amends section 2.8 of the clothes dryer test procedure regarding clothes dryer preconditioning to include the revisions proposed in the June 2010 TP SNOPR, as presented above, but without the 36-hour maximum time limit for leaving the machine at room ambient conditions for ventless clothes dryer preconditioning.

AHAM also commented that DOE should to insert the word "machine" before temperature when describing the machine steady-state requirements for ventless clothes dryers. (AHAM, Public Meeting Transcript, No. 20 at pp. 117–118) AHAM stated that for a manufacturer running back-to-back tests, waiting 12 hours between tests is a significant test burden. AHAM suggested replacing the word "can" with "may" regarding the 12-hour requirement to allow manufacturers to reach the ambient room temperature by some other means of cooling the machine, such as a fan or portable air conditioner. (AHAM, Public Meeting Transcript, No. 20 at p. 118) BSH commented that because ventless clothes dryers do not discharge air there needs to be a method for determining steady state other than monitoring the discharge air temperature. (BSH, Public Meeting Transcript, No. 20 at pp. 129–130)

DOE agrees with AHAM's comments and accepts the clarifications that the steady-state "machine" temperature must be equal to ambient room temperature. It also agrees that an additional note should clarify that this "may" be done by leaving the machine at ambient room conditions for at least 12 hours between tests. Thus, using other means to achieve a steady-state machine temperature would be acceptable under the test procedure provisions. In response to the comments by BSH, DOE believes that the steady-state "machine" temperature clarifies that the temperature of the actual machine itself should be monitored. For these reasons, DOE adopts the amendments to section 2.8 of the DOE clothes dryer test procedure for clothes dryer preconditioning proposed in the June 2010 TP SNOPR, with the additional clarifications discussed above.

Relatedly, DOE stated in the June 2010 TP SNOPR that it agrees with the provisions in section 9.2.2 of EN Standard 61121 and Whirlpool's proposed amendments. These specify that the first cycle after a period of non-operation longer than 36 hours shall not be used for evaluation, and that, between test cycles, the door of the clothes dryer shall be closed except for loading (and unloading). DOE noted that the first requirement makes the first test run on an unused (dry) ventless clothes dryer invalid, and the results from it could not be used for the energy efficiency calculations. DOE proposed in the June 2010 TP SNOPR to incorporate these provisions into section 3.3 of the DOE clothes dryer test procedure. 75 FR 37594, 37623–24 (June 29, 2010).

AHAM, Whirlpool, and ALS commented in support of the proposed requirements that after 36 hours of non-operation, the first test run is not valid and that the door remain closed between tests except for loading and unloading. They felt these requirements would enhance repeatability. (AHAM, No. 31 at p. 8; Whirlpool, No. 27 at p. 4; ALS, No. 24 at p. 6) DOE is not aware of any data providing a rationale for why the first test run after a period of non-operation of 36 hours would not be valid. As a result, DOE is not adopting amendments that specify the first cycle after a period of non-operation longer than 36 hours shall not be used for evaluation. In the absence of comments objecting to the latter proposal, DOE adopts the amendment to the clothes dryer test procedure that, between test cycles, the door of the tumble dryer shall be closed except for loading (and unloading), as proposed in the June 2010 TP SNOPR. 75 FR 37594, 37623–24 (June 29, 2010).

DOE noted in the June 2010 TP SNOPR that section 9.2.1 of EN Standard 61121 requires that at least five valid test cycles be performed and the results averaged. DOE's clothes dryer test procedure does not specify multiple test cycles to obtain the representative EF, and DOE is not aware of data suggesting that test-to-test variation is sufficient to warrant a requirement for more than one test cycle. Therefore, DOE did not propose amendments addressing the number of valid test cycles in the June 2010 TP SNOPR. 75 FR 37624.

ALS supported DOE's recommendation to require only one test cycle for a valid clothes dryer test because there is no evidence that additional tests are warranted, and additional tests would add burden to manufacturers and test labs, without any corresponding benefit. (ALS, No. 24 at p. 6) ALS further commented that if condensing clothes dryers have a genuine need to run additional test cycles, ALS could support such a requirement limited to condensing clothes dryers only. (ALS, No. 24 at p. 6) AHAM supported a requirement for more than one clothes dryer test cycle, but stated that the number of test cycles should not be so high as to create a test burden. AHAM stated that it would offer to assist DOE in determining the appropriate number of cycles. AHAM commented that increasing the number of test cycles would increase the repeatability and reproducibility of the test. AHAM stated that the age of the test cloth during any given test was a source of inherent variability that could be accounted for by introducing a standard deviation into the related energy use calculations. AHAM

commented that accounting for variability is especially critical as regulatory bodies move toward requiring third-party verification, as the various test labs must be capable of reproducing results. (AHAM, No. 31 at p. 8) Whirlpool recommended that each unit or model be tested three times and the results averaged to account for test-to-test variation. (Whirlpool, No. 27 at p. 4) The California Utilities/NRDC also commented that it would be more accurate, and good practice, to require multiple clothes dryer tests, but that they cannot provide any data at this time to indicate that doing so would greatly reduce test-to-test variation. (California Utilities/NRDC, No. 33 at p. 4)

As discussed above, DOE is not aware of any data indicating that the test-to-test variation is sufficient to warrant a requirement for more than one test cycle and the averaging of results. DOE is also unaware of any data suggesting that variability in the age of the test cloth increases the test-to-test variation of measured results for the clothes dryer test procedure. In addition, DOE conducted limited testing to evaluate the repeatability and reproducibility of the amended test procedure in today's final rule. As shown below in Table III.10, the test-to-test variation ranged from 0 percent to 2.7 percent, with an average of 0.9 percent. For these reasons, DOE is not amending the test procedure in today's final rule to require multiple test cycles. DOE would be open to considering such amendments in a future rulemaking if such data is made available showing that test-to-test variation is large enough to warrant multiple test cycles.

TABLE III.10—DOE REPEATABILITY TESTING FOR AMENDED CLOTHES DRYER TEST PROCEDURE

Test unit	Average EF *lb/kWh*			Test-to-test variation %
	Test 1	Test 2	Test 3	
Vented Electric Standard:				
Unit 1	3.67	3.70	3.71	1.1
Unit 2	3.77	3.77	.....	0.0
Unit 3	3.84	3.81	.....	0.8
Unit 4	3.92	3.92	.....	0.0
Unit 5	4.01	3.95	3.93	2.0
Unit 6	3.74	3.71	3.71	0.8
Vented Gas:				
Unit 7	3.36	3.36	.....	0.0
Unit 8	3.38	3.42	.....	1.2
Unit 9	3.47	3.38	.....	2.7
Unit 11	3.52	3.49	.....	0.9
Vented Electric Compact (240V):				
Unit 13	3.36	3.35	3.35	0.3
Vented Electric Compact (120V):				
Unit 14	3.74	3.74	.....	0.0
Ventless Electric Compact (240V):				
Unit 15	2.71	2.66	2.70	1.9
Ventless Electric Combo Washer-Dryer:				
Unit 16	2.26	2.27	.....	0.4
Unit 17	2.76	2.74	2.78	1.5

BSH commented that if DOE is proposing single tests rather than multiple tests with results averaged, many of the multiple test requirements, such as those for not removing a condenser or specifying a time period between tests, are irrelevant. BSH commented that if DOE decides to require multiple tests, it must define a set of test runs, and the condenser must be allowed to be removed and cleaned. Otherwise, the total number of test runs on a particular clothes dryer would be limited. (BSH, Public Meeting Transcript, No. 20 at p. 122) ACEEE commented that it is possible that if only one test cycle is required and the unit fails that test, more tests would need to be run on that unit. Therefore, provisions concerning multiple cycles would be needed. (ACEEE, Public Meeting Transcript, No. 20 at pp. 122–123) AHAM commented that the DOE test procedure does not have particular requirements for multiple test cycles, but in the general CFR there are requirements for the manufacturer to obtain repeatable and verifiable results. AHAM commented that DOE does not want to specify a minimum number of tests required, but a manufacturer may need to modify the condenser if they want or need to run multiple tests. (AHAM, Public Meeting Transcript, No. 20 at pp. 123–124) BSH further commented that if a manufacturer decides it is only comfortable running 5 or 10 tests, it would be reasonable to leave the condenser in place for that number of tests. (BSH, Public Meeting Transcript, No. 20 at p. 124)

As discussed above, multiple test runs may be necessary in cases when a test run is considered invalid, such as when the drying cycle stops because the condensation box is full of water and the test must be re-run. Because there are cases in which multiple test cycles may be required, DOE adopts the amendments discussed above related to multiple test requirements (that is, that the condenser not be removed and that the door be kept closed between tests).

DOE did not propose to measure the water consumption of ventless clothes dryers in the June 2010 TP SNOPR. 75 FR 37594, 37624 (June 29, 2010). ALS objected to DOE's proposal to not measure the water consumption of ventless "condensing" clothes dryers. ALS believes that if all clothes washers are required to meet strict standards regarding the amount of water consumed in a product that requires water to provide consumers with adequate utility, then a condensing clothes dryer must account for its water consumption as well. ALS commented that DOE needs to at least require that water consumption be measured and reported so that data is available for any future consideration of minimum standards for the water consumption of a condensing clothes dryer. (ALS, No. 24 at p. 6) General Electric (GE) commented that it does not have data on how much water is consumed by

ventless clothes dryers that utilize an external water source to condense moisture from the dryer steam air. GE believes, however, that water consumption could be easily measured by placing a calibrated flow meter on the water source. GE believes it would not be burdensome to perform the measurement and that such measurements would provide a more meaningful, robust measure of water use. (GE, No. 32 at p. 1) Whirlpool commented that it is not aware of any ventless clothes dryers in the United States that utilize water in the condensing process, and that should such products exist, their market share would be so small as to be immeasurable. Whirlpool commented that it does not believe that measuring water consumption is relevant or necessary. (Whirlpool, No. 27 at p. 4)

DOE notes that EPCA allows the establishment of water use metrics, but only for certain products. EPCA defines "energy conservation standard" in relevant part as:

(A) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title; (42 U.S.C. 6291(6)(A))

In addition, DOE regulates the water use of clothes washers based on the water conservation standards set by Congress in 42 U.S.C. 6295(g)(9).

Clothes dryers do not belong to the group of products specified by EPCA for which DOE can set a water use standard. As a result, DOE is not amending the clothes dryer test procedure in today's final rule to establish a water use metric or to include a requirement to measure the water consumption for ventless condensing clothes dryers.

DOE also stated that the results from DOE's tests at an independent laboratory are representative of the repeatability of results that would be observed using the testing procedures proposed in the June 2010 TP SNOPR. 75 FR 37594, 37624 (June 29, 2010). Although DOE's tests were conducted using the alternate test procedure that provided separate definitions for a "conventional clothes dryer" and a "condensing clothes dryer" and that simply required use of the exhaust simulator only for vented clothes dryers, DOE stated that the additional clarifications proposed in the June 2010 TP SNOPR would not significantly affect these testing results because they do not affect the the test cycle measurement method. Therefore, DOE stated that the amendments to the test procedure for ventless clothes dryers proposed in the June 2010 TP SNOPR would produce accurate and repeatable measurements of EF. *Id.*

To further support its assertion, after issuance of the June 2010 TP SNOPR, DOE conducted three identical tests on one ventless electric compact (240V) clothes dryer and two identical tests on one ventless electric combination washer/dryer to evaluate the repeatability of the proposed test procedure for ventless clothes dryers. Testing results, presented in Table III.11, showed 0.8-percent and 3.5-percent variation in EF from test to test for the ventless electric compact (240V) and ventless electric combination washer-dryer, respectively. The test-to-test variation shown below is comparable to the test-to-test variation shown in Table III.10 (conducted according to the alternate test procedure that provided separate definitions for a "conventional clothes dryer" and a "condensing clothes dryer" and that simply required use of the exhaust simulator only for vented clothes dryers). The slightly greater test-to-test variation observed in Table III.11 may be attributed to other test procedure tolerances, such as the allowable ranges in ambient temperature and relative humidity. DOE continues to believe that the amendments adopting in today's final rule for ventless clothes dryers produce accurate and repeatable measurements of EF.

TABLE III.11—DOE REPEATABILITY TESTING FOR VENTLESS CLOTHES DRYER AMENDMENTS

Test unit	EF *lb/kWh*			Test-to-test variation %
	Test 1	Test 2	Test 3	
Ventless Electric Compact (240V) (Unit 15)	2.36	2.38	2.37	0.8
Ventless Electric Combo Washer-Dryer (Unit 16)	2.05	1.98		3.5

4. Detergent Specifications for Clothes Dryer Test Cloth Preconditioning

Section 2.6.3 of the current DOE clothes dryer test procedure specifies that the test cloth be preconditioned by performing a 10-minute wash cycle in a standard clothes washer using AHAM Standard Test Detergent IIA. 10 CFR part 430, subpart B, appendix D, section 2.6.3. This detergent is obsolete and no longer available from AHAM or other suppliers. The current AHAM standard detergent is identified as AHAM standard test detergent Formula 3. Because AHAM Standard detergent IIA is no longer available to manufacturers, DOE proposed in the June 2010 TP SNOPR to amend section 2.6.3 of the clothes dryer test procedure to specify the use of AHAM standard test detergent Formula 3 in test cloth preconditioning. 75 FR 37594, 37624 (June 29, 2010).

Clothes washer tests that DOE conducted with AHAM standard test detergent Formula 3 suggest the dosage specified in section 2.6.3(2) of the DOE clothes dryer test procedure for AHAM Standard detergent IIA (6.0 grams (g) per gallon of water) may no longer be appropriate. This is because at the end of clothes washer test cloth preconditioning, which specifies the same dosage, undissolved clumps of detergent were observed in the cloth load. Further, DOE conducted extractor tests that indicate that detergent dosage impacts RMC measurements by as much as several percent.

AHAM's clothes dryer test procedure, AHAM HLD–1–2009, specifies a standard test detergent Formula 3 dosage of 27 g + 4.0 g/lb of base test load for test cloth pre-treatment. For DOE's clothes dryer test cloth preconditioning, the current test procedure specifies that clothes washer water fill level be set to the maximum level, regardless of test load size. In the June 2010 TP SNOPR, DOE proposed to amend the test load size for standard-size clothes dryers to 8.45 lb ± .085 lb (*see* section III.C.5.c.), which would result in a detergent dosage of AHAM standard test detergent Formula 3 of 60.8 g. DOE stated that the detergent concentration should be set by the pounds of test cloth in this standard-size test load because this load is more closely matched to the maximum water fill level than is the compact-size test load (3.0 lb ± .03 lb). For preconditioning a compact-size test load, DOE proposed that the same

detergent dosage be specified because the water fill level would remain the same as for the larger load, resulting in the same concentration of the water/detergent mixture. 75 FR 37594, 37624 (June 29, 2010).

To address the problems associated with the current dosage specification in the DOE clothes dryer test procedure, DOE proposed in the June 2010 TP SNOPR to amend section 2.6.3 of the clothes dryer test procedure. The amendment would require 60.8 g of AHAM standard test detergent Formula 3 be used to precondition test cloth. *Id.*

AHAM, Whirlpool, and ALS supported DOE's proposed detergent specifications. (AHAM, No. 31 at p. 8; Whirlpool, No. 27 at p. 4; ALS, No. 24 at p. 6) Whirlpool also strongly recommended that the test cloth be preconditioned in the same way when used in tests for both clothes washers and clothes dryers. This would enable test cloth with common characteristics to be interchanged between the two products, which would result in increased repeatability. (Whirlpool, No. 27 at p. 4) For the reasons stated above and in the absence of comments objecting to this proposal, DOE amends its clothes dryer test procedure in today's final rule to revise the detergent specifications for test cloth preconditioning as proposed in the June 2010 TP SNOPR. 75 FR 37594, 37624 (June 29, 2010). DOE will address detergent specifications for test cloth preconditioning for the clothes washer test procedure in the test procedure rulemaking for that product.

5. Changes To Reflect Current Usage Patterns and Capabilities

a. Clothes Dryer Number of Annual Cycles

As noted above, DOE most recently amended its test procedure for residential clothes dryers in a final rule published in the **Federal Register** on May 19, 1981. 46 FR 27324. Although DOE has updated its test procedure for residential clothes washers since that time,[33] it has not updated its residential clothes dryer test procedure. In the revised residential clothes washer test procedure, the average number of annual use cycles was revised to reflect current (at the time) consumer use patterns. DOE noted in the October 2007 Framework Document that the average number of clothes dryer use cycles assumed in the revised clothes washer test procedure is different from the number of use cycles in the clothes dryer test procedure. (Framework Document, STD No. 1 at p. 4)

In the June 2010 TP SNOPR, DOE reviewed available data to determine the number of annual clothes dryer use cycles so that it could amend its test procedure to accurately reflect current consumer usage habits. DOE reviewed the 2004 California Statewide RASS, which surveyed appliance product usage patterns, including clothes dryers.[34] The study surveyed 7,686 households between 2002 and 2003, asking the question "how many loads of clothes do you dry in your clothes dryer during a typical week?" For the 6,790 of these households that said they owned a clothes dryer, average usage was 4.69 loads per week, or approximately 244 loads per year. Because this study provides only a limited dataset, however, DOE stated in the June 2010 TP SNOPR that it did not intend to rely only on this data to determine an appropriate number of annual use cycles for the clothes dryer test procedure. 75 FR 37594, 37625 (June 29, 2010).

In the June 2010 TP SNOPR, DOE also reviewed data from the 2005 RECS to determine the annual usage of clothes dryers. RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. RECS provides enough information to establish the type (that is, product class) of clothes dryer used in each household, the age of the product, and an estimate of the household's annual energy consumption attributable to clothes dryers. DOE estimated the number of clothes dryer cycles per year for each sample home using data given by RECS on the number of laundry loads (clothes washer cycles) washed per week and the frequency of clothes dryer use. Based on its analysis of RECS data, DOE estimated the clothes dryer usage factor (the percentage of washer loads dried in a clothes dryer) to be 91 percent and the calculated average usage to be 283 cycles per year for all product classes of clothes dryers. DOE also noted that the RECS data shows that the number of clothes washer and clothes dryer cycles has been decreasing steadily for a number of years to the extent that a historical trend has been established. Because this dataset is more extensive than that of the RASS, DOE believes these numbers are more representative of annual usage patterns. Therefore, DOE proposed in the June 2010 TP SNOPR to amend the number of annual use cycles in its test procedure to 283 cycles for all product classes of clothes dryers. 75 FR 37594, 37625 (June 29, 2010).

AHAM supported DOE's proposal to amend the number of annual use cycles to 283 cycles for all product classes of clothes dryers. AHAM stated, however, that it continues to oppose using 2005 RECS data to support this change without verification of the RECS estimates. AHAM commented that the results from a recent survey by Procter & Gamble (P&G) indicated that 5.2 to 5.35 loads per household with a clothes dryer are dried per week, or 279 clothes dryer loads per year. AHAM noted this number is similar to that derived from the 2005 RECS data and therefore, it supported the change in the number of clothes dryer annual use cycles to 283. (AHAM, No. 31 at p. 8; AHAM, Public Meeting Transcript, No. 20 at p. 137)

The California Utilities/NRDC, the Joint Petitioners, Whirlpool, and ALS also commented in support of DOE's proposal of 283 annual use cycles. (California Utilities/NRDC, No. 33 at p. 5; Joint Petitioners, No. 30 at p. 7; Whirlpool, No. 27 at p. 4; ALS, No. 24 at p. 7) The California Utilities/NRDC noted that the California 2005 RASS, which indicates a weighted-average for California of 235 annual use cycles is fairly consistent with DOE's number and with the overall trend of decreasing yearly use cycles. (California Utilities/NRDC, No. 33 at p. 5) Whirlpool also noted that in its April 26, 2010 comments that it recommended 288 cycles per year, which is essentially consistent with DOE's recommendation of 283 cycles per year. (Whirlpool, No. 27 at p. 4)

DOE notes there is close agreement between the estimates provided by interested parties and DOE's estimate based on the data reviewed by DOE, and there were no comments objecting to its proposal. Therefore, DOE amends the clothes dryer test procedure to change the number of annual use cycles to 283 cycles for all product classes of clothes dryers.

b. Clothes Dryer Initial Remaining Moisture Content

In the revised residential clothes washer test procedure, a new parameter, the RMC of the test cloth, was introduced. 68 FR 62198, 62199 (October 31, 2003). The clothes washer RMC is the ratio of the weight of water contained within the test load at the completion of the clothes washer energy test cycle to the bone-dry weight of the

[33] *See* 62 FR 45484, 45498 (Aug. 27, 1997).

[34] KEMA, Inc. *op. cit.* p. 118. For more information visit: *http://www.energy.ca.gov/appliances/rass/.*

test load, expressed as a percent. Correspondingly, the initial RMC of a clothes load being dried is a function of RMC at the end of a clothes washer cycle. The current DOE clothes dryer test procedure specifies an initial RMC of 70 ± 3.5 percent. Similar to the discussion above of the average number of use cycles per year, the RMC of typical clothes loads in the residential clothes washer test procedure should be consistent with values defined in the clothes dryer test procedure. For the reasons explained below, however, DOE believes that the initial RMC in the clothes dryer test procedure may not reflect typical RMCs of actual clothes dryer loads.

DOE notes that the revision to the clothes washer test procedure changed the clothes washer energy conservation standards metric to a modified energy factor (MEF). This established a method for measuring the RMC for clothes washers. This RMC is then used to estimate the energy required by a clothes dryer to dry the clothes load. This estimate is then factored in to the calculation of MEF to account for clothes washers that reduce the estimated energy required to dry the clothes load in a clothes dryer. (10 CFR part 430, subpart B, appendix J1, section 4.3) Since the clothes dryer test procedure was last amended in 1981 (46 FR 27324 (May 19, 1981)), average clothes washer RMC has decreased due to the introduction of higher efficiency models with higher final spin speeds. Therefore, while clothes dryer energy use has decreased with the lower RMC, clothes washer energy use has increased somewhat to achieve the higher spin speeds. This energy use is accounted for in the residential clothes washer energy conservation standards rulemaking. In the clothes washer test procedure final rule published in the **Federal Register** on January 12, 2001, DOE estimated RMCs at specific efficiency levels. 66 FR 3314. For the residential clothes washer standard which became effective January 1, 2007 (1.26 MEF), DOE estimated a weighted-average RMC of 56 percent.

As discussed in section I, the EF for clothes dryers is determined by measuring the total energy required to dry a standard test load of laundry to a "bone dry" state. If today's clothes dryer loads have initial RMCs lower than the nominal 70 percent specified in the existing DOE clothes dryer test procedure, revisions to the test procedure to reflect more realistic (that is, lower) RMCs would result in the current EF rating increasing for a given clothes dryer. This is because the clothes dryer would have less water to remove.

As part of the preliminary analyses for the residential clothes dryer energy conservation standards rulemaking, DOE used a distribution of values for models listed in the December 12, 2008 CEC product database to estimate the RMC of clothes washers. For products for which the RMC was listed, DOE noted in the June 2010 TP SNOPR that the RMC values ranged from 30 percent to 61 percent, with an average of 46 percent. 75 FR 37594, 37626 (June 29, 2010).

As part of the October 2007 Framework Document, DOE requested data from AHAM showing the shipments of residential clothes washers for which RMC was reported, along with shipment-weighted RMC (*See* Table III.12). These data sets, each including disaggregated data for front-loading and top-loading clothes washers, as well as reported overall values for all units, provide insight into what initial clothes dryer RMC would be most representative of current residential clothes washers. As noted above, however, AHAM indicated that the data contain only shipments for which the RMC was reported, and thus the total will not be equal to actual shipments reported for 2000–2008. The data indicate that RMC has been decreasing consistently, from about 54 percent in 2000 to 47 percent in 2008. The data also suggest that the initial RMC of nominally 70 percent in the DOE clothes dryer test procedure is greater than the current shipment-weighted residential clothes washer average RMC.

TABLE III.12—AHAM SHIPMENT-WEIGHTED CLOTHES WASHER RMC DATA SUBMITTAL [35]

Year	Clothes washer shipments for which RMC was reported			Shipment-weighted RMC (%)		
	Front-loading	Top-loading	Total	Front-loading	Top-loading	Total
2000	232,714	686,440	919,154	43.6	57.4	53.9
2001	235,989	473,629	709,618	41.3	57.7	52.2
2002	280,667	529,265	809,932	41.5	58.1	52.3
2003	351,411	1,676,877	2,028,288	43.1	54.5	52.5
2004	1,179,813	5,270,285	6,450,098	42.2	52.8	50.9
2005	1,563,108	5,394,511	6,957,619	40.8	52.7	50.1
2006	1,851,218	5,628,279	7,479,497	39.3	51.4	48.4
2007	1,973,825	5,371,142	7,344,967	38.3	51.4	47.8
2008	2,043,024	4,492,059	6,535,083	38.1	51.0	47.0

Based on its analysis of the shipment-weighted RMC data submitted by AHAM, as well as its own review of the CEC residential clothes washer database, DOE stated in the June 2010 TP SNOPR that an initial RMC of 47 percent is representative of current residential clothes dryer initial test load characteristics. Therefore, DOE proposed to amend section 2.7, "Test loads," of the clothes dryer test procedure to require the initial RMC be changed from 70 ± 3.5 percent to 47 percent. DOE further proposed to eliminate the ± 3.5 percent allowable range in RMC. This is because the proposed amendments to the DOE clothes dryer test procedure for automatic cycle termination, detailed in section III.C.2, would require that the test load be initially prepared to between 42- and 47-percent RMC. The proposed amendments would also require final adjustments be made to the RMC to achieve 47-percent ± 0.33-percent RMC to account for over-drying energy consumption. 75 FR 37594, 37627 (June 29, 2010).

In the June 2010 TP SNOPR, DOE proposed that if it does not adopt the proposed amendments for testing automatic cycle termination, but adopts only these aforementioned proposed

[35] AHAM, 2009. *AHAM Weighted RMC for Front Load and Top Load Units, 2000–2008—DOE Clothes Dryer Rulemaking, Secondary Data Request.* July 7, 2009. Docket No. EE–2007–BT–STD–0010, Comment Number 18.

amendments to change the initial RMC, it could specify an initial RMC of 47 ± 3.5 percent. In that case, the tolerance of ± 3.5 percent on the nominal initial RMC, as currently specified in DOE's test procedure, would allow the same flexibility in test cloth preparation as is currently allowed. 75 FR 37594, 37627 (June 29, 2010).

DOE also noted in the June 2010 TP SNOPR that the current test procedure contains a provision in the calculation of per-cycle energy consumption intended to normalize EF by the reduction in RMC over the course of the drying cycle. A scaling factor of 66 is applied, representative of the percentage change from the nominal initial RMC of 70 percent to the nominal ending RMC of 4 percent. DOE noted, however, that the proposed changes to account for automatic cycle termination, as presented above in section III.C.2, would require amending the calculations for the per-cycle energy consumption to remove the need for this scaling factor. Therefore, DOE did not propose to amend the scaling factor in the June 2010 TP SNOPR. 75 FR 37594, 37627 (June 29, 2010). DOE proposed that if it does not adopt the proposed amendments for testing automatic cycle termination, but adopts only these aforementioned proposed amendments to change the initial RMC, it could change the scaling factor to 43 to reflect a starting RMC of 47 percent. *Id.*

AHAM, the California Utilities/NRDC, and the Joint Petitioners all supported an initial RMC of 47 percent. (AHAM, No. 31 at p. 9; California Utilities/NRDC, No. 33 at p. 5; Joint Petitioners, No. 30, at p. 7) AHAM provided data to support this approach in their April 26, 2010 comments. (AHAM, No. 31 at p. 9) Whirlpool also commented that DOE's proposal of 47 ± 1 percent RMC is consistent with its recommendation from its April 26, 2010 comments. (Whirlpool, No. 27 at p. 4)

ALS objected to DOE's proposal to utilize 47-percent initial RMC. ALS commented that the current clothes dryer test procedure uses "raw" non-correction factored RMC values, unlike the values DOE used to arrive at the national average of 47-percent RMC. The data DOE used was based on shipment-weighted average clothes washer data supplied by AHAM that had a correction factor applied to account for extraction. (ALS, No. 24 at p. 7; ALS, Public Meeting Transcript, No. 20 at p. 141) ALS commented that DOE should be using raw RMC values from the clothes washer, because the current clothes dryer test uses raw values and there is a significant difference between "raw" RMC values and "correction-factored" RMC values. ALS stated that it conducted tests on front-load washers (both its own and those of its competition) that resulted in raw RMC values of around 50 percent, compared to the 41-percent RMC derived when the correction factor is applied. This is a difference of 9 RMC percentage points, which is a 18-percent relative difference. ALS added that it is apparent that if "raw" values of washer RMC were analyzed by DOE, the national average would be closer to 53–55 percent. ALS acknowledged that no database exists of "raw" shipment-weighted average RMC values for clothes washers. ALS suggested DOE perform limited clothes washer tests to confirm the ALS results regarding the "raw" versus "correction-factored" RMC values, and adjust the proposed 47-percent value to align more closely to the ALS-suggested value of 53 percent. (ALS, No. 24 at p. 7) ALS also commented that manufacturers prefer to utilize their own production front-loading clothes washers to prepare test loads per the DOE clothes dryer test procedure. However, they would find it more difficult to achieve DOE's proposed 47-percent RMC when the front-loader in their labs can only achieve raw values at 50-percent RMC in default DOE test program cycles. (ALS, No. 24 at p. 7) ALS did not recommend adding in correction factors to the clothes dryer test procedure to raise the initial RMC higher to reflect the uncorrected value. (ALS, Public Meeting Transcript, No. 20 at p. 143)

DOE first notes that it proposed an initial RMC of 47 percent ± 3.5 percent, not ±1 percent as commented by Whirlpool. DOE agrees with ALS that the clothes dryer test procedure should be using a "raw" uncorrected RMC value and not the corrected RMC values in the data submitted by AHAM. DOE understands that in the clothes washer test procedure, an RMC correction factor curve is applied to account for the different extraction rates of different test cloth lots in order to calculate a corrected RMC value. The correction factor curve uses the following equation: $RMC_{corrected} = A \times RMC_{measured} + B$, where $RMC_{measured}$ is the measured RMC after the clothes washer spin cycle and A and B are coefficients based on extraction testing using a linear least-squares fit to relate the standard RMC to the measured extraction RMC value. (The standard RMC is provided in table 2.6.6.1 of the clothes washer test procedure.) DOE notes that in 2008, the latest year for which shipment-weighted average corrected RMC values were provided in the AHAM data, the most recent test cloth lot was lot 16. DOE acknowledges, however, that manufacturers and testing labs were likely using previous test cloth lots for the RMC values reported in the AHAM data. For this reason, DOE estimated the 2008 uncorrected RMC value by using the RMC correction factor curves from lots 12 through 16 and averaging the results. As shown in Table III.13, the results showed an average uncorrected RMC value of 57.5 percent.

TABLE III.13—DOE CLOTHES WASHER TEST PROCEDURE TEST CLOTH LOT RMC CORRECTION FACTOR DATA

	Lot #	Coefficient A	Coefficient B	2008 Shipment-weighted average uncorrected RMC (percent)
2008 Shipment-Weighted Average Corrected RMC = 47.0%	12	0.7165	0.0505	65.5
	13	0.8828	0.0015	53.2
	14	0.8970	0.0014	52.4
	15	0.89904	-0.04284	52.3
	16	0.73478	0.03174	63.9
	Average	.....	.....	57.5

To validate this estimate, DOE examined the uncorrected RMC data from tests of 17 residential clothes washer (9 front-loading and 8 top-loading units) it conducted for the residential clothes washer energy conservation standards rulemaking preliminary analyses. The results from DOE's testing are shown below in Table III.14. Taking the average RMC for each product class (that is, front-loading and top-loading) and weighting the average

RMCs by the shipments for each product class resulted in a shipment-weighted average uncorrected RMC of 58.1 percent, which is in close agreement with the 57.5-percent uncorrected RMC estimated by DOE using the RMC correction factor curves.

TABLE III.14—DOE CLOTHES WASHER TESTING UNCORRECTED RMC RESULTS

Test unit	Uncorrected RMC %
Front-Loading Clothes Washers (2008 Shipments = 3,022,077):	
Unit 1	43.7
Unit 2	58.9
Unit 3	55.9
Unit 4	49.3
Unit 5	49.5
Unit 6	38.5
Unit 7	50.7
Unit 8	45.3
Unit 9	45.4
Top-Loading Clothes Washers (2008 Shipments = 5,269,625):	
Unit 10	67.7
Unit 11	94.3
Unit 12	48.4
Unit 13	60.5
Unit 14	65.2
Unit 15	67.1
Unit 16	54.2
Unit 17	50.3
Shipment-Weighted Average	58.1

DOE estimated the uncorrected RMC value using shipment-weighted average corrected RMC data submitted by AHAM and the RMC correction factor curves for test cloth lots 12 through 16. Based on that estimate, DOE believes an initial RMC of 57.5 percent more accurately represents the moisture content of a load entering the clothes dryer after the wash cycle for the purposes of clothes dryer testing. As a result, DOE amends the clothes dryer test procedure in today's final rule to change the initial RMC to 57.5 percent ± 3.5 percent. In addition, DOE changes the scaling factor in the calculation of the per-cycle energy consumption that is intended to normalize EF by the reduction in RMC over the course of the drying cycle from a value of 66 to 53.5 (That value is the difference of 57.5-percent initial RMC minus 4-percent nominal final RMC).

DOE tested 13 representative clothes dryers to evaluate the affect of this amendment to the initial RMC for clothes dryer test load preparation on test repeatability. DOE tested these units according to the current DOE clothes dryer test procedure, except that the initial RMC was changed to 57.5 percent ± 3.5 percent. For the ventless clothes dryer test units, DOE additionally used the proposed testing method for ventless dryers presented in section III.C.3. As shown below in Table III.15, the test-to-test variation ranged from 0.3 percent to 1.8 percent, with an average of 0.9 percent. For this reason, DOE believes that the amendments to the initial RMC for clothes dryer test load preparation produce repeatable test results.

TABLE III.15—DOE REPEATABILITY TESTING FOR 57.5 PERCENT INITIAL RMC

Test unit	Average EF *lb/kWh*			Test-to-test variation %
	Test 1	Test 2	Test 3	
Vented Electric Standard:				
Unit 1	3.68	3.67	.....	0.3
Unit 3	3.84	3.81	3.82	0.8
Unit 4	3.79	3.80	3.78	0.5
Unit 5	3.93	3.88	3.92	1.3
Unit 6	3.70	3.71	.....	0.3
Vented Gas:				
Unit 7	3.32	3.32	3.31	0.3
Unit 8	3.41	3.44	.....	0.9
Unit 9	3.23	3.21	3.25	1.2
Unit 10	3.27	3.31	3.28	1.2
Unit 11	3.38	3.41	3.43	1.5
Vented Electric Compact (240V):				
Unit 12	3.61	3.62	3.61	0.3
Unit 13	3.46	3.48	3.42	1.8
Ventless Electric Combo Washer-Dryer:				
Unit 16	2.35	2.31	2.34	1.7

c. Clothes Dryer Test Load Weight

The current DOE clothes dryer test procedure requires a 7.00 lb ± .07 lb test load for standard-size clothes dryers and a 3.00 lb ± .03 lb test load for compact-size clothes dryers. In response to comments it received on the October 2007 Framework Document, DOE investigated in the June 2010 TP SNOPR whether the average test load weight for standard-size clothes dryers is valid for use in light of the capacities of the current generation of clothes washer. 75 FR 37594, 37631 (June 29, 2010).

DOE contacted detergent manufacturers to obtain data on average residential clothes washer load sizes. P&G conducted an internal study in 2003 on household laundry habits on a representative set of the population across the United States, from which P&G provided relevant summary data to DOE for this rulemaking. The clothes washer load weight data, based on a sample size of 3367 loads of laundry from a total of 510 respondents, showed that the average load size for top-loading and front-loading clothes washers was 7.2 lb and 8.4 lb, respectively. (P&G, No. 15 at p. 1) Based on the average shipment-weighted market share for top-loading and front-loading clothes washers between 2000 and 2008 from data submitted by AHAM (shown in Table III.12), the shipment-weighted average clothes washer load size would be approximately 7.5 lb. DOE stated in the June 2010 TP SNOPR, however, that clothes washer capacities were likely to have increased since the survey was conducted in 2003. Therefore, DOE factored into its analysis these capacity changes to estimate a more current

average load size. 75 FR 37594, 37631 (June 29, 2010).

Table III.16 shows the trends of the shipment-weighted average tub volume for residential clothes washers from 1981 to 2008, based on data from the AHAM *Trends in Energy Efficiency 2008*. The shipment-weighted average tub volume has increased from 2.52 ft^3 in 1981 to 3.22 ft^3 in 2008.

TABLE III.16—RESIDENTIAL CLOTHES WASHER SHIPMENT-WEIGHTED AVERAGE TUB VOLUME TRENDS [36]

Year	Shipment-weighted average tub volume (ft^3)	% Change since 1990
1981	2.52	
1990	2.63	
1991	2.72	3.4
1992	2.71	3.0
1993	2.71	3.0
1994	2.69	2.3
1995	2.72	3.4
1996	2.80	6.5
1997	2.83	7.6
1998	2.85	8.4
1999	2.89	9.9
2000	2.92	11.0
2001	2.96	12.5
2002	2.96	12.5
2003	3.01	14.4
2004	3.05	16.0
2005	3.08	17.2
2006	3.13	19.2
2007	3.16	20.3
2008	3.22	22.4

Section 2.7, "Test Load Sizes," in the DOE clothes washer test procedure provides the minimum, maximum, and average test load size requirements for the clothes washer test, which are based on the clothes container capacity. Table III.17 shows the minimum, maximum, and average test load sizes for 2.52 ft^3 and 3.22 ft^3 container capacities according to Table 5.1 in the DOE clothes washer test procedure.

TABLE III.17—DOE CLOTHES WASHER TEST LOAD SIZE REQUIREMENTS (FROM TABLE 5.1 OF 10 CFR 430 SUBPART B, APPENDIX J1)

Container volume ft^3	Minimum load *lb.*	Maximum load *lb.*	Average load *lb.*
≥ 2.50 to < 2.60	3.00	10.50	6.75
≥ 3.20 to < 3.30	3.00	13.30	8.15

DOE notes that the average load size in the clothes washer test procedure increases by about 21 percent when the container volume increases in capacity, which DOE believes is the degree to which container volume impacts clothes dryer load sizes. Applying this ratio of average clothes washer test load sizes to the clothes dryer test load size would result in an increase from 7.00 lb to 8.45 lb for standard-size clothes dryers currently available. For these reasons, DOE proposed to amend the clothes dryer test load size to 8.45 lb for standard-size clothes dryers in the June 2010 TP SNOPR. 75 FR 37594, 37632 (June 29, 2010). DOE proposed to amend the test load size based on the change in average load size for clothes washers rather than the maximum load size because data from the 2005 RECS indicates that not all clothes that are washed are machine dried. Therefore, DOE believes that average clothes washer load size would be more representative of clothes dryer load size. DOE also proposed to maintain the 1-percent tolerance in load sizes specified by the current DOE test procedure for standard-size clothes dryers (8.45 lb ± .085 lb). *Id.*

ALS commented that the clothes dryer test procedure amendments are related to the clothes washer test procedure. It stated that if there are any changes to the clothes washer test procedure in an upcoming rulemaking, especially to the average load size or the load size chart, the effect of those changes on the clothes dryer test procedure must be considered. (ALS, Public Meeting Transcript, No. 20 at p. 171) DOE recently published a NOPR proposing amendments to the test procedure for clothes washers and welcomes comments on that proposal as stated in the NOPR. 75 FR 57556 (September 21, 2010). Because DOE has not published a final rule amending the clothes washer test procedure, however, the issue of how any such amendments might influence conditions for the final amended clothes dryer test procedure is not relevant at this time. DOE may consider this issue in a future rulemaking.

AHAM, Whirlpool, ALS, the California Utilities/NRDC, and the Joint Petitioners commented in support of the proposed amendment to change the clothes dryer load size to 8.45 ± 0.085 lb for standard-size clothes dryers. (AHAM, No. 31 at p. 9; Whirlpool, No. 27 at p. 5, ALS, No. 24 at p. 7, California Utilities/NRDC, No. 33 at p. 5, Joint Petitioners, No. 30 at p. 7) For the reasons stated above and in the absence of comment objecting to this proposal, DOE amends the clothes dryer test procedure in today's final rule to change the clothes dryer load size to 8.45 ± 0.085 lb for standard-size clothes dryers.

DOE stated in the June 2010 TP SNOPR that most compact clothes dryers are used with compact-size clothes washers, and that DOE does not have any information to suggest that the tub volume of such clothes washers has changed significantly. Therefore, DOE did not propose to change the 3-lb test load size currently specified in the test procedure for compact clothes dryers in the June 2010 TP SNOPR. DOE sought data on the historical trends of compact-size clothes washer average tub volumes or any other data that would suggest a change in the clothes dryer test load size for compact clothes dryers.

AHAM and the Joint Petitioners commented in support of maintaining the 3-lb load size for compact clothes dryers until there is sufficient data upon which to base a change. (AHAM, No. 31

[36] Association of Home Appliance Manufacturers, *Trends in Energy Efficiency 2008*. p. 3. Washington, DC. Available at: *http://www.aham.org/ht/d/Store*.

at p. 9; Joint Petitioners, No. 30 at p. 7) For these reasons, DOE is not amending the test procedure to change the load size for compact clothes dryers.

DOE tested 8 representative clothes dryers to evaluate the affect of this amendment to the test load weight for standard-size clothes dryers on test repeatability. DOE tested these units according to the current DOE clothes dryer test procedure, except that the test load size was changed to 8.45 lb ± .085 lbs for standard-size clothes dryers. As shown below in Table III.18, the test-to-test variation ranged from 0.0 percent to 2.9 percent, with an average of 1.6 percent. For this reason, DOE believes that the amendments to the test load weight in the clothes dryer test procedure produce repeatable test results.

TABLE III.18—DOE REPEATABILITY TESTING FOR 8.45 LB ± .085 LB TEST LOAD FOR STANDARD-SIZE CLOTHES DRYERS

Test unit	Average EF *lb/kWh*		Test-to-test variation %
	Test 1	Test 2	
Vented Electric Standard:			
Unit 1	3.13	3.13	0.0
Unit 4	3.20	3.27	2.2
Unit 6	3.53	3.47	1.7
Unit 7	3.33	3.34	0.3
Unit 8	3.18	3.09	2.9
Vented Gas:			
Unit 10	2.85	2.86	0.4
Unit 11	2.96	2.89	2.4
Unit 13	2.81	2.73	2.9

d. Room Air Conditioner Annual Operating Hours

The DOE test procedure currently assumes room air conditioners have an average annual use of 750 hours. DOE's technical support document from September 1997, issued in support of the most recent room air conditioner energy conservation standards rulemaking, shows that the average annual operational hours are closer to 500 hours.[37] That average would yield approximately 33-percent lower annual energy consumption than the annual energy consumption determined using the 750 operational hours assumed in the current test procedure.

DOE acknowledged the uncertainty regarding room air conditioner usage patterns and investigated the annual hours of usage from a range of information sources to develop an updated estimate of annual operating hours for the June 2010 TP SNOPR. 75 FR 37594, 37633 (June 29, 2010). DOE's investigation revealed a lack of metered and survey data for the operating hours of individual room air conditioners. DOE found that estimates of the annual operating hours of use were often based on regional climatic data rather than actual room air conditioner use. DOE did find two sources of survey data on room air conditioner use in the EIA's 2005 RECS (and previous versions) and the CEC California Statewide RASS. The CEC survey contained only aggregated residential data, which limited any analysis pertaining to the annual operating hours. EIA's 2005 RECS provides extensive data on individual residences, while providing a more expansive and representative sample of households. Thus, DOE continued its analysis using EIA's 2005 RECS. *Id.*

The 2005 RECS provides enough information to establish the type (that is, product class) of room air conditioner used in each household, the age of the product, and an estimate of the household's annual energy consumption attributable to the room air conditioner. Using this data, DOE developed an estimate of the annual hours of use of a room air conditioner in a household. This estimate was used to calculate a weighted national average of room air conditioner usage hours. The data in the 2005 RECS indicates that the estimated room air conditioner average annual usage is 810 hours. DOE noted in the June 2010 TP SNOPR that this number of hours is higher than the current 750 hours specified in the test procedure. It is also significantly higher than the approximately 500 hours suggested by the previous energy conservation standard rulemaking analysis. *Id.*

An investigation of the 2005 cooling season covered by RECS indicates that there were roughly 12-percent more cooling degree days (CDD) in 2005 than the 30-year 1971 to 2000 average.[38] The Annual Energy Outlook projections of CDD for the future suggest that the higher level of CDD will continue.[39] Hence, the predictions of annual hours based on the 2005 RECS can be considered representative of future usage. Further, DOE stated in the June 2010 TP SNOPR, however, it does not consider the increase of 60 hours from 750 hours to 810 hours to be significant. This is because that increase does not exceed the uncertainty level associated with the RECS-based approach for estimation of this value. Hence, DOE did not propose a change in the annual operating hours used in the test procedure in the June 2010 TP SNOPR. 75 FR 37594, 37633 (June 29, 2010).

AHAM commented that it strongly opposes relying on the RECS data. (AHAM, No. 31 at pp. 9–10) AHAM stated that it is becoming more difficult to get survey data on room air conditioners as more people rely on central air conditioning and because room air conditioners are being used more for space cooling or assistance cooling rather than primary cooling. AHAM also commented that consumers tend to buy room air conditioners that are oversized for the cooling space, resulting in fewer use-hours than if they had purchased a unit that was sized appropriately. (AHAM, Public Meeting Transcript, No. 20 at pp. 151–152) AHAM believes data are available, and that DOE should use such data for its

[37] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy, *Technical Support Document for Energy Conservation Standards for Room Air Conditioners*. September 1997. Chapter 1, section 1.5. Washington, DC. *http://www.eere.energy.gov/buildings/appliance_standards/residential/room_ac.html.*

[38] CDD is a sum of the difference between ambient temperature in °F and 65 °F for every hour of the year that the ambient temperature is higher than 65 °F for a given location, divided by 24 to convert from hours to days; DOE used data on CDD from the National Solar Radiation Database (NSRDB). National Renewable Energy Laboratory, *National Solar Radiation Database 1991–2005 Update: User's Manual*, 2007. Golden, CO. Available online at: *http://www.nrel.gov/docs/fy07osti/41364.pdf.*

[39] Energy Information Administration, *2006 State Energy Consumption, Price, and Expenditure Estimates (SEDS)*, 2006. Washington, DC. Available online at: *http://www.eia.doe.gov/emeu/states/_seds.html.*

analysis. (AHAM, Public Meeting Transcript, No. 20 at pp. 152–154) AHAM also supported maintaining the current 750 annual operating hours used in the test procedure for room air conditioners until or unless additional reliable surveys or testing are completed that determine a more representative number of use hours for room air conditioners exists. (AHAM, No. 31 at pp. 9–10; AHAM, Public Meeting Transcript, No. 20 at p. 150) The California Utilities/NRDC also supported DOE's allocation of 750 hours per year to active cooling, adding that this allocation seems reasonable given available data. However, the California Utilities/NRDC stated that DOE may need to revise this allocation in light of its proposed treatment of fan-only energy. (California Utilities/NRDC, No. 33 at p. 4)

DOE understands the uncertainties associated with RECS data, but believes that the estimates using such data generally support maintaining the current 750 annual operating hours. As discussed in section III.B.4, DOE is not amending the test procedure in today's final rule to account for fan-only active mode energy use, but may consider amendments to address fan-only active mode in a future rulemaking as data become available. For these reasons, DOE maintains the current 750 annual operating hours used in the test procedure for room air conditioners. DOE may consider revising this number of annual operating hours if data are made available indicating that a change in this value is warranted.

e. Room Air Conditioner Part-Load Performance

DOE noted in the October 2007 Framework Document that the current DOE room air conditioner test procedure measures full-load performance and does not assess energy savings associated with technologies that improve part-load performance. DOE concluded in the June 2010 TP SNOPR that widespread use of part-load technology in room air conditioners is not likely to be stimulated by the development of a part-load metric at this time, and therefore, the significant effort required to develop an accurate part-load metric is not likely to be warranted by the expected minimal energy savings. 75 FR 37594, 37633–34 (June 29, 2010). A part-load metric would measure efficiency of a product when operating at conditions other than maximum capacity, with outdoor or indoor conditions cooler than currently used in the DOE active mode energy test, or both. In field use of room air conditioners using currently available technologies, when enough cooling is provided to the space, any number of events can occur to prevent over-cooling. For example, the user may turn off the unit or adjust fan speed; or the controls might turn off the compressor, turn off both the compressor and the fan, or reduce fan speed. Delivery of cooling might be done more efficiently with part-load technologies, such as a compressor that can adjust its capacity rather than cycling on and off, but sufficient information is not available at this time regarding use of room air conditioner features to assess whether those alternative technologies would be cost effective. DOE notes that the key design changes that improve full-load efficiency also improve part-load efficiency, so the existing EER metric is already a strong indication of product efficiency over a wide range of conditions. DOE concludes that development of an additional test for part load, or a change of the room air conditioner metric to a part-load metric is not supported by the information available to DOE at this time. Therefore, DOE did not consider amendments to its room air conditioner test procedure to measure part-load performance in the June 2010 TP SNOPR. 75 FR 37594, 37634 (June 29, 2010). For these reasons and in the absence of comments objecting to this determination, DOE is not amending its room air conditioner test procedure to measure part-load performance at this time. DOE may amend the test procedure to account for part-load performance in a future rulemaking if information becomes available on part-load technologies that are likely to result in significant energy savings during actual use by consumers.

f. Room Air Conditioner Ambient Test Conditions

DOE also considered whether the ambient test conditions in its test procedure for room air conditioners are representative of typical installations. DOE noted in the June 2010 TP SNOPR that it received a comment in response to the October 2007 Framework Document that recommended increasing the ambient temperature of the DOE energy test procedure from 95 °F to 115 °F. The commenters stated that room air conditioners are generally operated when the outdoor temperatures are the highest, and that they are often located on the south or west side of residences where the sun can shine on them during operation. 75 FR 37594, 37634 (June 29, 2010). DOE stated that it did not receive further information to support the specification of the higher temperature, and, therefore, did not consider an amendment to the ambient test conditions specified in the room air conditioner test procedure in the June 2010 TP SNOPR. *Id.*

AHAM supported maintaining the current specifications regarding ambient test conditions for room air conditioners. (AHAM, No. 31 at p. 10; AHAM, Public Meeting Transcript, No. 20 at p. 155) In the absence of data to support a change to the ambient test conditions, DOE is not amending the ambient test conditions specified in the room air conditioner test procedure.

6. Room Air Conditioner Referenced Test Procedures

The room air conditioner test procedure cites two test standards: (1) ANS Z234.1–1972 and (2) ASHRAE Standard 16–69. Both the ANS (since renamed ANSI) and ASHRAE standards have been updated since DOE last revised its room air conditioner test procedure. The current standards are ANSI/AHAM RAC–1–R2008 and ANSI/ASHRAE Standard 16–1983 (RA 2009), respectively. Because it is likely that any manufacturer rating it products is using the most recent test standards, DOE suggested in the October 2007 Framework Document that it consider updating its test procedure to incorporate by reference the most recent test standards.

In the June 2010 TP SNOPR, DOE reviewed the differences between the test standards currently referenced by the DOE test procedure and the latest versions of these standards to determine if amendments to reference the latest ANSI and ASHRAE test standards are appropriate. DOE noted the sections that would be referenced in ANSI/AHAM RAC–1–R2008 by the DOE test procedure do not introduce any new changes in the measurement of cooling capacity or power input. DOE also noted the sections that would be referenced in ANSI/ASHRAE Standard 16–1983 (RA 2009) by the DOE test procedure would introduce changes to the determination of capacity, four new temperature measurements, and changes to the test tolerances. In particular, DOE noted in the June 2010 TP SNOPR that section 6.1.3 of ANSI/ASHRAE Standard 16–1983 (RA 2009) introduces a correction factor based on the test room condition's deviation from the standard barometric pressure of 29.92 inches (in.) of mercury (Hg) (101 kilopascal (kPa)). Section 6.1.3 of ANSI/ASHRAE Standard 16–1983 (RA 2009) states that the cooling capacity may be increased 0.8 percent for each in. Hg below 29.92 in. Hg (0.24 percent for each kPa below 101 kPa). DOE noted the capacity correction factor provides manufacturers with more

flexibility in the test room conditions while normalizing results to standard conditions. On November 26, 2010, 75 FR 72739, DOE published notice of a petition submitted by AHAM concerning use of the proposed correction factor for room air conditioner testing. While DOE seeks comment on the petition until December 27, 2010, DOE believes that the correction factor resolves the issues presented in the AHAM petition. DOE also noted the referenced section numbers from the old and current test standards are identical. 75 FR 37594, 37634–35 (June 29, 2010).

DOE determined that incorporation by reference of these updated versions provides more accurate and repeatable measurements of capacity while providing greater flexibility to manufacturers in selecting equipment and facilities, and does not add any significant testing burden because the time required for testing would not change. Furthermore, these revisions would not impact the measurement of EER for this equipment because the methodology used for this measurement is the same. DOE also stated that it believes that manufacturers may already be using these updated standards in their testing. Therefore, DOE proposed amending the DOE test procedure to reference the relevant sections of ANSI/AHAM RAC–1–R2008 and ANSI/ASHRAE Standard 16–1983 (RA 2009). 75 FR 37634–35.

AHAM agreed that DOE should reference the latest standards for room air conditioners. (AHAM, No. 31 at p. 10) For the reasons stated above and in the absence of comments objecting to amending the DOE test procedure to reference the relevant sections of ANSI/AHAM RAC–1–R2008 and ANSI/ASHRAE Standard 16–1983 (RA 2009), DOE adopts these amendments.

7. Clothes Dryer Referenced Test Procedure

The DOE clothes dryer test procedure currently references the industry test standard AHAM Standard HLD–1–1974. Specifically, the DOE clothes dryer test procedure requires that the clothes dryer under test add the AHAM exhaust simulator described in section 3.3.5 of AHAM Standard HLD–1–1974. The AHAM test standard has been updated since DOE established its clothes dryer test procedure. The current standard is designated as AHAM Standard HLD–1–2009. Because it is likely that any manufacturer rating it products is using the most recent test standard, DOE considered potential amendments to its clothes dryer test procedure to reference AHAM Standard HLD–1–2009 in the June 2010 TP SNOPR. DOE noted that section 3.3.5.1 of AHAM Standard HLD–1–2009 regarding exhausting conditions provides the same requirements for the exhaust simulator as required by AHAM Standard HLD–1–1974. For this reason, DOE proposed to amend the DOE test procedure to reference AHAM Standard HLD–1–2009. DOE stated that because the requirements for the exhaust simulator would be the same, the proposed amendments would not affect the EF rating of residential clothes dryers and would not require that the existing energy conservation standards for these products be revised. 75 FR 37594, 37636 (June 29, 2010).

AHAM, Whirlpool, and ALS commented in support of updating the test procedure to reference AHAM standard HLD–1–2009. (AHAM, No. 31 at p. 10, AHAM, Public Meeting Transcript, No. 20 at p. 158, Whirlpool, No. 27 at p. 5, ALS, No. 24 at p. 8) For these reasons and in the absence of comments objecting to amending the DOE test procedure to reference AHAM Standard HLD–1–2009, DOE adopts these amendments in today's final rule.

DOE also acknowledges that AHAM Standard HLD–1–2009 allows for the optional use of a modified exhaust simulator, which is included as a more convenient option than the exhaust simulator originally specified for testing vented clothes dryers. The requirements for the modified exhaust simulator are presented in section 3.3.5.2 of AHAM Standard HLD–1–2009. The test standard notes that only limited testing has been done to compare results using the two exhaust simulators, and that users are invited to submit results and comments for both options. Because this modified exhaust simulator is recent, and limited data exist to compare the effects of using different exhaust simulators, DOE stated in the June 2010 TP SNOPR that it will continue to require the standard exhaust simulator currently referenced by the DOE clothes dryer test procedure. 75 FR 37594, 37636 (June 29, 2010). However, DOE requested data from manufacturers comparing the effects of the two exhaust simulators on the drying efficiency using the DOE test procedure. DOE also invited comment on whether the test procedure should be amended to allow for the optional modified exhaust simulator.

AHAM commented that there may be more data available concerning the modified exhaust simulator, which gained ANSI approval in 2009. (AHAM, Public Meeting Transcript, No. 20 at pp. 159–160) AHAM stated that DOE should allow for the optional use of a modified exhaust simulator. AHAM added that the AHAM Standard HLD–1–2009 was developed after an extensive standards-making process, which fully vetted issues related to optional use of a modified exhaust simulator, and as such there is no reason for DOE to deviate from that standard. (AHAM, No. 31 at p. 10).

DOE is not aware of any data comparing the effects of the two exhaust simulators on the drying efficiency using the DOE test procedure. DOE notes that it requested such data in the June 2010 TP SNOPR, but did not receive any data. In the absence of such data, DOE will continue to require the standard exhaust simulator currently referenced by the DOE clothes dryer test procedure. If data are made available showing that the test results using the modified exhaust simulator produce repeatable results, as well as comparing the effects of the different exhaust simulators on the measured EF, DOE may consider such revisions to its clothes dryer test procedure in a future rulemaking.

Section 1.8 in the "Definitions" section of the DOE clothes dryer test procedure also references an obsolete AHAM clothes dryer test standard, AHAM Standard HLD–2EC. No provisions of this test standard are currently used in DOE's test procedure, and DOE therefore proposed to remove this reference in the June 2010 TP SNOPR. 75 FR 37594, 37636 (June 29, 2010). AHAM and Whirlpool both commented in support of removing the reference to AHAM Standard HLD–2EC. (AHAM, No. 31 at p. 10, Whirlpool, No. 27 at p. 5) For this reason and in the absence of comments objecting to this proposal, DOE amends the test procedure to remove this reference.

8. Technical Correction for the Per-Cycle Gas Dryer Continuously Burning Pilot Light Gas Energy Consumption

The equation provided under section 4.4 Per-cycle gas dryer continuously burning pilot light gas energy consumption of the current DOE clothes dryer test procedure contains a technical error in the equation for calculation of the per-cycle gas dryer continuously burning pilot light gas energy consumption (E_{up}), in Btus per cycle. E_{up} is the product of the following three factors: (A) The cubic feet of gas consumed by the gas pilot in hour; (B) the total number of hours per year the pilot is consuming gas while the clothes dryer is not operating in active mode (8,760 total hours per year minus 140 hours per year the clothes dryer operates in active mode) divided by the representative average number of

clothes dryer cycles in a year (416); and (C) the corrected gas heat value. Part (B) of this equation is currently incorrect, reading (8760 − 140/416) and missing the appropriate parentheses. The equation should correctly subtract the total number of hours per year the pilot is consuming gas while the clothes dryer is not operating in active mode from the number of hours per year the clothes dryer operates in active mode, before dividing by the average number of clothes dryer cycles in a year. The equation should read ((8760 − 140)/416) to correctly calculate the per-cycle gas dryer continuously burning pilot light gas energy consumption. Therefore, DOE proposed in the June 2010 TP SNOPR to amend the equation to correctly calculate the per-cycle gas dryer continuously burning pilot light gas energy consumption. 75 FR 37594, 37636 (June 29, 2010).

AHAM and Whirlpool supported the technical correction to the per-cycle gas dryer continuously burning pilot light gas energy consumption calculation. (AHAM, No. 31 at p. 10; Whirlpool, No. 27 at p. 5) ALS commented that it supported DOE's proposed technical correction. However, ALS believes this an unnecessary addition to the test procedure. ALS believes the proper way to address the issue is to revise the minimum energy conservation standard during its current standards rulemaking to add back into the minimum standard the design prescription banning constant burning pilot lights. ALS noted that the original 1987 standard included the design prescription, but it was removed in the first review of the standard effective May 14, 1994 because it was perceived that the revised minimum standard of 1994 would continue to effectively eliminate continuously burning pilot lights. ALS noted that no clothes dryer with continuously burning gas pilot lights exists on the market at this time. Therefore, it is a wasted effort to add text to the test procedure for something that does not exist and can be more effectively dealt with by a simple revision to the clothes dryer minimum standard. (ALS, No. 24 at p. 8) AHAM also commented that it is not aware of any clothes dryer on the market that uses a constant burning pilot light, and doubts any such dryers will be introduced soon. (AHAM, Public Meeting Transcript, No. 20 at p. 162)

As discussed in section I, EPCA establishes prescriptive standards for clothes dryers, requiring that gas dryers manufactured on or after January 1, 1988 not be equipped with a constant burning pilot (42 U.S.C. 6295(g)(3)). Because constant burning pilot lights are precluded by EPCA, DOE agrees with ALS that any provisions for measuring constant burning pilot light energy use in gas clothes dryers are no longer necessary. As a result, DOE amends the clothes dryer test procedure to remove all provisions for measuring the constant burning pilot light energy use.

9. Clarification of Gas Supply Test Conditions for Gas Clothes Dryers

Section 2.3.2.1 and 2.3.2.2 of the DOE clothes dryer test procedure specifies maintaining "the gas supply to the clothes dryer at a normal inlet test pressure immediately ahead of all controls at" 7 to 10 inches of water column for natural gas or 11 to 13 inches of water column for propane gas. DOE believes that the references to "normal inlet test pressure" in sections 2.3.2.1 and 2.3.2.2 of its clothes dryer test procedure may be confusing because the term "normal" is not defined. DOE believes that such language is not necessary because the gas supply pressure immediately ahead of all controls is explicitly stated. Therefore, DOE proposed in the June 2010 TP SNOPR to revise the test pressure conditions in sections 2.3.2.1 and 2.3.2.2 of the DOE clothes dryer test procedure to specify maintaining "the gas supply to the clothes dryer immediately ahead of all controls at a pressure of" 7 to 10 inches of water column for natural gas and 11 to 13 inches of water column for propane gas. 75 FR 37594, 37636 (June 29, 2010). AHAM, Whirlpool, and ALS supported DOE's proposed clarification. (AHAM, No. 31 at pp. 10–11; Whirlpool, No. 27 at p. 5; ALS, No. 24 at p. 8) For these reasons and in the absence of comments objecting to this proposal, DOE amends its clothes dryer test procedure to revise the test pressure conditions as discussed above.

DOE also believes the specifications for a gas pressure regulator in sections 2.3.2.1 and 2.3.2.2 of its clothes dryer test procedure should clarify that the outlet pressure for a clothes dryer equipped with a pressure regulator for which the manufacturer specifies an outlet pressure should be approximately that recommended by the manufacturer. DOE proposed in the June 2010 TP SNOPR to make these minor revisions these sections. 75 FR 37594, 37636 (June 29, 2010). In the absence of comments objecting to this proposal, DOE is amending its clothes dryer test procedure to revise the test pressure conditions for clothes dryers equipped with a gas pressure regulator as discussed above.

10. Other Clothes Dryer Active Mode Issues

DOE received a number of comments on issues related to the active mode for clothes dryers not identified in the June 2010 TP SNOPR. The following sections discuss each of these issues.

a. Test Cloth Specifications

ALS commented in response to the June 2010 TP SNOPR that DOE should consider if the number of test runs allowed on test cloth after pre-conditioning should be equal to the number of allowable runs for clothes washer test cloth. ALS commented that, currently, the clothes dryer test cloth can be used for only 25 test runs, while the clothes washer test cloth is allowed to be used for 60 test runs. (ALS, No. 24 at p. 6) Whirlpool commented that both the clothes washer and clothes dryer test procedures should be modified to allow for 50 cycles of test cloth use, because this would be easier to manage and reduce the cost of cloth used in clothes dryers. Whirlpool commented that beyond 50 wash cycles, the load-to-load variability increases significantly, adversely impacting repeatability. (Whirlpool, No. 27 at p. 6) DOE is not aware of any data showing the repeatability of clothes dryer test results for test cloth after 25 runs. DOE is also not aware of any data indicating that the wear on test cloth from a drying cycle is equivalent to that of a washing cycle. Thus, there is no evidence that warrants changing the test procedures to specify the same number of allowable test runs on clothes washer and clothes dryer test cloths. For these reasons, DOE is not amending the clothes dryer test procedure in today's final rule to change the number of test runs allowed on clothes dryer test cloth.

Whirlpool commented that the lot-to-lot test cloth correction factors used in the clothes washer test procedure are not used in the clothes dryer test procedure. Whirlpool stated that it is increasingly the case that clothes dryer test results are not repeatable across test cloth lots. Whirlpool stated its research suggests that adding the washer correction factors to the clothes dryer test procedure would substantially address this problem. (Whirlpool, No. 27 at p. 6) DOE is not aware of any data indicating variations in test results across different test cloth lots is significant enough to warrant amending the clothes dryer test procedure to include correction factors. In addition, DOE notes that the clothes washer RMC correction factor is based on extractor testing (spinning water out of the clothes load). Extractor testing can have

very different moisture removal characteristics than the applied heated air and slower tumbling to evaporate moisture during a clothes dryer cycle. DOE is not aware of any data indicating that the same correction factor from the clothes washer test procedure can be applied to the clothes dryer test procedure. For these reasons, DOE is not amending the clothes dryer test procedure to include a lot-to-lot test cloth correction factor in today's final rule. If data is made available documenting such lot-to-lot variation as well as validating that the RMC correction factor in the clothes washer test procedure can be applied to the clothes dryer test procedure, DOE may consider such amendments.

b. Relative Humidity Measurement Specifications

ALS commented that section 2.4.4 Dry & Wet Bulb Psychrometer of the DOE clothes dryer test procedure should be updated. ALS stated that DOE may want to remove any reference to a dry and wet bulb psychrometer, because electronic digital sensors exist that directly report the relative humidity and test labs should be allowed to utilize them. ALS commented that DOE needs to research humidity measurement electronic digital sensors and propose new limits for their accuracy and reporting. (ALS, No. 24 at p. 9)

DOE notes section 2.2.4 specifies that the dry and wet bulb psychrometer shall have an error no greater than ± 1 °F. DOE acknowledges that the dry and wet bulb psychrometer specifications for determining the relative humidity were developed in 1981 when the clothes dryer test procedure was last amended. Since that time, more advanced digital equipment has been developed for measuring relative humidity. DOE also acknowledges that the DOE test procedure for central air conditioners and heat pumps specifies the allowable error in the measurement of wet bulb temperature for determining the psychrometric state of air (the wet bulb temperature sensor must be accurate within ± 0.2 °F). That test procedure also specifies the allowable error for an alternative option of directly measuring the relative humidity (such a meter must be accurate to within ± 0.7 nominal percent relative humidity). 10 CFR part 430, subpart B, appendix M, § 2.5.6 DOE is not aware of data or information on how the allowable dry and wet bulb psychrometer measurement error of no greater than ± 1 °F would translate to measurement error specifications for relative humidity measurement equipment that could be used to determine an appropriate allowable error for the DOE clothes dryer test procedure. For these reasons, DOE is not adopting amendments to the dry bulb and wet bulb psychrometer specifications for determining the relative humidity. If data are made available indicating an appropriate range for the allowable error for relative humidity measurement equipment, however, DOE may consider amendments to the clothes dryer test procedure.

c. Calculations of EF and CEF

ALS commented that DOE needs to add the calculation for the EF, the newly proposed IEF,[40] or both to the clothes dryer test procedure. According to ALS, the clothes washer test procedure displays the calculation for the minimum energy efficiency descriptor (the modified energy factor). ALS stated the clothes dryer test procedure should likewise show how to calculate the value of clothes dryer minimum energy efficiency descriptor EF and/or IEF. (ALS, No. 24 at p. 9) AHAM also requested that DOE expressly state the equation for EF in the test procedure to provide optimal clarity for the regulated industry. (AHAM, No. 31 at p. 11)

DOE notes that the calculation for EF (and the proposed CEF) for clothes dryers can be found at 10 CFR 430.23(d). However, DOE acknowledges that other test procedures in the appendices of 10 CFR part 430, subpart B also include the calculations of the energy efficiency metric. For example, the clothes washer test procedure (10 CFR part 430, subpart B, appendix J1) includes the calculation, as noted by ALS. Including such calculations would help test technicians find the proper calculation for EF and CEF. For these reasons, DOE believes that the calculation for EF and CEF should be included in 10 CFR part 430, subpart B, appendix D1. Therefore, DOE amends the clothes dryer test procedure in today's final rule to include those calculations. DOE also amends 10 CFR part 430.23(d)(2) and (3) in today's final rule to clarify that the EF and CEF are to be determined in accordance with the appropriate sections in 10 CFR part 430, subpart B, appendix D1.

[40] DOE proposed to use the term Integrated Energy Factor (IEF) in the December 2008 TP NOPR. 73 FR 74639, 74650 (December 9, 2008). However, in the June 2010 TP SNOPR, DOE proposed to revise the name of the metric to Combined Energy Factor (CEF). 75 FR 37594, 37612 (June 29, 2010).

d. Measurement of Kilowatt Electricity Demand

SEDI recommended that kW electricity demand, in addition to kWh energy consumption, also be measured during the test procedure. SEDI added that different clothes dryer technologies can have very different electricity demand profiles. Typical electric clothes dryers available in North America today have powerful heating elements and may significantly contribute to system peak demand. SEDI commented that a more efficient clothes dryer with a lower contribution to peak demand may be even more cost-effective from perspective of electric utilities. (SEDI, No. 34 at p. 3) As discussed previously, EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE believes that measuring the electricity demand profile of a clothes dryer to account for designs options that may reduce utility peak load demand would be inconsistent with the EPCA requirement for a test procedure to measure the energy use of a product. For this reason, DOE is not amending the clothes dryer test procedure to measure the electricity demand profile of a clothes dryer to account for the peak load demand of a clothes dryer.

e. Clarifications to the Measurement of Drum Capacity

The Joint Petitioners and AHAM commented that DOE should clarify section 3.1 of the clothes dryer test procedure regarding the measurement of drum capacity. The clarification would specify that the clothes dryer's rear drum surface be supported on a platform scale to "prevent deflection of the drum surface * * *" instead of "prevent deflection of the dryer." (Joint Petitioners, No. 25 at p. 14; Joint Petitioners, No. 30 at p. 8; AHAM, No. 31 at p. 11) DOE agrees with the comments that the reference to deflection of the "dryer" is unclear and should be clarified to specify that the clothes dryer's rear drum surface should be supported on a platform scale to prevent deflection of the drum surface. For this reason, DOE amends the clothes dryer test procedure to reflect this change.

f. Test Procedure Language

AHAM commented that manufacturers are having a difficult

time using the proposed test procedure because it is not written in a way that can be easily followed when running a test. AHAM commented that the extraneous portions derived from the IEC and Australia/New Zealand procedures create a confusing amalgam of testing situations that makes the procedure extremely difficult to conduct. AHAM stated that the test procedure itself needs to be evaluated, and they would like to see a more sequenced and applicable test procedure. (AHAM, Public Meeting Transcript, No. 20 at pp. 88–89, 126–127) AHAM commented that the AHAM HLD–1 committee will likely consider whether the test procedure amendments should be added as modifications to AHAM HLD–1, which is written in the test procedure format. AHAM stated that it would be helpful for DOE to identify explicitly how the proposed changes to the DOE test procedure could be reflected in AHAM HLD–1. AHAM added that manufacturers could test on a version of AHAM HLD–1 that incorporated the changes DOE identified and report what changes to test results have taken place. AHAM commented that it would also assist the AHAM HLD–1 committee in processing the changes because it is unlikely that the AHAM HLD–1 committee will want to run tests that are different from the DOE test procedure. (AHAM. Public Meeting Transcript, No. 20 at pp. 127–129)

DOE notes that its proposed clothes dryer test procedure is similar in structure to many other DOE test procedures, and DOE is not aware of the particular sections of the test procedure language that may be confusing or difficult to interpret. DOE also notes that it is not adopting the amendments to more accurately account for automatic cycle termination based on the provisions in AS/NZS Standard 2442, as discussed in section III.C.2. For these reasons, DOE does not believe that the test procedure needs to be restructured or re-written and is not including any additional revisions to the test procedure language.

D. Compliance With Other EPCA Requirements

1. Test Burden

Standby Mode and Off Mode

Section 323(b)(3) of EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

For the proposed amendments to measure standby and off mode energy use, DOE tentatively concluded in the December 2008 TP NOPR that amending the relevant test procedures to incorporate clauses regarding test conditions and methods found in IEC Standard 62301 for measuring standby mode and off mode power consumption, along with the proposed clarifications and text corrections, would satisfy this requirement because the test methods and equipment that the amendments would require are not substantially different from the test methods and equipment in the current DOE test procedures for measuring the products energy consumption. Therefore, DOE stated the proposed test procedures would not require manufacturers to make major investments in test facilities and new equipment. 73 FR 74639, 74650 (December 9, 2008).

In the June 2010 TP SNOPR, DOE did not propose amendments to measure delay start and cycle finished modes in the clothes dryer test procedure. DOE instead proposed a simplified methodology in which the energy use associated with delay start and cycle finished modes, although determined to not be energy use in a standby mode, would be approximately represented by the measured energy in inactive and off modes. Therefore, because the proposal in the June 2010 TP SNOPR was less burdensome than the December 2008 TP NOPR proposal, DOE tentatively concluded that the proposed amendments to the clothes dryer test procedures for measuring standby and off modes adopted in June 2010 TP SNOPR are not unduly burdensome. 75 FR 37594, 37637 (June 29, 2010).

DOE proposed in the June 2010 TP SNOPR to provide manufacturers flexibility in setting the ambient conditions for standby mode and off mode testing for the room air conditioner test procedure. The proposed amendments to the room air conditioner test procedure specify maintaining the indoor test conditions at the temperature required by section 4.2 of IEC Standard 62301. Further, if the unit is tested in the cooling performance test chamber, the proposed amendments allow the manufacturer to maintain the outdoor test conditions either as specified for the DOE cooling test procedure or according to section 4.2 of IEC Standard 62301. Implementing those two specifications would mean that manufacturers would not have to build another facility to run the standby and off mode tests. In addition, DOE did not propose amendments that would specify measurement of energy use in delay start or off-cycle modes to the room air conditioner test procedure. DOE instead proposed a simplified methodology in which the energy use associated with delay start and off-cycle modes, although determined to not be energy use in a standby mode, would be approximately represented by the measured energy in inactive and off modes. For these reasons, DOE tentatively concluded that the test conditions proposed in the June 2010 TP SNOPR are not unduly burdensome and would result in representative standby mode and off mode energy consumption measurements. 75 FR 37594, 37637 (June 29, 2010).

As discussed in section III.B.2, AHAM, Whirlpool, and ALS commented that the requirement proposed in the June 2010 TP SNOPR to conduct standby and off mode testing for clothes dryers and room air conditioners in the settings that produce the highest power consumption level would result in extra test burden. This is because manufacturers will need to run several tests on every model in order to determine which cycle is the highest energy cycle (AHAM, No. 31 at pp. 4–5; Whirlpool, No. 27 at p. 1; ALS, No. 24 at pp. 1–2) DOE is not adopting the provisions for conducing standby and off mode testing in the settings that produce the highest power consumption level in today's final rule. DOE is instead incorporating by reference section 5.2 of IEC Standard 62301, which requires that the appliance be installed and set up in accordance with manufacturers instructions; if no instructions are given, then the appliance shall be tested at factory or "default" settings; and where there are no indications for such settings, the appliance shall be tested as supplied. DOE believes that such provisions would not require manufacturers to run several tests on every model to determine the appropriate mode, and therefore would not represent a testing burden.

For the reasons stated above and in the absence of additional comments, DOE concludes that the standby and off mode testing conditions for clothes dryers and room air conditioners adopted in today's final rule are not unduly burdensome, yet still produce representative standby mode and off mode energy consumption measurements.

Active Mode

In the June 2010 TP SNOPR, DOE noted that the proposed amendments to

its test procedure for clothes dryers to test automatic termination control dryers are based upon an international testing standard used to determine compliance with energy conservation standards for clothes dryers in Australia. A number of manufacturers that sell clothes dryers in the United States also sell clothes dryers in Australia, and therefore likely already test clothes dryers according to this test standard. DOE stated the proposed amendments would not require testing methods and equipment that are substantially different from the test methods and equipment in the current DOE test procedures. Therefore, manufacturers would not be required to make a major investment in test facilities and new equipment. 75 FR 37594, 37637 (June 29, 2010). As discussed in section III.C.2, DOE is not adopting in today's final rule the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR.

In the June 2010 TP SNOPR, DOE also noted that the proposed amendments to its test procedure for residential clothes dryers to test ventless clothes dryers are based on an international test standard used throughout the EU to determine compliance with energy conservation standards. A number of manufacturers that sell clothes dryers in the United States also sell clothes dryers in the EU, and therefore likely already test clothes dryers according to this test standard. DOE stated the proposed amendments would not require testing methods and equipment that are substantially different from the test methods and equipment in the current DOE clothes dryer test procedure. 75 FR 37594, 37637 (June 29, 2010).

DOE noted that its proposed amendments to the clothes dryer test procedure to reflect current usage patterns and capabilities in the June 2010 TP SNOPR do not substantially change the testing procedures and methods. DOE noted that its proposed amendments to change the number of annual use cycles affects only the calculation of the estimated annual operating cost. The number of annual use cycles does not impact the testing procedures because the value is only used in the calculation of results. DOE also noted that the proposed amendments to change the initial RMC from 70 percent to 47 percent are intended to reflect current clothes loads after a wash cycle. DOE believes that such a change would likely require only a moderately longer spin time during test load preparation to achieve the proper lower moisture content. Finally, DOE noted that the proposed amendment to change the test load size for standard-size clothes dryers from 7.00 lb ± .07 lb to 8.45 lb ± .085 lb would not significantly impact the testing procedures because it only affects the amount of test cloth required to be used for the test cycle. The amendment also would not require manufacturers to make any significant new investment in test facilities and equipment. DOE stated in the June 2010 TP SNOPR that these proposed amendments to the DOE clothes dryer test procedure would produce test results that measure energy use of clothes dryers during a representative average use cycle. 75 FR 37594, 37637 (June 29, 2010).

DOE noted in the June 2010 TP SNOPR that the proposed amendments to update the references to external standards in the DOE room air conditioner test procedure are based on the availability of revised standards representing current industry practices and methods. The proposed amendments to reference ANSI/AHAM RAC–1–R2008 do not introduce any new changes in the measurement of cooling capacity or power input. The proposed amendments to reference ANSI/ASHRAE Standard 16–69 would introduce four new temperature measurements, provide increased test tolerances, and allow additional flexibility in the methodology for measuring capacity. DOE notes the four new temperature measurements would be measured simultaneously with the other measurements already required by the test procedure, and therefore would not require additional time to conduct the test. DOE stated in the June 2010 TP SNOPR that these proposed amendments would not require manufacturers to make any significant new investment in test facilities and equipment, nor require significant changes in the testing methodology. 75 FR 37594, 37637 (June 29, 2010).

For the reasons noted above, DOE tentatively concluded that the amendments to the active mode test procedures would produce representative test results for both residential clothes dryers and room air conditioners, and that testing under the test procedures would not be unduly burdensome to conduct. 75 FR 37594, 37638 (June 29, 2010).

ALS commented that there could be a test burden associated with the revised initial RMC requirements. ALS stated that it might not be able to achieve the 47 percent RMC proposed in the June 2010 TP SNOPR in one of their residential clothes washers due to the disconnect between the actual RMC and the corrected RMC values. (ALS, Public Meeting Transcript, No. 20 at pp. 166–167) AHAM commented that extracting moisture to the 47 percent RMC level would cause test cloth to deteriorate more quickly. Also, extracting moisture to the 47 percent RMC level would cause other problems. For example, to achieve the level it would be necessary to use an extractor, which would require spending significant sums of money. (AHAM, Public Meeting Transcript, No. 20 at pp. 167–168)

DOE notes that the tests conducted for the June 2010 TP SNOPR at an independent test lab prepared the clothes dryer test cloth with an RMC of 47 percent using a commercially available clothes washer. For the reasons discussed in section III.C.5.b, however, DOE adopts an initial RMC of 57.5 percent ± 3.5 percent for the clothes dryer test procedure in today's final rule. As a result, DOE believes that there would be no significant test burden associated with reaching this higher initial RMC value.

For the reasons stated above and in the absence of additional comments, DOE concludes that the amendments to the active mode test procedures in today's final rule would produce representative test results for both residential clothes dryers and room air conditioners, and that testing under the test procedures would not be unduly burdensome to conduct.

2. Integration of Standby Mode and Off Mode Energy Consumption Into the Efficiency Metrics

Section 325(gg)(2)(A) requires that standby mode and off mode energy consumption be "integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product" unless the current test procedures already fully account for the standby mode and off mode energy consumption or if such an integrated test procedure is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) For clothes dryers, today's final rule does not affect DOE's proposal in the December 2008 TP NOPR to incorporate the standby and off mode energy consumption into a "per-cycle combined total energy consumption expressed in kilowatt-hours" and into an CEF, as discussed in section III.B.5 of this notice. For room air conditioners, today's final rule does not affect DOE's proposal in the December 2008 TP NOPR to incorporate the standby and off mode energy consumption into a metric for "combined annual energy consumption" and into an CEER, as discussed in section III.B.5. In addition, DOE is amending the clothes dryer and room air conditioner test procedures in

today's final rule to incorporate standby and off mode energy consumption into the annual energy cost calculations, as discussed in section III.B.5.

IV. Effects of Test Procedure Revisions on Compliance With Standards

As noted in section I, DOE must determine to what extent, if any, the proposed test procedures would alter the measured energy efficiency of covered products as determined under the existing test procedures. If DOE determines that an amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. (42 U.S.C. 6293(e))

A. Standby Mode and Off Mode

As noted in section II, EPCA provides that amendments to the test procedures to include standby mode and off mode energy consumption will not determine compliance with previously established standards. (U.S.C. 6295(gg)(2)(C)) Because the proposed amended test procedures for standby mode and off mode energy consumption would not alter existing measures of energy consumption or efficiency for active mode, these amendments would not affect a manufacturer's ability to demonstrate compliance with previously established standards.

B. Active Mode—Clothes Dryers

DOE reviewed the amendments to the DOE clothes dryer active mode test procedure to evaluate the effects on the measured EF. The following sections discuss DOE's evaluation of each active mode amendment individually, as well as DOE's evaluation of the fully amended test procedure.

Automatic Cycle Termination

In the June 2010 TP SNOPR, DOE analyzed how the proposed changes to the DOE clothes dryer test procedure for automatic cycle termination controls discussed above in section III.C.2 would affect the measured EF of residential clothes dryers, as required by EPCA. 75 FR 37594, 37618 (June 29, 2010). As part of DOE's preliminary analyses for the energy conservation standards rulemaking for clothes dryers, DOE concluded that virtually all clothes dryers currently available on the U.S. market that are covered under the current energy conservation standards are equipped with some form of automatic cycle termination sensing. Therefore, DOE analyzed in the June 2010 TP SNOPR how the proposed changes to the clothes dryer test procedure for automatic termination control dryers would affect the measured EF of residential clothes dryers with such a feature. 75 FR 37594, 37618 (June 29, 2010).

DOE noted in the June 2010 TP SNOPR that the proposed amendment to change the field use factor from 1.04 to 1.0 for automatic termination control dryers would result in a 4-percent increase in EF for a dryer that has an automatic cycle termination setting capable of drying the test load to 5-percent RMC. In addition, DOE noted the proposed target final RMC of 5 percent or lower would result in an increase in EF of about 2.4 percent (assuming a starting RMC of 47 percent). This is as compared to the current DOE test procedure, which uses a correction factor in order to determine the energy consumption required to dry the test load to a final RMC of 4 percent. DOE also stated in the June 2010 TP SNOPR that a clothes dryer that is only minimally compliant with current energy conservation standards would likely use a less accurate automatic termination control system. DOE stated that such a dryer would possibly over-dry the test load below 5-percent RMC such that the energy consumption and measured EF would be equivalent to that measured by the existing DOE clothes dryer test procedure. As a result, DOE stated that it does not believe that any changes to the current energy conservation standards as a result of the proposed amendments to the test procedure to account for automatic cycle termination would be warranted. 75 FR 37619–20. Because DOE did not have data regarding how the proposed changes to the clothes dryer test procedure for automatic termination control dryers would affect the measured EF of residential clothes dryers with such a feature, however, DOE requested comment on this tentative conclusion in the June 2010 TP SNOPR. *Id.*

The Joint Petitioners and AHAM commented that if the full cycle test (including cool-down) is adopted, DOE must also revise the relevant energy conservation standards to reflect the new test procedure, ensuring no change in the stringency of the standards for clothes dryers with effective automatic termination controls, as per section 323 of EPCA. The Joint Petitioners and AHAM stated that, specifically, the procedures in section 323(e)(2) should be used, with the clarification that for the purposes of establishing a representative sample of products, DOE should choose a sample of minimally compliant clothes dryers that automatically terminate the drying cycle at no less than 4-percent RMC. The Joint Petitioners and AHAM also stated that there will be additional energy savings by improving the effectiveness of automatic termination controls. (Joint Petitioners, No. 30 at p. 6; AHAM, No. 31 at pp. 30–31)

The California Utilities/NRDC commented that they are very concerned with DOE's proposal to not revise the current energy conservation standard levels as a result of its analysis of the test procedure amendments to account for automatic cycle termination. They are also concerned about DOE's interpretation of the definition of a "minimally compliant" clothes dryer in the June 2010 TP SNOPR. The California Utilities/NRDC noted that clothes dryers with less accurate automatic termination controls may actually over-dry beyond the specified RMC in the field. They also stated that clothes dryers with less accurate automatic termination controls will not exhibit equivalent energy consumption and measured EF under the new test procedure; should not be used as a basis for DOE's analysis; and should not be considered automatically compliant under the new test procedure. (California Utilities/NRDC, No. 33 at pp. 6–7)

The California Utilities/NRDC further stated that clothes dryers with operational automatic cycle termination controls will dry the clothes to an appropriate range of RMC without over-drying (between 2.5- and 5-percent RMC). They also stated that such clothes dryers should have about the same measured per-cycle energy use under both the current and proposed test procedures. The California Utilities/NRDC stated, however, that by changing the calculation for per-cycle energy use, and changing the field use factor to 1.0, the calculated final per-cycle energy use for automatic termination control dryers will decrease. The California Utilities/NRDC stated that the new test procedure would make these clothes dryers with operational controls appear to be more efficient and have a higher EF than under the current test procedure. The EF for these clothes dryers would increase by 4-percent through the change in the field use factor alone. The California Utilities/NRDC stated that, based on their calculations, all clothes dryers that dry to between 2.5- and 5-percent RMC would have a higher measured EF. They stated that the energy conservation standards should be revised to reflect this measured higher EF. The California Utilities/NRDC commented that for dryers with less accurate automatic termination controls, EF would decrease because of

the over-drying energy consumption mesaured using the the new test procedure. The California Utilities/NRDC stated that adjustments to EF would be required to account for the new test procedure, per-cycle energy use calculation, and change in the field use factor. (California Utilities/NRDC, No. 33 at pp. 7–8)

The California Utilities/NRDC stated they are concerned that by not changing the clothes dryer standards accordingly DOE's current approach may qualify as backsliding prohibited by EPCA's "anti-backsliding" provision. The California Utilities/NRDC stated that under DOE's proposed approach, many compliant clothes dryers could test with lower per-cycle energy use and higher EF, than currently. By not adjusting the maximum allowable energy use (and minimum allowable EF) for such dryers, DOE risks effectively weakening the standard. (California Utilities/NRDC, No. 33 at p. 8) The California Utilities/NRDC proposed that DOE adjust its proposed candidate standard levels to a level consistent with the performance of a selection of dryers that are "minimally compliant" under both the current and proposed test procedure. The California Utilities/NRDC also recommended that when DOE selects a representative sample of minimally compliant clothes dryers, it choose models that automatically terminate at between 2.5- and 5-percent RMC. They explained that this approach would remove clothes dryers with less accurate automatic termination controls that comply under the current testing procedure and ensure that new standards are appropriately adjusted, so that the standard is not overly weak. *Id.*

As discussed in section III.C.2, DOE is not adopting the amendments to better account for automatic cycle termination proposed in the June 2010 TP SNOPR. For this reason. DOE is not revising the energy conservation standards based on the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR. If DOE considers potential amendments for automatic cycle termination in a future rulemaking, it will consider any necessary revisions to the energy conservation standards.

Water Temperature for Clothes Dryer Test Load Preparation

DOE tested the 17 clothes dryers to evaluate the effects on measured EF to change the water temperature for clothes dryer test load preparation from 100 °F ± 5 °F to 60 °F ± 5 °F, as discussed in section III.C.2. DOE tested these units according to the current DOE clothes dryer test procedure, first with a water temperature for clothes dryer test load preparation of 100 °F ± 5 °F, and then with a water temperature of 60 °F ± 5 °F. For the ventless clothes dryer test units, DOE additionally used the proposed testing method for ventless dryers presented in section III.C.3. For each water temperature, DOE conducted up to three tests for each test unit and the results were averaged. Table IV.1 below shows the results from this testing, which indicate that, on average, measured EF decreases by about 2.9 percent when the water temperature for clothes dryer test load preparation is reduced from 100 °F ± 5 °F to 60 °F ± 5 °F. DOE also notes the variation in the percentage change in EF from model to model due to the change in water temperature may also be due to other test condition tolerances in the test procedure, such as the specified ranges for ambient temperature and relative humidity.

TABLE IV.1 DOE TEST RESULTS TO EVALUATE THE EFFECTS OF CHANGES TO THE WATER TEMPERATURE FOR CLOTHES DRYER TEST LOAD PREPARATION

Test unit	Average EF *lb/kWh*		% Change
	100° ± 5 °F Water temp	60° ± 5 °F Water temp	
Vented Electric Standard:			
Unit 1	3.07	3.00	−2.2
Unit 2	3.14	3.05	−3.1
Unit 3	3.20	3.10	−3.2
Unit 4	3.28	3.22	-1.9
Unit 5	3.24	3.17	−2.0
Unit 6	3.12	2.98	−4.6
Vented Gas:			
Unit 7	2.78	2.72	−2.4
Unit 8	2.83	2.92	3.1
Unit 9	2.85	2.64	−7.2
Unit 10	2.80	2.69	−3.7
Unit 11	2.98	2.79	−6.4
Vented Electric Compact (240V):			
Unit 12	3.19	2.95	−7.7
Unit 13	2.93	2.84	−3.2
Vented Electric Compact (120V):			
Unit 14	3.23	3.11	−4.0
Ventless Electric Compact (240V):			
Unit 15	2.37	2.22	−6.1
Ventless Electric Combo Washer-Dryer:			
Unit 16	2.01	1.96	−4.0
Unit 17	2.50	2.60	3.8

Test Procedure for Ventless Clothes Dryers

The amendments for ventless clothes dryers are applicable to products not covered under the current DOE test procedure. For this reason, the amendments in today's final rule for ventless clothes dryers discussed in section III.C.3 would not affect the existing EF ratings of residential clothes dryers. Therefore, no change to the current clothes dryer energy conservation standards would be required. (42 U.S.C. 6293(e))

Detergent Specifications for Clothes Dryer Test Cloth Preconditioning

DOE stated in the June 2010 TP SNOPR that it is unaware of any data indicating that changes to the detergent specifications for test cloth preconditioning discussed in section III.C.4 would affect efficiency measurements. DOE stated that the proposed amendments in the June 2010 TP SNOPR changing the detergent specifications for test cloth preconditioning would not affect the EF rating of residential clothes dryers and would not require the existing energy conservation standards for these products to be revised because DOE is not aware of any data indicating the changes to the detergent formula affects the ability of the clothes dryer to remove moisture from the clothes load during the drying cycle. For the reasons stated above and in the absence of comments objecting to this determination, DOE continues to believe that the change to the detergent specifications would not affect the EF rating of clothes dryers.

Clothes Dryer Number of Annual Cycles

The amendments for the number of annual use cycles, discussed in section III.C.5.a, affect only the estimated annual operating cost for all clothes dryers. The EF rating for clothes dryers is expressed in terms of the total energy use per drying cycle. Because the EF rating is measured on a per-cycle basis, the number of annual use cycles is not used in the calculation. For this reason, DOE stated in the June 2010 TP SNOPR that the proposed amendments to change the number of clothes dryer annual use cycles would not affect the EF rating of residential clothes dryers. Therefore, the proposed amendments would not require the existing energy conservation standards for these products to be revised.

Whirlpool commented that the change in the number of annual use cycles has a linear effect ((416–283)/416 = 32 percent), and therefore the clothes dryer would be rated as consuming 32 percent less energy under the proposed under the proposed test procedure. (Whirlpool, No. 27 at p. 5) The California Utilities/NRDC supported DOE's proposed revisions to the energy conservation standards to account for changes to the cycles per year. (California Utilities/NRDC, No. 33 at p. 6) DOE first notes it did not propose any revisions to the energy conservation standards to account for changes to the number of clothes dryer cycles per year. DOE notes that the current energy conservation standards for clothes dryers are based on EF and that changes to the number of annual use cycles does not affect EF for clothes dryers. As a result, DOE continues to believe that the amendments to change the number of clothes dryer annual use cycles would not affect the EF rating of residential clothes dryers. Therefore, the amendments would not require the existing energy conservation standards for these products to be revised.

Clothes Dryer Initial Remaining Moisture Content

In the June 2010 TP SNOPR, DOE evaluated how the amendments to the clothes dryer initial RMC discussed in section III.C.5.b affect the measured EF. DOE estimated, based on results of testing conducted at an independent testing laboratory, that the measured EF increases by 41 percent when the initial RMC is reduced to 47 percent. DOE stated that if the proposed amendments to change the initial RMC from 70 percent ± 3.5 percent to 47 percent ± 3.5 percent were implemented, current energy conservation standards in terms of EF for vented clothes dryer product classes would need to increase by 41 percent. 75 FR 37594, 37631 (June 29, 2010).

The California Utilities/NRDC supported DOE's proposed revisions to the energy conservation standards to account for changes in the initial RMC. (California Utilities/NRDC, No. 33 at p. 6) Whirlpool commented that the change in RMC is not linear, but that it does not have sufficient data to fully address how this would be reflected in total energy consumption. Whirlpool recommended that further study regarding the impact of changing the RMC on the energy factor be undertaken. Whirlpool added that if DOE were to make a specific request to AHAM for such data, Whirlpool would be willing to gather and supply information to AHAM for aggregation and submittal to DOE. (Whirlpool, No. 27 at pp 4, 5) The Joint Petitioners and AHAM both supported increasing EF for vented clothes dryer product classes to account for the change in initial RMC. The Joint Petitioners and AHAM also stated that they do not currently have data to quantify the increase, but upon DOE request would gather data to determine an appropriate increase. (Joint Petitioners, No. 30 at p. 7; AHAM, No. 31 at p. 9) The California Utilities/NRDC supported DOE's proposed revisions to the energy conservation standards to account for changes in test load weight, initial RMC, and cycles per year. (California Utilities/NRDC, No. 33 at p. 6) ALS supported the manner in which DOE has analyzed the impact of its proposed revisions to the test procedure on the minimum standard. ALS requested the analysis be conducted using a methodology consistent with the ALS proposal of an initial RMC of 53 percent. (ALS, No. 24 at p. 8)

After issuance of the June 2010 TP SNOPR, DOE conducted additional clothes dryer testing on 17 representative clothes dryers to evaluate the effects of the proposed amendment to change the initial RMC from 70 percent ± 3.5 percent to 57.5 percent ± 3.5 percent for the measured efficiency. DOE tested these units according to the current DOE clothes dryer test procedure with an initial RMC of 70 percent ± 3.5 percent and with an initial RMC of 57.5 percent ± 3.5 percent. For the ventless clothes dryer test units, DOE additionally used the proposed testing method for ventless dryers presented in section III.C.3. For each initial RMC, DOE conducted up to three tests for each test unit and the results were averaged Table IV.2 below shows the results from the tests. The results indicate that, on average, EF increases by about 17.1 percent when the initial RMC is changed from 70 percent ± 3.5 percent to 57.5 percent ± 3.5 percent.

TABLE IV.2—DOE TEST RESULTS TO EVALUATE THE EFFECTS OF CHANGES TO THE INITIAL RMC

Test unit	Average EF *lb/kWh*		% Change
	70% ± 3.5% RMC	57.5% ± 3.5% RMC	
Vented Electric Standard:			
Unit 1	3.07	3.67	19.8
Unit 2	3.14	3.62	15.1
Unit 3	3.20	3.83	19.6
Unit 4	3.28	3.79	15.5

TABLE IV.2—DOE TEST RESULTS TO EVALUATE THE EFFECTS OF CHANGES TO THE INITIAL RMC—Continued

Test unit	Average EF *lb/kWh*		% Change
	70% ± 3.5% RMC	57.5% ± 3.5% RMC	
Unit 5	3.24	3.91	20.9
Unit 6	3.12	3.70	18.7
Vented Gas:			
Unit 7	2.78	3.32	19.1
Unit 8	2.83	3.43	20.9
Unit 9	2.85	3.23	13.3
Unit 10	2.80	3.29	17.5
Unit 11	2.98	3.40	14.2
Vented Electric Compact (240V):			
Unit 12	3.19	3.61	13.2
Unit 13	2.93	3.45	17.7
Vented Electric Compact (120V):			
Unit 14	3.23	4.08	26.1
Ventless Electric Compact (240V):			
Unit 15	2.37	2.74	15.9
Ventless Electric Combo Washer-Dryer:			
Unit 16	2.01	2.33	15.8
Unit 17	2.50	2.70	8.0

Clothes Dryer Test Load Weight

As noted previously, EF for clothes dryers is the bone-dry test load weight divided by the clothes dryer energy consumption per cycle. DOE notes that the proposed amendments to the test load size, discussed in section III.C.5.c, would increase both the bone-dry test load weight and the energy consumption per cycle. For example, for a test in which the nominal RMC of the test load is reduced from an initial 70 percent to a final 4 percent, an 8.45-lb test load would require about 5.6 lb of water to be removed during the drying cycle. However, a 7-lb. test load would require only 4.6 lb. of water to be removed. DOE also notes that as lower nominal RMCs are reached at the end of the test cycle, the rate and efficiency of water removal from the load would be higher for the larger test load. This is because there would simply be more water in the load, hence making it easier to remove.

In the June 2010 TP SNOPR, DOE reviewed research on the effects of changing the load size on the measured efficiency to determine a quantifiable estimate of the change in the measured EF. 75 FR 37594, 37632 (June 29, 2010). NIST conducted testing to investigate the effects of changing the clothes dryer load size on the measured efficiency of a vented electric standard clothes dryer with a capacity of 6.3 ft^3.[41] NIST tested the clothes dryer according to the DOE clothes dryer test procedure, except the test load size varied from 2–15 lb. Table IV.3 presents the results of the NIST testing, which shows an increase in EF when the load size was increased in 7–9 lb. range, which for the purpose of analysis corresponds to the 7–8.45 lb. range.

TABLE IV.3—NIST VENTED ELECTRIC STANDARD CLOTHES DRYER VARIABLE TEST LOAD DATA

Test Number	1	2	3	4	5	6	7	8
Room Temperature, °*F*	74.1	74.4	73.8	73.3	73.8	74.1	74.4	74.4
Room Humidity, %	40	38	38	33	42	38	40	36
Nominal Bone-Dry Weight, *lb*	2	3	5	7	9	11	13	15
Measured Bone-Dry Test Load Weight, *lb*	1.99	2.99	4.99	7.00	8.99	10.98	13.01	15.01
Measured Dry Test Load Weight, *lb*	2.05	3.06	5.17	7.99	9.11	11.56	13.57	15.71
Measured Wet Test Load Weight, *lb*	3.40	5.10	8.50	11.89	15.34	18.98	22.04	25.56
Measured Energy Consumption, *kWh*	0.953	1.159	1.593	2.112	2.667	3.250	3.796	4.384
Initial RMC, %	70.30	70.67	70.52	69.99	70.67	72.81	69.35	70.34
Final RMC, %	2.84	2.48	3.73	2.88	1.28	5.27	4.29	4.67
Per-Cycle Energy Consumption, *kWh*	0.970	1.167	1.637	2.160	2.638	3.303	4.005	4.582
EF, *lb/kWh*	2.06	2.56	3.04	3.24	3.41	3.33	3.25	3.27
Percentage Change in EF Compared to 7-lb Test, %	−36.6	−20.9	−6.0	0.0	5.2	2.7	0.3	1.1

In the June 2010 TP SNOPR, DOE estimated the percentage change in EF for an 8.45-lb test load by linearly interpolating the results for the 7-lb and 9-lb tests. Estimates based on this method showed the EF increase by about 3.8 percent when the test load size increased from 7 lb. to 8.45 lb. DOE stated that this percentage change in EF can be applied to all vented standard-size clothes dryer product classes because the moisture removal mechanisms are comparable among them. For these reasons, DOE stated that if the proposed amendments to increase the test load size to 8.45 ± .085 lb for standard-size clothes dryers were implemented, the current energy conservation standards in terms of EF for vented standard-size clothes dryer product classes would need to be

[41] J. Y. Kao. Energy Test Results of a Conventional Clothes Dryer and a Condensing Clothes Dryer. pp. 11–*21 1999. International Appliance Technical Conference, 49th. Proceedings. May 4–6,, 1998.*

increased by 3.8 percent. 75 FR 37594, 37632 (June 29, 2010).

The California Utilities/NRDC supported DOE's proposed revisions to the energy conservation standards to account for changes to the test load weight. (California Utilities/NRDC, No. 33 at p. 6) Whirlpool commented that the change in load size is not linear, but that it does not have sufficient data to fully address how this would be reflected in total energy consumption. Whirlpool commented that if DOE were to make a specific request to AHAM for such data, Whirlpool would be willing to gather and supply information to AHAM for aggregation and submittal to DOE. (Whirlpool, No. 27 at p. 5) The Joint Petitioners and AHAM supported DOE's proposal to revise the relevant energy conservation standards to reflect the new test load weight. The Joint Petitioners and AHAM stated they do not currently have data that would support a specific test load weight, but upon DOE request would gather such data. (Joint Petitioners, No. 30 at p. 7; AHAM, No. 31 at p. 9)

DOE conducted additional clothes dryer testing after issuance of the June 2010 TP SNOPR on 11 representative standard size clothes dryers to evaluate the effects of the proposed amendment to increase the test load size for standard-size clothes dryers on the measured efficiency. DOE tested these units according to the current DOE clothes dryer test procedure with a 7.00 ± .07 lb load and at the increased test load size of 8.45 ± .085 lb for standard-size clothes dryers. For the ventless clothes dryer test units, DOE additionally used the proposed testing method for ventless dryers presented in section III.C.3. For each test load weight, DOE conducted up to three tests for each test unit and the results were averaged. Table IV.4 below shows the results from this testing, which indicate that, on average, measured EF increases by about 2.6 percent when the test load weight is increased to 8.45 ± .085 lb for standard-size clothes dryers. DOE believes the 2.6 percent increase in measured EF represents a more accurate estimate than the 3.8 percent increase because the 2.6 percent increase in measured EF is based on more extensive testing on a representative sample of clothes dryers.

TABLE IV.4—DOE TEST RESULTS TO EVALUATE THE EFFECTS OF CHANGES TO TEST LOAD WEIGHT FOR STANDARD-SIZE CLOTHES DRYERS

Test unit	Average EF *lb/kWh*		Percent change
	7.00 ± .07 lb	8.45 ± .085 lb	
Vented Electric Standard:			
Unit 1	3.07	3.13	2.0
Unit 2	3.14	3.21	2.1
Unit 3	3.20	3.28	2.5
Unit 4	3.28	3.50	6.7
Unit 5	3.24	3.34	3.1
Unit 6	3.12	3.13	0.4
Vented Gas:			
Unit 7	2.78	2.85	2.5
Unit 8	2.83	2.93	3.3
Unit 9	2.85	3.00	5.2
Unit 10	2.80	2.77	−0.9
Unit 11	2.98	3.02	1.5

All Active Mode Amendments

DOE also analyzed how the fully amended test procedure would affect the measured EF as compared to the existing test procedure. In the June 2010 TP SNOPR, DOE tested and analyzed minimally compliant clothes dryers, and reviewed available research. DOE found that the proposed amendments to the initial RMC would increase the measured EF of minimally compliant clothes dryers by 41 percent, while the proposed amendments to the test load size for standard-size clothes dryers would increase the measured EF for standard-size dryers by 3.8 percent. DOE also found that because of the proposed amendments in the June 2010 TP SNOPR, the measured EF of minimally compliant clothes dryers would increase by about 41 percent for compact-size clothes dryers and about 46 percent for standard-size clothes dryers (determined multiplying the 41 percent increase for the decrease in the initial RMC by the 3.8 percent increase for the increase in test load size for standard-size clothes dryers). 75 FR 37594, 37638 (June 29, 2010).

The Joint Petitioners stated that the final rule amending the clothes dryer test procedure should also amend the standards in their Joint Petition. The standards in the Joint Petition would be amended according to the procedures in section 323(e)(2), except that to establish a representative sample of products, DOE shall choose a sample of minimally compliant clothes dryers that automatically terminate the drying cycle at no less than 4 percent RMC. (Joint Petitioners, No. 25 at p. 6) In conducting the analysis under 42 U.S.C. 6293(3)(2) for the current clothes dryer energy conservation standards, DOE notes that as discussed in section I, EPCA requires that in determining the amended energy conservation standard, DOE must measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard and that the average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2)) DOE notes that EPCA requires testing of a representative sample of minimally compliant products, and that the measurement of only clothes dryers that automatically terminate the drying cycle at no less than 4 percent RMC would not constitute a representative sample. In addition, for the reasons discussed in section III.C.2, DOE is not adopting in today's final rule the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR. For these reasons, DOE does not intend to consider such limitations for product testing to determine the effects of the amended test procedure on the measured efficiency.

DOE conducted clothes dryer testing on a sample of 17 representative clothes dryers after issuance of the June 2010

TP SNOPR to evaluate the effects of all of the amendments on the clothes dryer test procedure on the measured EF. DOE tested these units according to the amended clothes dryer test procedure in today's final rule. DOE conducted up to three tests for each test unit and the results were averaged. The results from this testing are shown in Table IV.5. For vented electric standard-size clothes dryers, the measured EF increases by an average of about 20.1 percent as a result of the amendments to the test procedure in today's final rule. For vented gas clothes dryers, the measured EF increased by an average of about 19.8 percent. For vented electric compact-size 120V and 240V clothes dryers, the measured EF increased by an average of about 15.6 and 12.8 percent, respectively. For ventless electric compact 240V clothes dryers and ventless electric combination washer/dryers, the measured EF increased by an average of about 13.6 and 11.4 percent, respectively. DOE notes that the increase in measured EF is greater for the standard-size products (that is, for vented electric standard-size and vented gas clothes dryers) than for compact-size products due to the additional amendments that specify increased test load sizes for standard-size products. These measured increases in EF are different from the values presented in the June 2010 TP SNOPR, and shown above in this section. This is because the initial RMC was changed from 47 percent to 57.5 percent and the change to the water temperature specified for test load preparation. These values are also based on more extensive testing on a representative sample of clothes dryers.

TABLE IV.5—DOE TEST RESULTS TO EVALUATE THE EFFECTS OF THE TEST PROCEDURE AMENDMENTS ON MEASURED EF

Test unit	Average EF *lb/kWh*		Percent change
	Current test procedure	Amended test procedure	
Vented Electric Standard:			
Unit 1	3.07	3.69	20.4
Unit 2	3.14	3.77	19.5
Unit 3	3.20	3.83	19.6
Unit 4	3.28	3.92	19.4
Unit 5	3.24	3.96	22.5
Unit 6	3.12	3.72	19.1
Vented Gas:			
Unit 7	2.78	3.36	20.6
Unit 8	2.83	3.40	19.9
Unit 9	2.85	3.42	20.2
Unit 10	2.80	3.37	20.5
Unit 11	2.98	3.50	17.6
Vented Electric Compact (240V):			
Unit 12	3.19	3.56	11.4
Unit 13	2.93	3.35	14.2
Vented Electric Compact (120V):			
Unit 14	3.23	3.74	15.6
Ventless Electric Compact (240V):			
Unit 15	2.37	2.69	13.6
Ventless Electric Combo Washer-Dryer:			
Unit 16	2.01	2.27	12.5
Unit 17	2.50	2.76	10.3

Table IV.6 shows how the current energy conservation standards would be affected by the amendments to the DOE clothes dryer test procedure. DOE will consider such changes in the concurrent energy conservation standards rulemaking for clothes dryers and room air conditioners.

TABLE IV.6—ENERGY FACTOR OF A MINIMALLY COMPLIANT CLOTHES DRYER WITH THE CURRENT AND PROPOSED AMENDED TEST PROCEDURE

Product class	Energy factor *lb/kWh*	
	Current test procedure	Proposed amended test procedure
1. Electric, Standard (4.4 ft^3 or greater capacity)	3.01	3.62
2. Electric, Compact (120 v) (less than 4.4 ft^3 capacity)	3.13	3.62
3. Electric, Compact (240 v) (less than 4.4 ft^3 capacity)	2.90	3.27
4. Gas	2.67	3.20

Because the clothes dryer test procedure amendments for active mode would substantially change the existing EF metric, DOE has decided to create a new appendix D1 in 10 CFR 430 subpart B. This appendix contains a clothes dryer test procedure that manufacturers would be required to use on the mandatory compliance date of any

amended clothes dryer energy conservation standards. DOE is required by consent decree to publish the final rule for any amended clothes dryer energy conservation standards rulemaking by June 30, 2011, and the compliance date of any amended standards is expected to be 3 years later. Manufacturers must continue to use appendix D to subpart B of part 430 for clothes dryers until compliance with any amended energy conservation standards at 10 CFR 430.32(h) is required, at which point use of the procedures at appendix D1 will be required.

C. Active Mode—Room Air Conditioners

As discussed in section III.C.6, DOE amends the room air conditioner test procedure in today's final rule to update the references to the industry test standards, ANSI/AHAM RAC–1–R2008 and ANSI/ASHRAE Standard 16–1983 (RA 2009). These amendments provide more accurate and repeatable measurements of capacity while providing greater flexibility to manufacturers in selecting equipment and facilities but do not impact the measurement of EER. Because DOE's review of the room air conditioner test procedure amendments tentatively concluded that the measured EER would not be affected, manufacturers must continue to use appendix F to measure room air conditioner active mode energy use. Manufacturers would not be required to use the proposed provisions for standby mode and off mode energy use (specifically, sections 2.2, 3.2, 4.2, and 5.3) until the mandatory compliance date of any amended room air conditioner energy conservation standards.

The Joint Petitioners proposed that the final rule amending the room air conditioner test procedure must also amend the standards in the Joint Petition according to the procedures in section 323(e)(2). (Joint Petitioners, No. 25 at p. 7) As noted above, DOE believes that the amendments to the room air conditioner test procedure in today's final rule would not affect the measured efficiency of covered products, and DOE is not aware of any data indicating otherwise. For these reasons, DOE continues to believe that revisions to the energy conservation standards for room air conditioners are not warranted.

All representations related to standby mode and off mode energy consumption of both clothes dryers and room air conditioners made 180 days after the publication of today's test procedure final rule in the **Federal Register** and before the compliance date of amended energy conservation standards must be based upon the standby mode and off mode requirements of the amended test procedures. The requirements are specified in appendix D1 for clothes dryers, and in amended appendix F for room air conditioners.

V. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule prescribes amendments to test procedures that will be used to test compliance with energy conservation standards for clothes dryers and room air conditioners that are described in detail elsewhere in the preamble. DOE certifies that this final rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The thresholds set forth in these regulations are based on size standards and codes established by the North American Industry Classification System (NAICS).[42] The threshold number for NAICS classification for 335224, "Household Laundry Equipment Manufacturing," which includes clothes dryer manufacturers, is 1,000 employees. Additionally, the threshold number for NAICS classification for 335415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing," which includes room air conditioner manufacturers, is 750 employees.

Most of the manufacturers supplying clothes dryers and room air conditioners are large multinational corporations. As part of the energy conservation standards rulemaking for residential clothes dryers and room air conditioners, DOE requested comment on whether there are any manufacturer subgroups, including potential small businesses, that it should consider for its analyses. DOE did not receive any comments regarding whether there are any residential clothes dryer or room air conditioner manufacturers that would be considered small businesses. DOE then conducted a more focused inquiry of the companies that could be small business manufacturers of products covered by this rulemaking. During its market survey, DOE used all available public information to identify potential small manufacturers. DOE's research included the AHAM membership directory, product databases (the AHRI, AHAM, CEC, and ENERGY STAR databases), individual company websites, and the SBA dynamic small business search[43] to find potential small business manufacturers. DOE also asked interested parties and industry representatives if they were aware of any other small business manufacturers during manufacturer interviews conducted and at DOE public meetings for the energy conservation standards rulemakings. DOE also contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential clothes dryers or room air conditioners. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a "small business," or are foreign owned and operated.

DOE initially identified at least 14 manufacturers of residential clothes

[42] For more information visit: *http://www.sba.gov/*.

[43] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*.

dryers that sold products in the United States. DOE determined that 13 of these companies exceeded the SBA's maximum number of employees or foreign-owned and operated. Thus, DOE identified only one potential small business manufacturer of residential clothes dryers but could not locate this manufacturer on the dynamic small business search on the SBA website. In addition, upon further review, DOE does not believe that the small business is a clothes dryer manufacturer. While the manufacturer has developed a highly efficient technology that, while not yet commercially available, could be used by other manufacturers to increase the efficiency of clothes dryers, it does not produce clothes dryers. Because the company plans to produce only a technology for clothes dryers that is not yet commercially available, this potential small business manufacturer has no market share of the residential clothes dryer market.

For room air conditioners, DOE initially identified at least 11 manufacturers of room air conditioners that sold products in the United States. DOE determined that 10 of these were large or foreign-owned and operated. In addition, DOE subsequently determined that the one room air conditioner manufacturer that was previously designated as a small business manufacturer now exceeds SBA's employment threshold for consideration as a small business under the appropriate NAICS code specified above.

DOE received no comments on the certification, and comments on the testing burden are discussed elsewhere in the preamble and did not result in changes to the certification. For these reasons, DOE certifies that the amendments in today's final rule will not have a significant economic impact on a substantial number of small entities.

Based on the above, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of clothes dryers and room air conditioners must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the DOE test procedures for clothes dryers and room air conditioners, including any amendments adopted for those test procedures. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including clothes dryers and room air conditioners. 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Subid Wagley at the **ADDRESSES** above, and e-mail to *Christine_J._Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any 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 Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE is adopting test procedure amendments that it expects will be used to develop and implement future energy conservation standards for clothes dryers and room air conditioners. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5, which applies because this rule establishes revisions to existing test procedures that will not affect the amount, quality, or distribution of energy usage, and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not preempt State law and 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make

every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov).* DOE reviewed today's final rule under the statutory requirements and its policy and determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action to establish amended test procedures for clothes dryers and room air conditioners is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides in part that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The amendments to the test procedures in today's final rule incorporate testing methods contained in the commercial standard, IEC Standard 62301. Specifically DOE is incorporating from section 4, ("General conditions for measurements"), paragraph 4.2, "Test room," paragraph 4.3, "Power supply," paragraph 4.4, "Supply voltage waveform," and paragraph 4.5, "Power measurement accuracy," and from section 5 ("Measurements"), paragraph 5.1, "General," paragraph 5.2, "Selection and preparation of appliance or equipment," and paragraph 5.3, "Procedure" of IEC Standard 62301. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (that is, whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard, and neither

recommended against incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 15, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, part 430 of chapter II of title 10, of the Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.3 is amended by:
■ a. Redesignating paragraphs (e)(1) through (e)(9) as (e)(2) through (e)(10).
■ b. Adding a new paragraph (e)(1).
■ c. Removing the word "Standard" from paragraph (g)(3).
■ d. Redesignating paragraphs (g)(1), (2), and (3) as paragraphs (g)(3), (1), and (4), respectively.
■ e. Adding new paragraphs (g)(2) and (5).
■ d. Removing in paragraph (1)(1), "Appendix N to Subpart B", and adding in its place, "Appendix D1, Appendix F and Appendix N to Subpart B".

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(e) * * *

(1) ANSI/ASHRAE Standard 16–1983 ("ANSI/ASHRAE 16") (RA 2009), (Reaffirmation of ANSI/ASHRAE Standard 16–1983 [RA 1999]), Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners, ASHRAE approved October 18, 1988, and reaffirmed June 20, 2009. ANSI approved October 20, 1998 and reaffirmed June 25, 2009. IBR approved for Appendix F to Subpart B.

* * * * *

(g) * * *

(2) AHAM HLD–1–2009 ("AHAM HLD–1"), Household Tumble Type Clothes Dryers, (2009), IBR approved for Appendix D1 to Subpart B.

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(5) ANSI/AHAM RAC–1–2008 ("ANSI/AHAM RAC–1"), Room Air Conditioners, (2008; ANSI approved July 7, 2008), IBR approved for Appendix F to Subpart B.

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■ 3. Section 430.23 is amended by revising paragraphs (d) and (f) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(d) *Clothes dryers.* (1) The estimated annual operating cost for clothes dryers shall be—

(i) For an electric clothes dryer, the product of the following three factors:

(A) The representative average-use cycle of 283 cycles per year,

(B) The per-cycle combined total energy consumption in kilowatt-hours per-cycle, determined according to 4.6 of appendix D1 to this subpart, and

(C) The representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year, and

(ii) For a gas clothes dryer, the product of the representative average-use cycle of 283 cycles per year times the sum of:

(A) The product of the per-cycle gas dryer electric energy consumption in kilowatt-hours per cycle, determined according to 4.2 of appendix D1 to this subpart, times the representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary plus,

(B) The product of the per-cycle gas dryer gas energy consumption, in Btus per cycle, determined according to 4.3 of appendix D1 to this subpart, times the representative average unit cost for natural gas or propane, as appropriate, in dollars per Btu as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year plus,

(C) The product of the per-cycle standby mode and off mode energy consumption in kilowatt-hours per cycle, determined according to 4.5 of appendix D1 to this subpart, times the representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary.

(2) The energy factor, expressed in pounds of clothes per kilowatt-hour, for clothes dryers shall be either the quotient of a 3-pound bone-dry test load for compact dryers, as defined by 2.7.1 of appendix D to this subpart before the date that appendix D1 becomes mandatory, or the quotient of a 7-pound bone-dry test load for standard dryers, as defined by 2.7.2 of appendix D to this subpart before the date that appendix D1 becomes mandatory, as applicable, divided by the clothes dryer energy consumption per cycle, as determined according to 4.1 for electric clothes dryers and 4.6 for gas clothes dryers of appendix D to this subpart before the date that appendix D1 becomes mandatory, the resulting quotient then being rounded off to the nearest hundredth (.01). Upon the date that appendix D1 to this subpart becomes mandatory, the energy factor is determined in accordance with 4.7 of appendix D1, the result then being rounded off to the nearest hundredth (.01).

(3) Upon the date that appendix D1 to this subpart becomes mandatory, the combined energy factor is determined in accordance with 4.8 of appendix D1, the result then being rounded off to the nearest hundredth (.01).

(4) Other useful measures of energy consumption for clothes dryers shall be those measures of energy consumption for clothes dryers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix D to this subpart before the date that appendix D1 becomes mandatory and appendix D1 upon the date that appendix D1 to this subpart becomes mandatory.

* * * * *

(f) *Room air conditioners.* (1) The estimated annual operating cost for room air conditioners, expressed in dollars per year, shall be determined by multiplying the following three factors:

(i) The combined annual energy consumption for room air conditioners, expressed in kilowatt-hours per year, as determined in accordance with paragraph (f)(4) of this section, and

(ii) A representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The energy efficiency ratio for room air conditioners, expressed in Btus per watt-hour, shall be the quotient of:

(i) The cooling capacity in Btus per hour as determined in accordance with 5.1 of appendix F to this subpart divided by:

(ii) The electrical input power in watts as determined in accordance with 5.2 of appendix F to this subpart, the resulting quotient then being rounded off to the nearest 0.1 Btu per watt-hour.

(3) The average annual energy consumption for room air conditioners, expressed in kilowatt-hours per year, shall be determined by multiplying together the following two factors:

(i) Electrical input power in kilowatts as determined in accordance with 5.2 of appendix F to this subpart, and

(ii) The representative average-use cycle of 750 hours of compressor operation per year, the resulting product then being rounded off to the nearest kilowatt-hour per year.

(4) The combined annual energy consumption for room air conditioners, expressed in kilowatt-hours per year, shall be the sum of:

(i) The average annual energy consumption as determined in accordance with paragraph (f)(4) of this section, and

(ii) The standby mode and off mode energy consumption, as determined in accordance with 5.3 of appendix F to this subpart, the resulting sum then being rounded off to the nearest kilowatt-hour per year.

(5) The combined energy efficiency ratio for room air conditioners, expressed in Btu's per watt-hour, shall be the quotient of:

(i) The cooling capacity in Btus per hour as determined in accordance with 5.1 of appendix F to this subpart multiplied by the representative average-use cycle of 750 hours of compressor operation per year, divided by

(ii) The combined annual energy consumption as determined in accordance with paragraph (f)(4) of this section multiplied by a conversion factor of 1,000 to convert kilowatt-hours to watt-hours, the resulting quotient then being rounded off to the nearest 0.1 Btu per watt-hour.

* * * * *

■ 4. Appendix D to subpart B of part 430 is amended by adding introductory note to read as follows:

Appendix D to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Note: Manufacturers must continue to use appendix D to subpart B of part 430 until the energy conservation standards for clothes dryers at 10 CFR 430.32(h) are amended to require mandatory compliance using appendix D1.

* * * * *

■ 5. Appendix D1 is added to subpart B of part 430 to read as follows:

Appendix D1 to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Note: Appendix D1 to subpart B of part 430 is informational only. Manufacturers must continue to use appendix D to subpart B of part 430 until compliance with any amended energy conservation standards for clothes dryers at 10 CFR 430.32(h) is required, at which time manufacturers must use appendix D1.

1. Definitions

1.1 "Active mode" means a mode in which the clothes dryer is connected to a main power source, has been activated and is performing the main function of tumbling the clothing with or without heated or unheated forced air circulation to remove moisture from the clothing, remove wrinkles or prevent wrinkling of the clothing, or both.

1.2 "AHAM" means the Association of Home Appliance Manufacturers.

1.3 "AHAM HLD–1" means the test standard published by the Association of Home Appliance Manufacturers, titled "Household Tumble Type Clothes Dryers" (2009), AHAM HLD–1–2009 (incorporated by reference; see § 430.3).

1.4 "Automatic termination control" means a dryer control system with a sensor which monitors either the dryer load temperature or its moisture content and with a controller which automatically terminates the drying process. A mark, detent, or other visual indicator or detent which indicates a preferred automatic termination control setting must be present if the dryer is to be classified as having an "automatic termination control." A mark is a visible single control setting on one or more dryer controls.

1.5 "Bone dry" means a condition of a load of test clothes which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed, and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less.

1.6 "Compact" or "compact size" means a clothes dryer with a drum capacity of less than 4.4 cubic feet.

1.7 "Conventional clothes dryer" means a clothes dryer that exhausts the evaporated moisture from the cabinet.

1.8 "Cool down" means that portion of the clothes drying cycle when the added gas or electric heat is terminated and the clothes continue to tumble and dry within the drum.

1.9 "Cycle" means a sequence of operation of a clothes dryer which performs a clothes drying operation, and may include variations or combinations of the functions of heating, tumbling, and drying.

1.10 "Drum capacity" means the volume of the drying drum in cubic feet.

1.11 "IEC 62301" means the test standard published by the International Electrotechnical Commission ("IEC"), titled "Household electrical appliances–Measurement of standby power," Publication 62301 (first edition June 2005) (incorporated by reference; see § 430.3).

1.12 "Inactive mode" means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.13 "Moisture content" means the ratio of the weight of water contained by the test load to the bone-dry weight of the test load, expressed as a percent.

1.14 "Moisture sensing control" means a system which utilizes a moisture sensing element within the dryer drum that monitors the amount of moisture in the clothes and automatically terminates the dryer cycle.

1.15 "Off mode" means a mode in which the clothes dryer is connected to a main power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.16 "Standard size" means a clothes dryer with a drum capacity of 4.4 cubic feet or greater.

1.17 "Standby mode" means any product modes where the energy using product is connected to a main power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer.

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (e.g., switching) and that operates on a continuous basis.

1.18 "Temperature sensing control" means a system which monitors dryer exhaust air temperature and automatically terminates the dryer cycle.

1.19 "Ventless clothes dryer" means a clothes dryer that uses a closed-loop system with an internal condenser to remove the evaporated moisture from the heated air. The moist air is not discharged from the cabinet.

2. Testing Conditions

2.1 *Installation.* Install the clothes dryer in accordance with manufacturer's instructions. For conventional clothes dryers, as defined in 1.7, the dryer exhaust shall be restricted by adding the AHAM exhaust simulator described in 3.3.5.1 of AHAM HLD–1 (incorporated by reference; see § 430.3). For ventless clothes dryers, as defined in 1.19, the dryer shall be tested without the AHAM exhaust simulator. Where the manufacturer gives the option to use the dryer both with and without a duct, the dryer shall be tested without the exhaust simulator. All external joints should be taped to avoid air leakage. If the manufacturer gives the

option to use a ventless clothes dryer, as defined in 1.19, with or without a condensation box, the dryer shall be tested with the condensation box installed. For ventless clothes dryers, the condenser unit of the dryer must remain in place and not be taken out of the dryer for any reason between tests. For drying testing, disconnect all console lights or other lighting systems on the clothes dryer which do not consume more than 10 watts during the clothes dryer test cycle. For standby and off mode testing, the clothes dryer shall also be installed in accordance with section 5, paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3). For standby and off mode testing, do not disconnect console lights or other lighting systems.

2.2 *Ambient temperature and humidity.*

2.2.1 For drying testing, maintain the room ambient air temperature at 75 ± 3 °F and the room relative humidity at 50 ± 10 percent relative humidity.

2.2.2 For standby and off mode testing, maintain room ambient air temperature conditions as specified in section 4, paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.3 *Energy supply.*

2.3.1 *Electrical supply.* Maintain the electrical supply at the clothes dryer terminal block within 1 percent of 120/240 or 120/208Y or 120 volts as applicable to the particular terminal block wiring system and within 1 percent of the nameplate frequency as specified by the manufacturer. If the dryer has a dual voltage conversion capability, conduct the test at the highest voltage specified by the manufacturer.

2.3.1.1 *Supply voltage waveform.* For the clothes dryer standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4, paragraph 4.4 of IEC 62301 (incorporated by reference; see § 430.3).

2.3.2 *Gas supply.*

2.3.2.1 *Natural gas.* Maintain the gas supply to the clothes dryer immediately ahead of all controls at a pressure of 7 to 10 inches of water column. If the clothes dryer is equipped with a gas appliance pressure regulator for which the manufacturer specifies an outlet pressure, the regulator outlet pressure shall be approximately that recommended by the manufacturer. The hourly Btu rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. The natural gas supplied should have a heating value of approximately 1,025 Btus per standard cubic foot. The actual heating value, H_n2, in Btus per standard cubic foot, for the natural gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using a standard continuous flow calorimeter as described in 2.4.6 or by the purchase of bottled natural gas whose Btu rating is certified to be at least as accurate a rating as could be obtained from measurements with a standard continuous flow calorimeter as described in 2.4.6.

2.3.2.2 *Propane gas.* Maintain the gas supply to the clothes dryer immediately ahead of all controls at a pressure of 11 to 13 inches of water column. If the clothes dryer is equipped with a gas appliance pressure regulator for which the manufacturer specifies an outlet pressure, the regulator outlet pressure shall be approximately that recommended by the manufacturer. The hourly Btu rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. The propane gas supplied should have a heating value of approximately 2,500 Btus per standard cubic foot. The actual heating value, H_p, in Btus per standard cubic foot, for the propane gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using a standard continuous flow calorimeter as described in 2.4.6 or by the purchase of bottled gas whose Btu rating is certified to be at least as accurate a rating as could be obtained from measurement with a standard continuous calorimeter as described in 2.4.6.

2.4 *Instrumentation.* Perform all test measurements using the following instruments as appropriate.

2.4.1 *Weighing scale for test cloth.* The scale shall have a range of 0 to a maximum of 30 pounds with a resolution of at least 0.2 ounces and a maximum error no greater than 0.3 percent of any measured value within the range of 3 to 15 pounds.

2.4.1.2 *Weighing scale for drum capacity measurements.* The scale should have a range of 0 to a maximum of 500 pounds with resolution of 0.50 pounds and a maximum error no greater than 0.5 percent of the measured value.

2.4.2 *Kilowatt-hour meter.* The kilowatt-hour meter shall have a resolution of 0.001 kilowatt-hours and a maximum error no greater than 0.5 percent of the measured value.

2.4.3 *Gas meter.* The gas meter shall have a resolution of 0.001 cubic feet and a maximum error no greater than 0.5 percent of the measured value.

2.4.4 *Dry and wet bulb psychrometer.* The dry and wet bulb psychrometer shall have an error no greater than ±1 °F.

2.4.5 *Temperature.* The temperature sensor shall have an error no greater than ±1 °F.

2.4.6 *Standard Continuous Flow Calorimeter.* The calorimeter shall have an operating range of 750 to 3,500 Btu per cubic feet. The maximum error of the basic calorimeter shall be no greater than 0.2 percent of the actual heating value of the gas used in the test. The indicator readout shall have a maximum error no greater than 0.5 percent of the measured value within the operating range and a resolution of 0.2 percent of the full-scale reading of the indicator instrument.

2.4.7 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption of the clothes dryer shall have the resolution specified in section 4, paragraph 4.5 of IEC 62301 (incorporated by reference; see § 430.3). The watt meter shall also be able to record a "true" average power as specified in section 5, paragraph 5.3.2(a) of IEC 62301.

2.5 *Lint trap.* Clean the lint trap thoroughly before each test run.

2.6 *Test Clothes.*

2.6.1 *Energy test cloth.* The energy test cloth shall be clean and consist of the following:

(a) Pure finished bleached cloth, made with a momie or granite weave, which is a blended fabric of 50-percent cotton and 50-percent polyester and weighs within +10 percent of 5.75 ounces per square yard after test cloth preconditioning, and has 65 ends on the warp and 57 picks on the fill. The individual warp and fill yarns are a blend of 50-percent cotton and 50-percent polyester fibers.

(b) Cloth material that is 24 inches by 36 inches and has been hemmed to 22 inches by 34 inches before washing. The maximum shrinkage after five washes shall not be more than 4 percent on the length and width.

(c) The number of test runs on the same energy test cloth shall not exceed 25 runs.

2.6.2 *Energy stuffer cloths.* The energy stuffer cloths shall be made from energy test cloth material, and shall consist of pieces of material that are 12 inches by 12 inches and have been hemmed to 10 inches by 10 inches before washing. The maximum shrinkage after five washes shall not be more than 4 percent on the length and width. The number of test runs on the same energy stuffer cloth shall not exceed 25 runs after test cloth preconditioning.

2.6.3 *Test Cloth Preconditioning.*

A new test cloth load and energy stuffer cloths shall be treated as follows:

(1) Bone dry the load to a weight change of ± 1 percent, or less, as prescribed in section 1.5.

(2) Place the test cloth load in a standard clothes washer set at the maximum water fill level. Wash the load for 10 minutes in soft water (17 parts per million hardness or less), using 60.8 grams of AHAM standard test detergent Formula 3. Wash water temperature is to be controlled at 140 ° ± 5 °F (60 ° ± 2.7 °C). Rinse water temperature is to be controlled at 100 ° ± 5 °F (37.7 ± 2.7 °C).

(3) Rinse the load again at the same water temperature.

(4) Bone dry the load as prescribed in section 1.5 and weigh the load.

(5) This procedure is repeated until there is a weight change of 1 percent or less.

(6) A final cycle is to be a hot water wash with no detergent, followed by two warm water rinses.

2.7 *Test loads.*

2.7.1 *Compact size dryer load.* Prepare a bone-dry test load of energy cloths which weighs 3.00 pounds ± .03 pounds. Adjustments to the test load to achieve the proper weight can be made by the use of energy stuffer cloths, with no more than five stuffer cloths per load. Dampen the load by agitating it in water whose temperature is 60 °F ± 5 °F and consists of 0 to 17 parts per million hardness for approximately 2 minutes in order to saturate the fabric. Then, extract water from the wet test load by spinning the load until the moisture content of the load is between 54.0–61.0 percent of the bone-dry weight of the test load.

2.7.2 *Standard size dryer load.* Prepare a bone-dry test load of energy cloths which weighs 8.45 pounds ± .085 pounds.

Adjustments to the test load to achieve the proper weight can be made by the use of energy stuffer cloths, with no more than five stuffer cloths per load. Dampen the load by agitating it in water whose temperature is 60 °F ± 5 °F and consists of 0 to 17 parts per million hardness for approximately 2 minutes in order to saturate the fabric. Then, extract water from the wet test load by spinning the load until the moisture content of the load is between 54.0–61.0 percent of the bone-dry weight of the test load.

2.7.3 *Method of loading.* Load the energy test cloths by grasping them in the center, shaking them to hang loosely, and then dropping them in the dryer at random.

2.8 *Clothes dryer preconditioning.*

2.8.1 *Conventional clothes dryers.* For conventional clothes dryers, before any test cycle, operate the dryer without a test load in the non-heat mode for 15 minutes or until the discharge air temperature is varying less than 1 °F for 10 minutes—whichever is longer—in the test installation location with the ambient conditions within the specified test condition tolerances of 2.2.

2.8.2 *Ventless clothes dryers.* For ventless clothes dryers, before any test cycle, the steady-state machine temperature must be equal to ambient room temperature described in 2.2.1. This may be done by leaving the machine at ambient room conditions for at least 12 hours between tests.

3. Test Procedures and Measurements

3.1 *Drum Capacity.* Measure the drum capacity by sealing all openings in the drum except the loading port with a plastic bag, and ensuring that all corners and depressions are filled and that there are no extrusions of the plastic bag through the opening in the drum. Support the dryer's rear drum surface on a platform scale to prevent deflection of the drum surface, and record the weight of the empty dryer. Fill the drum with water to a level determined by the intersection of the door plane and the loading port. Record the temperature of the water and then the weight of the dryer with the added water and then determine the mass of the water in pounds. Add or subtract the appropriate volume depending on whether or not the plastic bag protrudes into the drum interior. The drum capacity is calculated as follows:

$C = w/d$

C = capacity in cubic feet.

w = weight of water in pounds.

d = density of water at the measured temperature in pounds per cubic feet.

3.2 *Dryer Loading.* Load the dryer as specified in 2.7.

3.3 *Test cycle* Operate the clothes dryer at the maximum temperature setting and, if equipped with a timer, at the maximum time setting and dry the load until the moisture content of the test load is between 2.5 and 5 percent of the bone-dry weight of the test load, but do not permit the dryer to advance into cool down. If required, reset the timer or automatic dry control. If the dryer automatically stops during a cycle because the condensation box is full of water, the test is stopped, and the test run is invalid, in which case the condensation box shall be emptied and the test re-run from the beginning. For ventless dryers, as defined in 1.19, during the time between two cycles, the door of the dryer shall be closed except for loading (and unloading).

3.4 *Data recording.* Record for each test cycle:

3.4.1 Bone-dry weight of the test load described in 2.7.

3.4.2 Moisture content of the wet test load before the test, as described in 2.7.

3.4.3 Moisture content of the dry test load obtained after the test described in 3.3.

3.4.4 Test room conditions, temperature, and percent relative humidity described in 2.2.1.

3.4.5 For electric dryers—the total kilowatt-hours of electric energy, E_t, consumed during the test described in 3.3.

3.4.6 For gas dryers:

3.4.6.1 Total kilowatt-hours of electrical energy, E_{te}, consumed during the test described in 3.3.

3.4.6.2 Cubic feet of gas per cycle, E_{tg}, consumed during the test described in 3.3.

3.4.6.3 Correct the gas heating value, GEF, as measured in 2.3.2.1 and 2.3.2.2, to standard pressure and temperature conditions in accordance with U.S. Bureau of Standards, circular C417, 1938.

3.5 *Test for automatic termination field use factor.* The field use factor for automatic termination can be claimed for those dryers which meet the requirements for automatic termination control, defined in 1.4.

3.6 *Standby mode and off mode power.* Establish the testing conditions set forth in Section 2 "Testing Conditions" of this appendix, omitting the requirement to disconnect all console light or other lighting systems on the clothes dryer that do not consume more than 10 watts during the clothes dryer test cycle in section 2.1. If the clothes dryer waits in a higher power state at the start of standby mode or off mode before dropping to a lower power state, as discussed in section 5, paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3),wait until the clothes dryer passes into the lower power state before starting the measurement. Follow the test procedure specified in section 5, paragraph 5.3 of IEC 62301 for testing in each possible mode as described in 3.6.1 and 3.6.2, except allow the product to stabilize for 30 to 40 minutes and use an energy use measurement period of 10 minutes. For units in which power varies over a cycle, as described in section 5, paragraph 5.3.2 of IEC 62301, use the average power approach described in paragraph 5.3.2(a) of IEC 62301, except allow the product to stabilize for 30 to 40 minutes and use an energy use measurement period not less than 10 minutes.

3.6.1 If a clothes dryer has an inactive mode, as defined in 1.12, measure and record the average inactive mode power of the clothes dryer, P_{IA}, in watts.

3.6.2 If a clothes dryer has an off mode, as defined in 1.15, measure and record the average off mode power of the clothes dryer, P_{OFF}, in watts.

4. Calculation of Derived Results From Test Measurements

4.1 *Total Per-cycle electric dryer energy consumption.* Calculate the total electric dryer energy consumption per cycle, E_{ce}, expressed in kilowatt-hours per cycle and defined as:

$E_{ce} = [53.5/(W_w - W_d)] \times E_{tt} \times$ field use,

Where:

53.5 = an experimentally established value for the percent reduction in the moisture content of the test load during a laboratory test cycle expressed as a percent.

field use = field use factor.

= 1.18 for clothes dryers with time termination control systems only without any automatic termination control functions.

= 1.04 clothes dryers with automatic control systems that meet the requirements of the definition for automatic control systems in 1.4, 1.14 and 1.18, including those that also have a supplementary timer control, or that may also be manually controlled.

W_w = the moisture content of the wet test load as recorded in 3.4.2.

W_d = the moisture content of the dry test load as recorded in 3.4.3.

4.2 *Per-cycle gas dryer electrical energy consumption.* Calculate the gas dryer electrical energy consumption per cycle, E_{ge}, expressed in kilowatt-hours per cycle and defined as:

$E_{ge} = [53.5/(W_w - W_d)] \times E_{te} \times$ field use,

Where:

E_{te} = the energy recorded in 3.4.6.1 field use, 53.5, W_w, W_d as defined in 4.1.

4.3 *Per-cycle gas dryer gas energy consumption.* Calculate the gas dryer gas energy consumption per cycle, E_{ge}, expressed in Btus per cycle as defined as:

$E_{gg} = [53.5/(W_w - W_d)] \times E_{tg} \times$ field use $\times$ GEF

Where:

E_{tg} = the energy recorded in 3.4.6.2

GEF = corrected gas heat value (Btu per cubic feet) as defined in 3.4.6.3, field use, 53.5, W_w, W_d as defined in 4.1.

4.4 *Total per-cycle gas dryer energy consumption expressed in kilowatt-hours.* Calculate the total gas dryer energy consumption per cycle, E_{cg}, expressed in kilowatt-hours per cycle and defined as:

$E_{cg} = E_{ge} + (E_{gg}/3412$ Btu/kWh)

Where:

E_{ge} as defined in 4.2

E_{gg} as defined in 4.3

4.5 *Per-cycle standby mode and off mode energy consumption.* Calculate the dryer inactive mode and off mode energy consumption per cycle, E_{TSO}, expressed in kWh per cycle and defined as:

$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF})] \times K/283$

Where:

P_{IA} = dryer inactive mode power, in watts, as measured in section 3.6.1;

P_{OFF} = dryer off mode power, in watts, as measured in section 3.6.2.

If the clothes dryer has both inactive mode and off mode, S_{IA} and S_{OFF} both equal 8,620 ÷ 2 = 4,310, where 8,620 is the total inactive and off mode annual hours;

If the clothes dryer has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8,620 and the off mode annual hours, S_{OFF}, is equal to 0;

If the clothes dryer has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to 8,620

Where:

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours; and

283 = representative average number of clothes dryer cycles in a year.

4.6 *Per-cycle combined total energy consumption expressed in kilowatt-hours.* Calculate the per-cycle combined total energy consumption, E_{CC}, expressed in kilowatt-hours per cycle and defined for an electric clothes dryer as:

$$E_{CC} = E_{ce} + E_{TSO}$$

Where:

E_{ce} = the energy recorded in 4.1, and

E_{TSO} = the energy recorded in 4.7, and defined for a gas clothes dryer as:

$$E_{CC} = E_{cg} + E_{TSO}$$

Where:

E_{cg} = the energy recorded in 4.4, and

E_{TSO} = the energy recorded in 4.7.

4.7 *Energy Factor in pounds per kilowatt-hour.* Calculate the energy factor, EF, expressed in pounds per kilowatt-hour and defined for an electric clothes dryer as:

$$EF = W_{bonedry}/E_{ce}$$

Where:

$W_{bonedry}$ = the bone dry test load weight recorded in 3.4.1, and

E_{ce} = the energy recorded in 4.1, and

and defined for a gas clothes dryer as:

$$EF = W_{bonedry}/E_{cg}$$

Where:

$W_{bonedry}$ = the bone dry test load weight recorded in 3.4.1, and

E_{cg} = the energy recorded in 4.4,

4.8 *Combined Energy Factor in pounds per kilowatt-hour.* Calculate the combined energy factor, CEF, expressed in pounds per kilowatt-hour and defined as:

$$CEF = W_{bonedry}/E_{CC}$$

Where:

$W_{bonedry}$ = the bone dry test load weight 3.4.1. and

E_{CC} = the energy recorded in 4.6

■ 6. Appendix F to subpart B of part 430 is revised to read as follows:

Appendix F to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners

Note: Manufacturers are not required to use the test procedures and calculations that refer to standby mode and off mode energy consumption, (specifically, sections 2.2, 3.2, 4.2, and 5.3 of this appendix F) until the compliance date of any amended energy conservation standards for room air conditioners at 10 CFR 430.32(b).

1. *Definitions.*

1.1 "Active mode" means a mode in which the room air conditioner is connected to a mains power source, has been activated and is performing the main function of cooling or heating the conditioned space, or circulating air through activation of its fan or blower, with or without energizing active air-cleaning components or devices such as ultraviolet (UV) radiation, electrostatic filters, ozone generators, or other air-cleaning devices.

1.2 "ANSI/AHAM RAC–1" means the test standard published jointly by the American National Standards Institute and the Association of Home Appliance Manufacturers, titled "Room Air Conditioners," Standard RAC–1–2008 (incorporated by reference; see § 430.3).

1.3 "ANSI/ASHRAE 16" means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled "Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners," Standard 16–1983 (RA 2009) (incorporated by reference; see § 430.3).

1.4 "IEC 62301" means the test standard published by the International Electrotechnical Commission, ("IEC"), titled "Household electrical appliances—Measurement of standby power," Publication 62301 (first edition June 2005), (incorporated by reference; see § 430.3).

1.5 "Inactive mode" means a standby mode that facilitates the activation of active mode by remote switch (including remote control) or internal sensor or which provides continuous status display.

1.6 "Off mode" means a mode in which a room air conditioner is connected to a mains power source and is not providing any active or standby mode function and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the clasification of an off mode.

1.7 "Standby mode" means any product modes where the where the energy using product is connected to a mains power source and offers one or more of the following user oriented or protective functions which may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer.

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.*, switching) and that operates on a continuous basis.

2. *Test methods.*

2.1 *Cooling.* The test method for testing room air conditioners in cooling mode shall consist of application of the methods and conditions in ANSI/AHAM RAC–1 sections 4, 5, 6.1, and 6.5 (incorporated by reference; see § 430.3), and in ANSI/ASHRAE 16 (incorporated by reference; see § 430.3).

2.2 *Standby and off modes.* The method for testing room air conditioners in standby and off modes shall consist of application of the methods and conditions in IEC 62301 (incorporated by reference; see § 430.3), as modified by the requirements of this standard. The testing may he conducted in test facilities used for testing cooling performance. If testing is not conducted in such a facility, the test facility shall comply with IEC 62301 section 4.2.

3. *Test conditions.*

3.1 *Cooling mode.* Establish the test conditions described in sections 4 and 5 of ANSI/AHAM RAC–1 (incorporated hy reference; see § 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see § 430.3).

3.2 *Standby and off modes.*

3.2.1 *Test room conditions.* Maintain the indoor test conditions as required by section 4.2 of IEC 62301 (incorporated by reference; see § 430.3). If the standby and off mode testing is conducted in a facility that is also used for testing cooling performance, maintain the outdoor test conditions either as required by section 4.2 of IEC 62301 or as described in section 3.1. If the unit is equipped with an outdoor air ventilation damper, close this damper during testing.

3.2.2 *Power supply.* Maintain power supply conditions specified in section 4.3 of IEC 62301 (incorporated by reference; see § 430.3). Use room air conditioner nameplate voltage and frequency as the basis for power supply conditions. Maintain power supply voltage waveform according to the requirements of section 4.4 of IEC 62301.

3.2.3 *Watt meter.* The watt meter used to measure standby mode and off mode power consumption of the room air conditioner shall have the resolution specified in section 4, paragraph 4.5 of IEC 62301 (incorporated by reference; see § 430.3). The watt meter shall also be able to record a "true" average power specified in section 5, paragraph 5.3.2(a) of IEC 62301.

4. *Measurements.*

4.1 *Cooling mode.* Measure the quantities delineated in section 5 of ANSI/AHAM RAC–1 (incorporated by reference; see § 430.3).

4.2 *Standby and off modes.* Establish the testing conditions set forth in section 3.2. Prior to the initiation of the test measurements, the room air conditioner shall also be installed in accordance with section 5, paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3). For room air conditioners that drop from a higher power state to a lower-power state as discussed in section 5, paragraph 5.1, note 1 of IEC 62301, allow sufficient time for the room air conditioner to reach the lower power state before proceeding with the test measurement.

Follow the test procedure specified in section 5, paragraph 5.3 of IEC 62301 for testing in each possible mode as described in 4.2.1 and 4.2.2, except allow the product to stabilize for 5 to 10 minutes and use an energy use measurement period of 5 minutes. For units in which power varies over a cycle, as described in section 5, paragraph 5.3.2 of IEC 62301, use the average power approach in paragraph 5.3.2(a).

4.2.1 If a room air conditioner has an inactive mode, as defined in 1.5, measure and record the average inactive mode power of the room air conditioner, P_{IA}, in watts.

4.2.2 If a room air conditioner has an off mode, as defined in 1.6, measure and record the average off mode power of the room air conditioner, P_{OFF}, in watts.

5. *Calculations.*

5.1 Calculate the cooling capacity (expressed in Btu/hr) as required in section 6.1 of ANSI/AHAM RAC–1 (incorporated by reference; see § 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see § 430.3).

5.2 Determine the electrical power input (expressed in watts) as required by section 6.5 of ANSI/AHAM RAC–1 (incorporated by reference; see § 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see § 430.3).

5.3 *Standby mode and off mode annual energy consumption.* Calculate the standby mode and off mode annual energy consumption for room air conditioners, E_{TSO}, expressed in kilowatt-hours per year, according to the following:

$$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OFF} \times S_{OFF})] \times K$$

Where:

P_{IA}= room air conditioner inactive mode power, in watts, as measured in section 4.2.1

P_{OFF} = room air conditioner off mode power, in watts, as measured in section 4.2.2.

If the room air conditioner has both inactive mode and off mode, S_{IA} and S_{OFF} both equal 5,115 ÷ 2 = 2,557.5, where 5,115 is the total inactive and off mode annual hours;

If the room air conditioner has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 5,115 and the off mode annual hours, S_{OFF}, is equal to 0;

If the room air conditioner has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OFF} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

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Part IV

Federal Trade Commission

16 CFR Part 305
Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (Appliance Labeling Rule); Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (Appliance Labeling Rule)

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (FTC or Commission) is adopting final amendments to its Appliance Labeling Rule, to implement section 325 of the Energy Independence and Security Act of 2007. The amendments establish labeling requirements for televisions.

DATES: The amendments published in this document will become effective on May 10, 2011, with the exception of the amendments to § 305.20, which will become effective on July 11, 2011. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 2011.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, or Maura Dundon, (202) 326–3311, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 325 of the Energy Independence and Security Act of 2007 (EISA), Public Law 110–140, which amends the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6291 *et seq.*, authorizes the Commission to require energy cost disclosures for televisions and certain other consumer electronics, including personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors. Pursuant to this authority, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comment on proposed energy labels for televisions.[1] Although the NPRM did not propose requirements for other consumer electronics, it requested comment on whether such disclosures would assist consumers. On April 16, 2010, the Commission held a public meeting to augment the written comments.

Having reviewed the written and oral comments, the Commission now publishes the final amendments to the Appliance Labeling Rule, 16 CFR part 305.[2] The amendments require manufacturers to affix an EnergyGuide label to televisions. The label will disclose the unit's estimated annual energy cost and a comparison of energy costs to similar units. The amendments also require paper catalogs and Web sites to disclose the energy information for the televisions they offer for sale. These new requirements will help consumers who want to purchase energy efficient televisions.

This Notice provides background on the Commission's statutory authority, discusses the public comments received in response to the NPRM and at the public hearing, describes the amendments to the Appliance Labeling Rule and the Commission's reasons for promulgating the amendments, and analyzes the impact of those amendments pursuant to the Paperwork Reduction and Regulatory Flexibility Acts.

II. Background

The current Appliance Labeling Rule requires energy disclosures for a variety of home appliances ("covered products"), such as refrigerators and dishwashers. The Rule requires manufacturers to affix a distinctive yellow and black EnergyGuide label to most covered products. For most covered products, the EnergyGuide labels disclose the products' estimated annual energy cost based on Department of Energy (DOE) test procedures, as well as an energy cost comparison to similar products. Energy cost disclosures must also appear in paper catalogs and on Internet sites offering the products for sale. The Rule allows manufacturers to place the U.S. Government ENERGY STAR logo on labels for products that qualify for that program.[3]

Televisions are covered products under EPCA. However, in 1979, the Commission determined not to require labeling because there was little variation in energy use between models and energy costs per model were generally low.[4] In 2007, the Commission revisited labeling televisions as part of a broad review of the EnergyGuide label's effectiveness.[5] Commenters urged the Commission to require television labels because many modern televisions use as much, or more, electricity than products labeled under the current Rule, and energy use varies significantly between similarly sized models. The Commission therefore concluded that energy labeling for televisions likely would assist consumers in purchasing decisions, but noted that DOE test procedures dating from the 1970s were outdated and inapplicable to most modern televisions.[6] Absent an applicable DOE test procedure, the Commission had no authority to require an alternate procedure.

In late 2007, Congress amended EPCA, giving the Commission discretion to require energy disclosures for televisions and four other consumer electronic products[7] even if DOE has not published its own test procedures.[8] Specifically, the Commission may require disclosures if it identifies adequate non-DOE test procedures and finds that disclosures will likely assist consumers to make purchasing decisions.[9] However, the Commission cannot require disclosures if it finds they would not be technically or economically feasible.[10] The amended law also empowers the Commission to consider alternatives to traditional product labels for these consumer electronics.[11] Finally, the amendments

[1] 75 FR 11483 (Mar. 11, 2010).

[2] The Appliance Labeling Rule's full title is "Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act."

[3] ENERGY STAR is a voluntary government labeling program that identifies high-efficiency products. The Environmental Protection Agency (EPA) administers the ENERGY STAR program. *See http://www.energystar.gov*.

[4] The NPRM discusses the statutory and administrative background of television labeling in greater detail. 75 FR at 11483–84.

[5] 72 FR 49948, 49962 (Aug. 29, 2007); 72 FR 6836, 6857–58 (Feb. 13, 2007).

[6] *Id.* Until October 2009, DOE's regulations contained a test procedure created for analog cathode-ray tube (CRT) products and relied on a black and white static test pattern. DOE repealed that television test procedure. 74 FR 53640 (Oct. 20, 2009).

[7] The four products are personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors. 42 U.S.C. 6294(a)(2)(I)(i).

[8] *Id.* § 6294(a)(2)(I)(ii). If DOE publishes applicable test procedures for the specified consumer electronics, the labeling requirements are no longer discretionary: the Commission must issue disclosure requirements using the DOE procedures within 18 months of their publication. *Id.* § 6294(a)(2)(I)(i).

[9] *Id.* § 6294(a)(2)(I)(ii).

[10] *Id.* § 6294(a)(2)(I)(iv).

[11] Specifically, EPCA empowers the Commission to "prescribe labeling *or other disclosure*

provide the Commission with authority to require labeling or other disclosures for any other consumer product not specifically listed in the statute if the FTC determines such labeling is likely to assist consumers in making purchasing decisions.[12]

In response to the EPCA amendments, on March 16, 2009, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on the need for television energy disclosures.[13] Given the lack of an applicable DOE test procedure, the ANPR proposed requiring a recently developed test procedure adopted by the ENERGY STAR program. The ANPR also sought comment on the format of the television disclosures and the need for disclosures for other consumer electronics.

III. Notice of Proposed Rulemaking

After reviewing the ANPR comments, the Commission published an NPRM on March 11, 2010, which proposed a label with energy disclosures derived from the ENERGY STAR test.[14] The label would disclose the television's annual energy cost in dollars, its annual energy use in kilowatt hours, and an energy cost comparison with televisions of similar screen sizes. The proposed label would employ a black-on-yellow design, similar to EnergyGuide labels currently in use for other products. Manufacturers would affix the labels to the front of televisions, so that they are visible to consumers looking at models displayed in retail stores. The NPRM provided three choices for the label shape and attachment: a rectangular horizontal adhesive label affixed to the bezel (the rim bordering the screen); a vertical rectangular label essentially identical to the horizontal label; and a triangular static cling label affixed to the bottom right-hand corner of the screen. The NPRM sought comment on whether the bezel labels should be affixed in a consistent location, whether some televisions were too small for the proposed labels, and whether the label disclosures should appear on television packaging.

In addition, the NPRM proposed requiring paper catalogs and Web sites selling televisions to include either a copy of the EnergyGuide label or a text statement of the product's annual energy cost. Paper catalogs and Web sites choosing the latter option would not have to include the energy cost comparison.

Finally, the NPRM sought comments on labeling other consumer electronics, but did not propose requiring labels for those products.

IV. Public Comments and Final Rule

Twenty-three commenters responded to the NPRM, and the Commission received further public comment during an April 16, 2010, public meeting.[15] The Commission's responses to those comments are detailed below.

A. The Need for Television Disclosures

In its NPRM, the Commission explained that television labels are likely to assist consumers in their purchasing decisions because televisions consume large amounts of electricity, energy use varies considerably among competing models, and consumers are likely to use energy information in their purchasing decisions.[16] No commenter challenged these facts or opposed a disclosure requirement. Indeed, although there were disagreements on implementation details, commenters from all sectors supported disclosure, including manufacturers, retailers, private individuals, utilities, consumer groups, and environmental groups.[17] In light of these comments and the reasons given in the NPRM, the Commission reaffirms its determination that television energy disclosures are likely to assist consumers in making purchasing decisions.

B. Test Procedure for Determining Energy Usage

As discussed below, the final amendments adopt the NPRM's proposal to use the EPA's ENERGY STAR test procedure to provide data for the disclosure.

Background: Where no "applicable" DOE test exists, EPCA authorizes the Commission to use "adequate non-Department of Energy test procedures" to obtain information for energy disclosures.[18] DOE does not currently have a test procedure for televisions.[19] Accordingly, the NPRM proposed using the EPA's ENERGY STAR test procedure, which is based on the International Electrotechnical Commission (IEC) procedure.[20]

The NPRM noted two additional issues related to test procedures. First, DOE was planning to develop a test procedure and energy efficiency standards for televisions. Second, CEA was developing its own test procedure, although it was unclear if CEA had finalized its protocol. Accordingly, the Commission sought comments on whether it should wait to finalize disclosure rules until DOE, CEA, or both, completed their work.[21]

Comments: No commenters identified any inadequacy with the ENERGY STAR test procedure. However, CEA urged the use of its own standard, CEA–2037, which it published in March 2010.[22] According to CEA, this standard covers all necessary measurements and is also fully consistent with ENERGY STAR's testing criteria.

Sharp, Sony, and Mitsubishi also supported using CEA–2037. Sharp characterized CEA–2037 as the "clearest,

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requirements for the energy use of" the covered consumer electronic products. *Id.* § 6294(a)(2)(I) (emphasis added). EPCA also allows discretionary application of the label content required for other covered products (*e.g.*, energy cost comparison ranges). *Id.* § 6294(c)(9).

[12] Under EPCA, a "consumer product" means any article which consumes energy and is distributed in commerce for personal use or consumption by individuals. *Id.* § 6291(1).

[13] 74 FR 11045 (Mar. 16, 2009). The comments received in response to the ANPR can be found at *http://www.ftc.gov/os/comments/tvenergylabels/index.shtm.*

[14] 75 FR 11483.

[15] The written comments and a transcript of the April 16 public meeting are online at: *http://www.ftc.gov/os/comments/tvenergylabelsnprm/index.shtm.* Unless otherwise stated, the citations for comments in this Notice are: American Council for an Energy-Efficient Economy (ACEEE), #547194–00030; Adamo, #547194–00005; Bang & Olufsen, #547194–00012; People's Republic of China (China), #547194–00031; Consortium for Energy Efficiency (CEE), #547194–00026; Consumer Electronics Association (CEA), #547194–00021; Consumer Electronics Retailers Coalition (CERC), #547194–00015; Consumers Union, #547194–00013; Dabney, #547194–00004; Earthjustice, #547194–00020, #547194–00022, #547194–00023, #547194–00024, #547194–00025; Edison Electric Institute, #547194–00017; Heizer, Mark, #547194–00003; Jarvis, Eric, #547194–00002; Miles, Christopher, #547194–00006; Mitsubishi Digital Electronics America (Mitsubishi), #547194–00019; National Cable & Telecommunications Association, #547194–00018; Natural Resources Defense Council (NRDC), #547194–00011; Northeast Energy Efficiency Partnerships (NEEP), #547194–00014; Pacific Gas and Electric Company, Sacramento Municipal Utility District, Northwest Efficiency Alliance (PG&E), #547194–00027; Panasonic Corporation of North America (Panasonic), #547194–00029; Rollins, Matthew, #547194–00009; Sharp Laboratories of America (Sharp), #547194–00028; Sony Electronics Inc. (Sony), #547194–00016. Citations to the Commission's public meeting are to the transcript page number (Meeting Tr. at x).

[16] 75 FR at 11484–11485.

[17] *See, e.g.*, Mitsubishi; CERC; Miles, Christopher; Rollins, Matthew; PG&E; Consumers Union; and Earthjustice.

[18] 42 U.S.C. 6294(a)(2)(I)(ii).

[19] 74 FR at 53641 (DOE notice repealing its obsolete standard and stating that "DOE will soon begin a rulemaking process to establish a new Federal test procedure * * *").

[20] 74 FR at 11485 ("[T]he ENERGY STAR tests seek to reflect the manner in which consumers are likely to use the product in their homes.").

[21] *Id.*

[22] CEA submitted a copy of CEA–2037, which is copyright protected, as a confidential attachment to its comment. The full procedure is available for purchase on CEA's Web siteWeb site at *http://www.ce.org/Standards/browseByCommittee_7559.asp.*

least ambiguous measurement method" and "harmonious" with the ENERGY STAR program. Sony noted that CEA–2037 was developed by CEA's standards committee with industry input and is consistent with IEC and ENERGY STAR test procedures. Sony also stated that CEA–2037 will provide "additional details to assure that measurements are consistent and repeatable." Mitsubishi noted that the recent version of the ENERGY STAR test references CEA–2037 for some measurement procedures.

Two commenters, NRDC and NEEP, urged the Commission to use the ENERGY STAR test.[23] NRDC noted that manufacturers already use the IEC procedures incorporated into ENERGY STAR and, thus, should be able to adapt quickly within the proposed six month effective date. Moreover, NRDC viewed the CEA standard as "overly restrictive" because it does not let the tester use any mode other than the home (standard) mode. Similarly, PG&E commented that the procedure adopted should be able to adapt to new television features, such as Internet connectivity, as they emerge.

NRDC also raised concerns that the development process for CEA–2037 lacked transparency and did not include all stakeholders.[24] CEA disagreed, stating that "the claim that somehow the CEA standard was not done in an open and transparent way is simply untrue."[25]

Finally, without commenting on the relative merits of CEA–2037, ACEEE and Earthjustice urged the Commission to adopt the ENERGY STAR standard rather than delaying rulemaking for the DOE standard.

Discussion: The final amendments require manufacturers to use the test procedure in the ENERGY STAR program requirements (Version 4.2).[26] For the reasons stated in the NPRM, the ENERGY STAR test procedure is adequate to test televisions as they are typically used by consumers, fulfilling EPCA's requirement that the Commission select an adequate non-DOE test.[27] Moreover, using the ENERGY STAR procedure would provide uniformity across the U.S. government, allowing manufacturers to use a single test for ENERGY STAR and the EnergyGuide label. In light of the unchallenged adequacy of the ENERGY STAR test and the uniformity it would provide, the Commission sees no compelling reason to depart from its proposal.

When DOE completes its own rulemaking to develop a television test procedure for use in that agency's efficiency standards program, the Commission will issue conforming amendments consistent with EPCA's requirement that the labels use information from DOE test procedures when such procedures are available.[28]

C. Content

The final amendments require two primary label disclosures: (1) The television's product-specific estimated annual energy cost, calculated using a standard electricity rate and an estimate of daily hours of television use; and (2) a comparison with the annual energy cost of other televisions with similar screen sizes.

1. Product-Specific Estimated Annual Energy Cost

Background: Under EPCA, the Commission may require the energy disclosure to include estimated annual energy cost or another useful measure of energy consumption.[29] In its NPRM, the Commission proposed that the label list the television's estimated annual energy cost in dollars and its annual energy use in kWh.

To calculate these disclosures using the ENERGY STAR test, the NPRM proposed a standard electricity cost and a standard "duty cycle" (an estimate of the hours the television is on and in standby mode per day). Specifically, the NPRM proposed a standard rate of 11 cents per kWh, which incorporates 2009 DOE cost data rounded to the nearest cent, and a duty cycle of 5 hours on and 19 hours standby per day ("the 5/19 duty cycle").[30] The NPRM proposed the 5/19 duty cycle because the ENERGY STAR program uses that duty cycle to provide annual energy use estimates.[31] The NPRM further reasoned that regardless of actual average usage, the 5/19 duty cycle would establish consistent energy use and cost figures, allowing consumers to compare products.

The NPRM did not propose that the amount of energy consumed by integrated functions, such as a built-in DVD player or Internet connectivity, be included in the annual energy use and cost disclosed on the label. However, the NPRM requested comment on whether the label should inform consumers that the annual energy cost does not include the operation of integrated functions.

Comments: Multiple commenters supported the proposal to calculate annual energy cost and use based on the assumptions of 11 cents per kWh and a 5/19 duty cycle.[32] Consumers Union, however, suggested using an 8/16 duty cycle, arguing that 5 hours underestimates total on-time. Consumers Union also asked the Commission to investigate usage patterns for smaller televisions, which consumers may use for less time because they are placed in secondary locations, like kitchens. Similarly, EEI proposed using a 2/22 or 3/21 duty cycle for televisions smaller than 27″ because consumers use them less than larger televisions.

With the exception of China, no commenter argued that the label's energy use and costs calculations should include the energy consumed by integrated functions. Commenters had varying views, however, regarding whether the label should disclose that it does not include the energy use of those integrated functions. CEE recommended that the label state that integrated functions are not included. On the other hand, Consumers Union opposed such a disclosure, reasoning that integrated functions do not significantly add to energy consumption. It added, however, that the Commission should revisit this issue if new integrated functions increase energy usage.[33] Mitsubishi took

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[23] While NEEP did not specifically address the energy test procedure, it incorporated NRDC's positions. *See* NEEP at 1 ("[W]e would like to express our explicit support for the comments submitted by * * * Natural Resources Defense Counsel.").

[24] NRDC; Meeting Tr. at 22, 33.

[25] Meeting Tr. at 23–24, 40–41.

[26] The test procedure comprises the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug, 2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010).

[27] 75 FR at 11485. Although some commenters argued in favor of the CEA–2037 test, neither they nor other commenters suggested that the ENERGY STAR procedure is inadequate. The Commission does not make any conclusions about the adequacy of CEA–2037 or the transparency of its development.

[28] *See* 42 U.S.C. 6293(c) and 6294(a)(2)(I)(i). The switch to the DOE test procedure will trigger EPCA's requirement that television manufacturers submit annual energy reports to the Commission derived from DOE test procedures. 42 U.S.C. 6296(b)(4); 16 CFR 305.8. At that time, the Commission will set an annual reporting date for television manufacturers. However, both before and after the switch to the DOE test, manufacturers must retain their test data until at least two years after production of the model has terminated. 16 CFR 305.21(a). The Commission may request this data with 30 days notice. *Id.* § 305.21(b).

[29] 42 U.S.C. 6294(c)(1). EPCA gives the Commission discretion to choose the content of television disclosures. 42 U.S.C. 6294(a)(2)(I)(ii), (c)(9).

[30] 5 FR at 11488 (citing DOE energy data published at 74 FR 26675 (June 3, 2009)).

[31] The NPRM also reasoned that the 5/19 duty cycle was within the range of usage provided by ANPR commenters.

[32] *See, e.g.*, Mitsubishi and Panasonic.

[33] Consumer Union also noted that while 20% of televisions sold in the United States in 2010 are forecasted to include Internet connectivity, it is too early to determine if consumers will use this function in a way that significantly increases energy

no position on the disclosure, but asked that any such requirement only apply to models with an integrated function.

Finally, Consumers Union raised an issue about which there was no specific proposal in the NPRM. Specifically, it voiced concern about retesting a television model's energy use, arguing that manufacturers should be required to retest their models whenever "a product design is changed" in order to determine whether the energy information on the label is still accurate.

Discussion: The final amendments adopt the NPRM's proposal to use 11 cents per kWh and a 5/19 duty cycle to calculate annual estimated energy cost and use.[34] No commenters objected to the 11 cents per kWh energy rate.[35]

As some commenters noted, consumers may use their televisions for more or less than five hours per day, but the 5/19 duty cycle provides uniformity between the EnergyGuide and ENERGY STAR's publicly available use estimates, reducing potential consumer confusion. Moreover, the uniform 5/19 duty cycle allows consumers to compare costs between products even if the estimate over or underestimates actual usage. Finally, using different duty cycles based on screen size as suggested by EEI and Consumers Union would prevent consumers from easily comparing the energy use of larger televisions to smaller ones. The Commission, therefore, declines to use a different duty cycle.

The final amendments do not require the label's annual energy calculations to include the energy consumed by integrated functions, nor do they require a disclosure that the integrated functions' energy use is not included. Neither including the energy consumed by integrated functions nor disclosing that those functions' energy use is excluded is likely to assist consumers because the functions currently consume little additional electricity. Moreover, an additional disclosure about the exclusion of integrated functions' energy use would crowd the label. If evidence indicates that integrated functions, especially Internet connectivity, implicate significant new energy use, the Commission may consider amending the Rule.[36]

Lastly, the amended Rule does not specify when manufacturers must retest their models to determine whether the energy information on the label remains accurate. Manufacturers are in the best position to determine when a design change could alter energy consumption, and therefore, when retesting is needed. Manufacturers whose labels do not contain accurate energy information because of design changes will violate 16 CFR 305.4.

2. Comparative Information

Background: Under EPCA, the Commission may require disclosure of comparative energy consumption information for similar products.[37] The NPRM, therefore, proposed requiring a scale on the label comparing televisions of similar diagonal screen sizes in categories of 10" increments. The categories would not separate products by display technology (*e.g.*, they would not compare plasma screens only to other plasma screens). The endpoints of each scale would represent the highest and lowest energy consumption of models on the market in that category, using ENERGY STAR energy data.[38] This data appeared to cover most products on the market, providing ranges that reasonably reflect the energy use of currently available models.[39]

Comments: Commenters generally favored including comparative information on the label, and agreed that screen size, rather than display technology or other factors, should be the basis of comparison.[40] However, many commenters (ACEEE, CEA, CEE, CERC, Consumers Union, Mitsubishi, NRDC, PG&E, Sharp, and Sony) noted that the NPRM's proposed 10" increments were too large because each proposed category would include several common screen sizes.[41] Mitsubishi and a Natural Resources Canada representative explained that consumers tend to shop by screen size, so the Commission's categories would prevent them from easily comparing the products they were considering.[42]

Many commenters, including CEA, Consumers Union, NRDC, Panasonic, PG&E, and Sony, presented specific proposals for grouping televisions into smaller categories of approximately 4"–5" increments, which place only one or two commonly sold screen sizes in each category.[43] NRDC additionally cautioned that the ranges should not allow manufacturers to game the system by slightly increasing their screen size to get into the next higher category, thus appearing more energy efficient in comparison to larger screens. CEE, however, voiced concern that the smaller proposed categories would be "too granular" and would prevent consumers from realizing that they could save energy costs by choosing a smaller screen size.

Discussion: The final amendments require the labels to compare televisions of similar screen sizes. The Commission agrees that the comparison categories should facilitate consumers' easy comparison of similar products, which reflects how they shop in practice. Accordingly, the final amendments adopt the commenters' proposals to reduce the size of the categories to 4–5" in order to place only one or two commonly sold screen sizes in each category.[44] Most of the common screen sizes fall towards the beginning or middle of each category, which should reduce any incentive for "gaming" the

use. However, China commented that Internet Protocol Television ("IPTV") has substantially different energy consumption and usage patterns from other televisions. Therefore, China recommended either exempting IPTVs from the labeling rule, including a disclosure about IPTVs on the proposed label, or creating a separate label for such televisions.

[34] The final amendments also adopt the NPRM's proposal to include additional information on the label consistent with other EnergyGuide labels, including manufacturer name, model number, and the ENERGY STAR logo (where applicable). The label excludes other information, such as the model's screen size or type, because manufacturers routinely provide this information elsewhere and its inclusion would clutter the label.

[35] China requested that the Commission provide a formula to determine the annual energy cost. The ENERGY STAR test and amended Rule sections 305.5(d) and 305.17(f) provide the information necessary to calculate the annual energy cost. The Commission will provide further written guidance to business as necessary to help them comply with the Rule, and Commission staff are also available to discuss compliance directly with manufacturers.

[36] The Commission is not exempting or treating IPTVs differently at this time. There is insufficient information on the record concerning how consumers use IPTV and whether it differs from their use of other televisions.

[37] 42 U.S.C. 6294(c)(1), (c)(9).

[38] The data were submitted voluntarily by manufacturers to qualify their models for ENERGY STAR certification under ENERGY STAR 3.0.

[39] *See, e.g.*, Steven Castle, Stricter Energy Star Standards for TVs Coming—Again, Electronic House, May 28, 2009, *http://www.electronichouse.com/article/stricter_energy_star_standards-for-tvs-coming-again/* ("Most TVs on the market can meet the [ENERGY STAR 3.0] spec.").

[40] *See e.g.*, ACEEE, CEA, CEE, CERC, Consumers Union, Mitsubishi, NRDC, PG&E, Sharp and Sony.

[41] The majority of sales tend to cluster around fixed screen sizes: 19", 22", 26", 32", 37", 40", 42", 46", 55", and 65". *See* CEA and PG&E. An analysis of the data submitted by commenters also shows a cluster of sales around the 15" screen size. The NPRM's proposal would have grouped two or three of these screen sizes into most categories.

[42] Mitsubishi; Meeting Tr. at 67–68. The Canadian regulators also are engaged in a process to require energy labels for televisions.

[43] The commenters offered slightly different proposals for each category size. The one significant difference among the proposals, however, involved smaller televisions. CEA, Panasonic, Sony, and PG&E proposed keeping televisions from 0–20" in one cagtegory, whereas NRDC proposed dividing these televisions into three categories.

[44] The amended Rule includes a table with the ranges at 16 CFR 305.17(f)(5). The final amendments divide smaller televisions into separate categories, thereby keeping the commonly sold screen sizes of 19" and 15" in their own categories. Given the apparent paucity of smaller television models covered by the amended Rule, the 15" category covers models from 0–16".

system by slightly increasing screen size in order to move up into the next category.

CEE's concern that smaller screen size increments will prevent consumers from comparing smaller screens to larger screens is not persuasive. Because consumers tend to shop by screen sizes, categories allowing them to easily compare energy costs for the same screen sizes should help them choose among the models that interest them. Moreover, the estimated annual energy cost, which is the label's primary disclosure, allows for easy comparisons across all categories for those consumers who wish to compare different screen sizes.

The comparison ranges are derived from ENERGY STAR data, as proposed in the NPRM. If a model's energy cost falls outside the high or low end of the comparability range, manufacturers must place the product on the very end of the scale (the high or low end as appropriate).[45]

D. Coverage

As detailed below, the final amendments: (1) Require a label visible from the front of all televisions, except for battery-powered models; and (2) do not require labels on boxes.

1. Labels Visible From the Front of All Televisions; Battery Powered Excluded

Background and Comments: The NPRM proposed that all televisions bear the EnergyGuide label on the screen or bezel.[46] The Commission reasoned that these labels would be easily visible to consumers and would assist them in comparing energy consumption. Bang & Olufsen argued that "label[ing] every single product is inappropriate" because many of the labels will not be visible to consumers before they purchase the item. Instead, it argued that only televisions used in displays should have a label. Sony likewise commented that only display models should bear physical labels because labeling all televisions would be "very labor intensive and costly." However, at the Commission's public meeting, CERC indicated that manufacturers do not designate certain televisions as display models.[47]

CEA and Sharp argued that the Commission should exempt battery-powered televisions. CEA explained that battery-powered televisions are unlike standard televisions in design, energy consumption, and consumer use. Unlike standard televisions, battery-powered models are mobile, can operate on battery power without being connected to the local mains (*i.e.*, into the wall socket), and consume little electricity in order to extend battery life and facilitate mobility. CEA also explained that unlike standard televisions, consumers routinely consider battery life when purchasing a battery-powered television.

Discussion: The final amendments require that all televisions bear a label, not just display models. In practice, retailers do not receive units designated for display by manufacturers. Therefore, limiting the labeling requirements to only certain display models would necessitate the development of a separate regulatory scheme to, among other things, ensure that manufacturers label a sufficient number of models and send those models to retailers, and that retailers display only those particular models. Further, labeling each model provides useful energy consumption information to consumers after they purchase the televisions. Given the need to develop numerous regulations for display models and the benefits that labeling each model provides to consumers, the Commission has determined to require the labeling of all covered units.

The final amendments do not cover battery-powered televisions. This rulemaking has focused on standard televisions, which are designed to be powered exclusively by being plugged directly into a wall outlet. Battery-powered televisions differ significantly from standard televisions: they may be powered by a rechargeable, built-in battery; a supplementary external power supply connected directly to a wall outlet (*e.g.*, an AC adapter); or disposable inserted batteries (*e.g.*, AA alkaline batteries). Although adequate tests may exist to measure these factors, no commenters identified which tests would provide useful energy information to consumers.[48] Accordingly, the Commission declines to cover battery-powered televisions at this time.

2. Boxes Not Labeled

Background and Comments: The NPRM sought comment on whether manufacturers should be required to label product packaging, as well as the televisions themselves, because some retailers place boxes in showrooms. Five commenters (Consumers Union, Earthjustice, ACEEE, CEE, and NEEP) advocated labeling boxes, arguing that box labels provide a back-up source of information in case the label is not visible on the product itself.[49] Earthjustice argued that labeling boxes would help consumers ensure that the model they purchased matched the energy efficiency of the model displayed. It also suggested that retailers may display boxes in addition to or rather than unboxed display models. Similarly, ACEEE stated that retailers may display boxes in a different location from the display models.

Several commenters disagreed, asserting that labeling boxes would not provide useful information. CEA, Mitsubishi, and Sharp argued that the box label would be duplicative. They observed that retailers usually display a television out-of-the-box, and consumers would usually examine a labeled display model or online model before purchase. Sony, Mitsubishi, and Panasonic added that many consumers never see the box prior to purchase, or may never see the box at all if the television is delivered and assembled for them.[50] Additionally, five commenters (CEA, Mitsubishi, Panasonic, Sharp, and Sony) explained that manufacturers print boxes many months before obtaining final test results of the model's energy consumption. Given this practice, a box labeling requirement, in their view, would likely force manufacturers to affix adhesive labels to the boxes after they are printed, rather than printing the disclosure on the box directly.

[45] NRDC reasserted its preference for a one through five star ranking system, stating that ranking systems in other countries have motivated manufacturers to produce efficient models. The Commission's prior studies of the EnergyGuide and light bulb labels, however, suggested that the five-star rating system was more likely to cause confusion with ENERGY STAR than other methods of communicating energy use. *See* 74 FR 57950, 57956 (Nov. 10, 2009); 72 FR 6836, 6844–46 (Feb. 13, 2007). The final amendments, therefore, do not employ such a rating system.

[46] EPCA gives the Commission discretion to chose the location of television disclosures. 42 U.S.C. 6294(a)(2)(I)(ii), (c)(3), (c)(9).

[47] Meeting Tr. at 126.

[48] The ENERGY STAR television test covers battery-powered models, but it specifies that the unit must be "connected to a mains power source" during the test (*i.e.*, plugged into the wall outlet, rather than using the battery). ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010), *supra* note 26, ¶¶ 2.1.1 and 1.G.1. That test does not measure the energy required to recharge the battery itself, nor can it account for the use of disposable alkaline batteries. The commenters did not address whether other tests exist to measure these factors. In addition, any label for a battery-powered television would need to avoid the possibility of consumers misinterpreting cost disclosures as representations about battery life or the cost of disposable batteries.

[49] CEE, however, stated that the Commission should require box labeling only if costs are not unduly burdensome.

[50] CERC commented that labeling both the television and the box may cause "inconsistent or erroneous messaging," but did not elaborate on the nature of the problem.

According to commenters, this would be labor and cost intensive.

Discussion: The final amendments do not require box labels. Although retailers may in some cases display boxes to consumers pre-purchase, the comments indicate that consumers typically examine a display model before purchase. Rather than impose additional cost, substantial in the manufacturers' opinions, to label boxes, the amended Rule relies on labeled models to convey energy cost information. Should this approach prove inadequate, the Commission may revisit the requirement.[51]

E. Label Format

The final amendments require that all covered televisions bear a physical EnergyGuide label that is visible from the front of the product. Additionally, as detailed below, the final amendments increase the size of the comparison scale and require a black-on-yellow color scheme; require a uniform label size; allow a choice between three label formats, including rectangular labels, triangular labels, and an alternate format not affixed directly to the front of the television; do not allow an electronic label in lieu of a physical label; and provide guidance on the label's location to promote uniformity.

1. Size of Comparison Scale and Color Scheme

Background and Comments: The NPRM proposed presenting comparative energy cost information via a scale similar to that used on appliance labels. While commenters generally supported this approach, ACEEE, Consumers Union, Earthjustice, NEEP, NRDC, and PG&E voiced concern about the scale's visibility. Two commenters (Earthjustice and NRDC) noted that televisions are routinely displayed high on showroom walls, and that consumers could not read the comparative information on the proposed labels at that distance. Consumers Union added that larger font sizes would also assist consumers who may have poor eyesight.

Discussion: In response to these concerns, the Commission has for all three label formats increased the comparison information's size and changed its design to improve visibility. The overall size of the labels will not increase significantly.[52] Figure 1 below compares the proposed label on the left and the new label on the right:

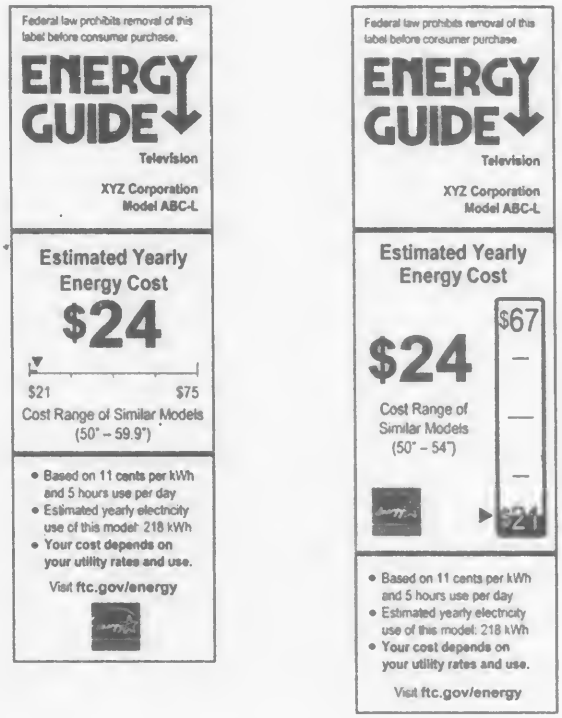

Figure 1: Proposed label (left); New label (right)

Sharp and CEA proposed yellow type on black background, which reverses the standard EnergyGuide scheme. They argued that such an approach would interfere less with the aesthetics of the screen while retaining visibility. The final Rule, however, continues to require the familiar black-on-yellow EnergyGuide design. This uniform color scheme is likely to help consumers already familiar with EnergyGuide

[51] As discussed below in section IV.E.2, manufacturers have the option of labeling the boxes of televisions smaller than 9".

[52] The triangular label's legs increase from 4.2" to 4.5". The horizontal label's width increases from 4.7" to 5.23". The vertical label's height increases from 4.7" to 5.5".

labels better recognize and use the label's information.

2. Uniform Label Size

Background and Comments: The NPRM proposed one size for the rectangular labels and one for the triangular label. The Commission requested comment on whether some models were too small for the proposed label. In response, the Commission received varying comments. Four commenters (NRDC, NEEP, CEA, and Sony) proposed scaling the label size to screen size. Specifically, NRDC proposed that screens larger than 32″ (measured diagonally) should have larger labels than those proposed in the NPRM, and CEA stated that televisions smaller than 22″ should have smaller labels than those proposed. Additionally, the government of China recommended exempting televisions smaller than the label, and CERC stated that "[i]t would not be practical" to require screen labels for televisions smaller than 9.″ CERC noted that such units are usually sold in boxes carried by the consumer to the counter, and thus should be labeled on the box rather than the screen.

Discussion: The final amendments maintain uniform label size regardless of television size. The label need not be enlarged because the graphic component of the redesigned cost comparison scale will be visible even on larger televisions displayed on walls, and a larger label might unnecessarily interfere with the consumer's view of the television screen. The label cannot be reduced for smaller televisions without compromising visibility. However, in light of China's concerns about small televisions and CERC's comment that televisions smaller than 9" are usually sold in boxes carried by consumers to a register, manufacturers may chose to label the boxes of these products, rather than the televisions themselves.[53]

3. Label Format

Background: Under EPCA, the Commission may prescribe the manner in which the label is displayed.[54] The NPRM proposed two formats for television labels: A small rectangular adhesive label affixed either vertically or horizontally on the product's bezel, or a triangular static cling label affixed to the bottom right-hand corner of the screen. Manufacturers would have the flexibility to chose which label to use, as well as the exact placement of the rectangular adhesive, which would allow them to take into consideration the configuration of their particular products. The NPRM also noted that some manufacturers already provide descriptive information (*e.g.,* screen resolution, sound features, and high definition capability) through similar labels on the bezel or screen. The NPRM proposed prohibiting hang tags because they can easily fall off.

Comments: Several commenters observed that many newer models, which have narrow or no bezels, would have to use the on-screen cling labels under the proposed Rule. Sony, Panasonic, Mitsubishi, and Bang & Olufsen, however, voiced concern that cling labels could damage television screens, especially newer technologies with delicate optical coatings, or that consumers would damage the screen trying to remove the labels.[55] In contrast, ACEEE expressed support for the labels, stating that 3M, an adhesive manufacturer, concluded that labels could be made safe for use on television screens. Finally, CEA favored both the adhesive and cling label options, but noted manufacturers' and retailers' concerns about damage.

In light of these concerns, four commenters (Sony, Mitsubishi, Sharp, and CEA) urged the Commission to give manufacturers the flexibility to display the label in a way that does not require them to affix the label directly to the screen or bezel. At the public meeting, Sharp demonstrated a design currently used in Canada which attaches to the back of the television and folds over the television, so that the information is visible from the front of the screen.[56]

Commenters largely supported prohibiting hang tags. CERC, NRDC, and Sony (in its capacity as a retailer) agreed that hang tags should not be permitted because they may become dislodged or twisted.[57] However, CEA stated that the Commission had not presented any evidence about why hang tags are unacceptable, and Consumers Union suggested that hang tags could be used on televisions too small to be labeled.

Discussion: In response to commenter concerns about screen damage, the final amendments allow manufacturers to affix the label anywhere on the television, as long as the label itself is visible to someone viewing the front of the television. Accordingly, the final amendments give manufacturers the choice of using either a rectangular adhesive label adhered to the horizontal or vertical bezel; a triangular cling label affixed to the lower right-hand corner of the screen; or a rectangular or triangular label affixed using an alternate method anywhere on the television. Whichever format is used, manufacturers must ensure that the label is fully and prominently visible to consumers from the front of the television, will not become dislodged during normal handling throughout the distribution chain, and will not become obscured or dislodged under normal retail conditions. The amended Rule does not permit hang tags, defined as a label affixed "using string or similar material,"[58] because they may become dislodged.[59]

Thus, the final amendments require an effective disclosure, but give manufacturers the flexibility to affix the label in a way that avoids any potential damage to the product and works for products with different configurations. The final amendments also accommodate evolving technology if televisions' physical shape and screen composition change over time.

4. Electronic Labeling Not Allowed To Satisfy the Amended Rule

Background and Comments: Sony, Panasonic and Sharp proposed an electronic or virtual label programmed to appear on the screen in the television's "retail mode."[60] In their view, the electronic label would reduce the costs of printing and affixing physical labels. Sony added that an electronic label would also reduce the risk of mislabeling.

ACEEE and NEEP, however, opposed the electronic label. They noted that Australian regulators rejected a similar proposal for several reasons. First, the regulators were concerned that continuously displaying the electronic

[53] Because most televisions smaller than 9″ are battery-powered and thus not covered by the final amendments, the Commission anticipates that few televisions boxes will be labeled.

[54] 42 U.S.C. 6294(c)(3), (c)(9).

[55] At the Commission's public meeting, CEE stated that one retailer in a voluntary television labeling project reported that cling labels damaged screens. Meeting Tr. at 50–52. However, a representative from the Collaborative Labeling and Appliance Standards Program (CLASP) clarified that the damage in that case was due to defective labels. Meeting Tr. at 52–53.

[56] *Id.* at 62–63.

[57] CERC discussed hang tags at the public meeting. *Id.* at 11. The other commenters discussed the matter in their written submissions.

[58] 16 CFR 305.11(d)(2).

[59] The restriction is consistent with the Commission's current prohibition against exterior hang tags on other covered appliances. *See* 72 FR at 49960–61 (discussing the Association of Home Appliance Manufacturers comment stating that hang tags can become dislodged). The Commission currently allows interior hang tags for some products with interiors often examined by consumers, such as refrigerators. Because interior hang tags are obviously inappropriate for televisions, the Commission prohibits hang tags entirely here.

[60] The NPRM did not propose an electronic label. Commenters first proposed the electronic label at the April 16, 2010 public meeting, followed by written comments in support.

disclosure could damage the screen, and therefore the label would only be intermittently displayed. Second, Australian regulators worried that retail staff would turn off the retail mode to display an unobstructed image to customers. Finally, they expressed concern that the electronic label would require retailers to operate showroom models continuously, which would waste energy.

CEA suggested further study of the electronic label, but cautioned that too many technological issues (such as font, access, layout, and rendering) remain unexplored for a timely decision. CEA urged that consideration of the electronic label not delay the present rulemaking.

Discussion: The amended Rule does not permit electronic labels to satisfy its requirements. As CEA noted, the method for implementing an electronic label is unclear. Furthermore, the concerns noted by the Australian regulators suggest significant pitfalls, including the fact that the electronic image might appear only periodically. These potential problems could significantly reduce the labels' ability to assist consumers in their purchasing decisions. Moreover, although an electronic label would save the costs associated with the physical label, the television would have to be on continuously to display the label, which may offset those savings. Given these uncertainties, the Commission declines to allow electronic labels at this time.

5. Location

Background: The Commission's NPRM proposed requiring manufacturers to affix the labels directly to the front of the screen. The triangular label would appear on the lower right-hand corner of the screen, and the rectangular label would be placed on the horizontal or vertical bezel. The Commission sought comment on whether manufacturers should be given discretion on the precise placement of the rectangular label on the bezel.

Comments: Sony and Panasonic argued that a physical label affixed to the screen will interfere with customers' view of the screen. As discussed above, they proposed providing the information in an electronic label. Panasonic suggested labeling the television's side or back in addition to the electronic label, and Sony suggested labeling a non-viewing surface, such as the television stand. China likewise commented that the label should be placed on the side or back in order not to interfere with "normal use," especially for smaller screens. In contrast, five commenters (ACEEE, CEE, NEEP, NRDC and PG&E) advocated a physical label on the front of the television so consumers can see the label while shopping. With respect to the rectangular label's precise location on the bezel, CEE and Consumers Union favored requiring a uniform location for easy comparison.

Discussion: The final amendments require that all labels be visible from the front of the television so that consumers can easily see them on display models. Consumers are not likely to see a label attached to the side or back, and as discussed above, the Commission rejected the proposal to display an electronic label. The labels are small enough not to interfere with consumers' view, which should assuage commenters' concern that the label will block the screen.

The final amendments specify the label's location on the television because a uniform location will help consumers to more easily find the label. However, given that televisions have varying configurations, the Rule provides manufacturers flexibility in placement of the rectangular and alternative labels. The rectangular label should be located on a bezel in the bottom right-hand corner of the television. Specifically, the horizontal rectangular label shall be located on the far right of the bottom bezel and the vertical rectangular label shall be located on the bottom of the right-hand bezel. However, if the television's configuration prevents such placement (*e.g.*, if the model has buttons on the bottom right-hand bezel), manufacturers may adhere the rectangular label to another location on the bezel. Similarly, the alternative label should be visible from the front of the television, near the bottom right-hand corner. However, manufacturers may use another prominent location visible from the front of the television if the product's configuration or the alternative label's design prevents such placement.[61]

The final amendments do not give flexibility in the location of the triangular cling label, which must be placed on the lower right-hand corner of the screen. There is no indication that varying configurations require flexibility for the labels placed directly on the screen.

[61] The alternative label presented at the Commission's public meeting was designed to hang over the top of the television. Meeting Tr. at 62–63. If this label meets the rest of the Rule's requirements, its location would be in compliance with the amended Rule because its design requires it to appear at the top of the television rather than the bottom.

F. Catalog Disclosures

The final amendments require catalogs (*i.e.*, publications, including those on the Internet, from which a consumer can order merchandise) to display EnergyGuide information for televisions offered for sale. The amendments specify different disclosures for paper and online catalogs. Additionally, to facilitate compliance, the amendments require manufacturers to provide copies of the EnergyGuide labels online.

Background: The NPRM proposed requiring catalogs that sell televisions to either: (1) Display an image of the full EnergyGuide label for each product; or (2) state the product's annual energy cost derived from the label, along with a generic disclosure that energy costs will vary with utility rates and use. Sellers choosing the latter option would not need to publish the comparative information found on the label. This proposal is consistent with current Commission requirements for covered appliances sold through catalogs.[62] The NPRM did not distinguish between paper and online catalogs.

Comments: Some commenters sought clarification concerning the scope of the disclosure requirements. Specifically, CERC asked the Commission to clarify that "circulars and flyers" are not subject to the disclosure requirements, and that manufacturers must provide the labels to retailers for use in their catalogs. NRDC asked the Commission to clarify that Web sites of brick-and-mortar stores must meet the catalog disclosure requirement, and that the Rule does not apply only to retailers that sell exclusively online.

The commenters also discussed the proposed disclosures for both paper and online catalogs. Two commenters specifically addressed paper catalog disclosures. Earthjustice objected to the Commission's proposal to allow paper catalog sellers the option of disclosing the television's annual energy cost without the comparative information. It argued there is no legal or rational basis to allow catalog sellers to disclose less information than what appears on the label. Earthjustice contended that consumers cannot be expected to collect cost information for each television and

[62] 16 CFR 305.20. This provision implements EPCA's requirement that a "catalog" must "contain all information required to be displayed on the label, except as otherwise provided by the rule of the Commission." 42 U.S.C. 6296(a). The current Rule defines "catalog" as any "printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product" 16 CFR 305.2(h).

conduct a comparison of those energy costs themselves. It also argued that there is no evidence that printing a full label in a paper catalog would be burdensome.

CERC, however, argued that print space is at a premium in paper catalogs and that "there is also an environmental issue associated with the additional print space needed for every disclosure requirement." CERC, therefore, supported retaining the option of disclosing only the annual energy cost. CERC also recommended permitting paper catalogs to display a smaller version of the label than what appears in stores. For paper catalogs disclosing only the annual energy cost, CERC recommended allowing them to: (1) Provide the disclosure in the same font size used for the products' other descriptive information; and (2) print the generic information that accompanies the cost disclosure one time on a page, rather than multiple times with each individual product.

With respect to catalogs on the Internet, several commenters (ACEEE, CEA, CEE, Earthjustice, NEEP, NRDC, and PG&E) supported requiring sellers to include an image of the entire EnergyGuide label for each advertised television. For example, Earthjustice stated that, as with paper catalogs, consumers need the full label information and there is no evidence that displaying a full label in a Web site would be burdensome. CERC, however, argued that space is also at a premium on the Internet and, as with paper catalogs, suggested that sellers have the option to display a smaller EnergyGuide label or make energy cost disclosures with one explanatory statement per page.

The commenters also made various proposals about how sellers should display labels on the Internet. For example, Earthjustice argued that the label should appear on each webpage displaying the covered product and adjacent to the first image of the product. It further stated that sellers should not use a hyperlink to lead to the label because consumers may not find the link or understand it leads to energy information. NRDC, however, suggested using an icon that hyperlinks to the label. It proposed placing the icon on the first product screen in close proximity to the product's price and stated that consumers should not have to scroll down or switch to another tab or page to see the icon. CEA similarly suggested either posting the full label or a link to the label on the "product description page."

Discussion: The final amendments require energy disclosures in catalogs that offer televisions for sale. Specifically, the amended Rule applies to all publications that contain "the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product."[63] Flyers and circulars meeting this definition must contain the required disclosures. Further, the definition makes no distinction between brick-and-mortar stores selling online and online-only retailers.

The final amendments depart in several respects from the NPRM proposal and the Rule's catalog disclosures for covered appliances because the amendments require different disclosures for paper and online catalogs. For paper catalogs, the final amendments allow sellers to either display the full EnergyGuide label, or a statement of the television's annual energy cost and a generic explanation that energy costs will depend on utility rates and use. Catalogs that display the text statement do not need to include the comparison scale. EPCA does not require the Commission to include comparative information on the label; rather, it gives the Commission discretion to decide the disclosure's content.[64] Print catalogs have space constraints and formats which may make it difficult to display the full label or the comparison scale. The Commission, therefore, exercises its discretion to give paper catalogs the option of stating the annual energy cost and not including the comparison scale.

Regardless of whether the paper catalog displays the full label or states the product's annual energy cost, the disclosure must appear clearly and conspicuously on each page displaying a television and its price, in close proximity to the price. These requirements should help ensure that consumers can find the energy information. The amendments do not require the use of a specific font size, however, given paper catalogs' differing formats. The amendments also state that if paper catalogs display more than one television model on a page, the seller can state that energy costs will vary once on that page rather than repeating the information for each advertised television. This information, however, must be clear and conspicuous.

Although paper catalog sellers have a choice regarding how to disclose energy information, the final amendments require Internet sellers to display the full EnergyGuide label. Based on the comments, the Commission now finds that the reasons for allowing a space saving text-only disclosure for paper catalogs do not apply to the Internet. Online catalogs have fewer space constraints than paper catalogs and can more easily include the full EnergyGuide label, and information can be condensed by linking to the label. Any such hyperlink, however, must be in the form of a distinctive icon with the EnergyGuide logo in black and yellow.[65]

The final amendments require the label or icon to appear clearly and conspicuously and in close proximity to the product price. These requirements should assist consumers by ensuring that the energy information is easy to find on the Web site and visible. Thus, consumers will not have to scroll down unreasonably or click on a tab or other link to view the label or icon. Internet sellers may scale the label and icon appropriately to accommodate their layout as long they remain readable and recognizable. In further recognition of varying layouts, the amended Rule does not require that the label or icon appear alongside every image of a television on the site. For example, if summary pages list multiple television models and consumers must click on a link to obtain more information about a particular model, the EnergyGuide label or icon does not need to appear next to each model on that webpage. Instead, the label or icon must appear clearly and conspicuously on the television's main page, where a detailed description of the television and its price appear.[66]

Finally, to facilitate catalog seller compliance with the Rule, manufacturers must make images of their labels available on a Web site for linking and downloading by both paper catalog and Internet sellers. The labels must remain available online for two years after the model ceases to be manufactured. This requirement is based on EPCA's mandate that manufacturers "provide" a label, which extends to providing the label online to catalog sellers so that those sellers may comply with the Rule's disclosure requirements.[67]

[63] 16 CFR 305.2(h).

[64] 42 U.S.C. 6296(a) (The catalog disclosure "shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission.").

[65] Sample 13 in Appendix L displays the required icon. The icon does not include the explanatory "Click Here for EnergyGuide Text" suggested by NRDC. The meaning of the link should be clear without this text because the icon consists of the EnergyGuide logo.

[66] The Commission may consider extending the Web site disclosure requirements to all appliances covered under the Rule in the future.

[67] 42 U.S.C. 6296(a). Catalog sellers may create their own versions of the labels rather than using the images provided by the manufacturers, as long as the labels conform to all the specifications in the amended Rule.

G. Retailer Responsibility

The final amendments forbid retailers from removing or rendering EnergyGuide labels illegible.

Background: The NPRM proposed that manufacturers and private labelers bear the responsibility for affixing labels to televisions. Retailers would be prohibited from removing or rendering the labels illegible, consistent with the Rule's requirements for other covered products,[68] but would not have additional responsibilities to label the televisions themselves.

Comments: In response to the NPRM, Earthjustice argued that EPCA's "express statutory mandate" requires the Commission to "hold retailers accountable for ensuring that the products they display and sell are properly labeled." Earthjustice focused on EPCA's requirement that the labeling rule must "require that each covered product * * * bear a label"[69] which is "displayed in a manner * * * likely to assist consumers."[70] In Earthjustice's view, this can only be accomplished if retailers have an affirmative duty to ensure the televisions are properly labeled in stores.

Earthjustice also argued that the Commission's failure to impose retailer obligations would be arbitrary and capricious.[71] Citing a 2007 Government Accountability Office (GAO) report finding that many covered products lacked a visible label in retail stores,[72] Earthjustice argued that the Commission "cannot rationally find its rules require labels to be displayed 'in a manner * * * likely to assist consumers in making purchasing decisions' when those rules in fact allow the person selling the product to the consumer to display no label at all, or a label that is illegible or located where it cannot be viewed by the consumer."

In contrast, CERC, the retailers' trade association, argued that requiring retailers to affix or reaffix missing labels would cause "chaos." In CERC's view, the retailer would not be able to quickly or easily determine the product to which the label belongs, and as a consequence may attach the label to the incorrect product.[73]

Discussion: The final amendments adopt the NPRM's proposal to require only manufacturers and private labelers to affix the labels. The amendments prohibit both manufacturers and retailers from removing the label or rendering it illegible.

EPCA does not require the Commission to impose additional responsibility on retailers, as Earthjustice argues. The EPCA provisions Earthjustice cites (the labeling rule must be "applicable to all covered products"[74] and "require that each covered product * * * bear a label"[75] which is "displayed in a manner * * * likely to assist consumers"[76]) do not direct the Commission to require retailers to label products. Instead, these broadly worded passages address labeling generally, with no specific reference to retailers.

The final amendments reasonably implement EPCA, in conformance with the statutory provisions Earthjustice cites. They are applicable to all covered products and require that each covered product bear a label displayed in a manner likely to assist consumers.[77] The final amendments create a network of measures intended to keep the label on the television to allow consumers to see it on a display model in the store. First, the manufacturers or private labelers must affix an adhesive or cling label to all televisions, or choose an alternate method of attachment. They must affix the label so that it will not become dislodged in the distribution chain and will remain attached and visible in the showroom under normal retail conditions. Second, the final amendments prohibit hang tags, which the Commission has previously determined often became dislodged if attached to the exterior of appliances.[78] Hang tags were likely a major contributing factor to the problems identified in the GAO report.[79] Third, retailers may not remove the label or render it illegible. Retailers cannot, for example, display a television intended for examination by consumers in a way that obscures the label. The final amendments thus fulfill EPCA and are reasonably calculated to ensure that the labeling problems detected by the GAO do not occur with television labels.

The Commission anticipates that the labeling system created by the final amendments will result in consumers receiving energy information while avoiding the imposition of costs on retailers and the possibility that retailers will attach labels to incorrect products. If experience with implementing the final amendments suggests that improvements are necessary, the Commission can revisit the requirements at a later date.

H. Timing

Background and Comments: Under EPCA, any FTC labeling requirements for consumer electronics shall be effective "not later than" 18 months after promulgation.[80] In the NPRM, the Commission sought comment on a six-month effective date.

The commenters had different views on this proposal. Several commenters (ACEEE, CEE, Earthjustice, NRDC) supported a six-month effective date, stating that it would ensure consumers receive the benefit of the labels as soon as possible. CERC, however, proposed nine months, stating that catalog sellers need additional time to change their designs. Sony asked for a January 2012 effective date, while both Bang & Olufsen and China recommended a twelve-month effective date.

Many manufacturers were more concerned with setting the effective date at the beginning of the industry's production cycle than with the length of the compliance period. For example, Panasonic and Mitsubishi believed that six months provided sufficient lead time as long as the effective date coincided with the production cycle. The manufacturers, however, disagreed about the precise start of the production cycle. CEA, Mitsubishi, and Sharp suggested an effective date in early summer, but Panasonic suggested that March 2011 would allowed continuity with the production cycle.

Discussion: The final amendments provide two different effective dates: May 10, 2011 for physical labels; and July 11, 2011 for catalog disclosures. The six-month effective date balances the goals of providing manufacturers with the necessary time to comply with the new requirements and expeditiously providing consumers the benefit of the

[68] 16 CFR 305.4(a)(2).

[69] 42 U.S.C. 6294(c)(1). Earthjustice also cites an additional similar provision of EPCA requiring that the Commission's rule apply to "all covered products." 42 U.S.C. 6294(a)(1).

[70] 42 U.S.C. 6294(c)(3).

[71] In addition to arguing that EPCA expressly mandates the Commission to impose additional duties on retailers, Earthjustice argued that EPCA gives the Commission the authority to impose additional retailer duties.

[72] United States Government Accountability Office, Energy Efficiency—Opportunities Exist for Federal Agencies to Better Inform Household Consumers, GAO–07–1162, Sept. 2007, at 6.

[73] Meeting Tr. at 45–46; *see also* CERC's written comment.

[74] 42 U.S.C. 6294(a)(1).

[75] 42 U.S.C. 6294(c)(1).

[76] 42 U.S.C. 6294(c)(3).

[77] *See* 42 U.S.C. 6294(a)(1), 6294(c)(1) and (c)(3).

[78] 72 FR at 49960–61. In their comments to this NPRM, CERC, NRDC, and Sony also identified hang tags as problematic.

[79] In addition, televisions may be less likely to suffer the missing label problems identified hy the GAO report, regardless of the mode of labeling. As discussed above in section IV.E.1, several commenters observed that televisions are routinely displayed high on retail store walls. Unlike the appliances at issue in the GAO report, which are displayed on the showroom floor, television labels will be often out of reach and therefore less likely to be removed by consumers viewing the products.

[80] 42 U.S.C. 6294(a)(2)(I)(iii).

labels. This effective date also should address most manufacturers' concerns about interrupting their production cycles because it occurs prior to the summer start date of most cycles. The catalog disclosure requirements become effective in eight months because catalog sellers (both online and paper) will likely require additional time to receive label information from manufacturers and redesign their catalogs. Under EPCA, the final amendments do not apply to any products manufactured before the six-month effective date.[81]

V. Other Consumer Electronics

The NPRM sought further comment about labeling cable and satellite set-top boxes, stand-alone digital video recorder boxes, personal computers, personal computer monitors, and other consumer electronics, but did not propose any labeling requirements for those products, choosing instead to focus on televisions. The Commission received several comments in response. In order not to delay implementation of television labeling, the Commission will review these comments and consider whether to propose labeling requirements for other consumer electronics at a future date.

VI. Section by Section Description of Final Amendments

Definition of Television (section 305.3): The amendments add a definition of televisions that is consistent with the definition used by the ENERGY STAR Specification.[82]

Testing Requirements (section 305.5): The amendments require manufacturers to follow the test procedures required by the ENERGY STAR Specification.

Minor Conforming Changes (sections 305.8 and 305.10): The amendments make minor, conforming changes to sections 305.8 (data submission) and 305.10 (ranges of comparability) to clarify that these sections do not apply to televisions.

Product Labeling (section 305.17): The amendments require manufacturers to affix EnergyGuide labels to televisions on the product's bezel in the form of a small rectangular adhesive label, on the screen in the form of a small triangular cling label, or using an alternate method of attachment that permits the label to be clearly visible from the front of the television. The primary disclosure on the label is the product's estimated annual energy cost.

Catalog Requirements (section 305.20): The amendments require catalogs to include energy disclosures for the televisions they offer for sale. Internet sellers must display the full EnergyGuide label, but may use a distinctive icon to hyperlink to the label. Paper catalogs must include either the full label or a text summary of only the annual cost information.

VII. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, and testing requirements that constitute "information collection requirements" as defined by 5 CFR 1320.3(c) under the regulations that implement the Paperwork Reduction Act (PRA).[83] OMB has approved the Rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084–0069). The amendments require television manufacturers to test and label their products with energy information and to maintain records for two years after a model is discontinued. They also require paper and Internet catalog sellers of televisions to provide energy information. Accordingly, the Commission has submitted a related clearance request to OMB for review under the PRA.

The following burden estimates for the final amendments (cumulatively, 58,867 hours for recordkeeping, testing, and disclosure at an associated labor cost of $874,179) are based on data submitted by manufacturers to the FTC under current requirements and FTC staff's general knowledge of manufacturing practices. The NPRM sought comment on these estimates, but the Commission received no comments in response. Accordingly, the final amendments adopt the NPRM's estimates. The Commission has made minor adjustments to the final burden as a result of changes implemented in the final Rule as noted below.

Testing: Manufacturers need not test each basic model annually; they must retest only if the product design changes in such a way as to affect energy consumption. Staff believes that the frequency with which models will be tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted will be attributable to the Rule's requirements. Nonetheless, given the lack of specific data on this point, the Commission conservatively assumes that all of the tests conducted would be attributable to the Rule's requirements and will apply to that assumption the high-end of the range noted above for frequency of testing. Staff estimates that there are approximately 2,000 basic models, that manufacturers will test two units per model, and that testing would require one hour per unit tested. Given these estimates and the above-noted assumption that 50% of these basic models would be tested annually, testing would require 2,000 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of $39.72 per hour,[84] labor costs for testing would total $79,440.

Recordkeeping: Pursuant to section 305.21 of the amended Rule, manufacturers must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 2,000 basic models, the recordkeeping burden would total 33 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $13.73 per hour,[85] the associated labor cost for recordkeeping would be approximately $450 per year.

Disclosures (Product Labeling): The final amendments required manufacturers to create and affix labels on televisions. The amendments specify the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates that there are 33,000,000 television units distributed in the U.S. per year.[86] Accordingly, the total disclosure burden for televisions would be 55,000 hours (33,000,000 × 6 seconds). Assuming that product labels will be affixed by electronic equipment assemblers at an hourly wage of $13.66 per hour,[87]

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[81] 42 U.S.C. 6294(d).

[82] The Rule's definition excludes battery-powered televisions as well as a sentence in the ENERGY STAR definition that states: "Cathode-ray tube (CRT), liquid crystal display (LCD), and plasma display panel (PDP) are examples of common display technologies." Such a list of examples is not necessary in a regulatory definition.

[83] 44 U.S.C. 3501–3521.

[84] *See* Bureau of Labor Statistics, U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States, 2009, Bulletin 2738, Table 3, at 3–4 (Aug. 2010), available at *http://www.bls.gov/ncs/ocs/sp/nctb1346.pdf* (National Compensation Survey).

[85] *See id.* at 3–24.

[86] *See* ENERGY STAR Unit Shipment and Market Penetration Report Calendar Year 2008 Summary, *http://www.energystar.gov/ia/partners/downloads/2008_USD_Summary.pdf*, at 5 (approximately 26 million television units shipped in 2008, constituting 79% of televisions sold; 26,000,000 ÷ 0.79 = 33,000,000).

[87] *See* National Compensation Survey, *supra* note 84 at 3–30.

cumulative associated labor cost would total $751,300 per year.

Catalog Disclosures: The final amendments would require sellers offering covered products through catalogs (both online and print) to disclose energy use for each television model offered for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

FTC staff estimates that there are 200 online and paper catalogs for televisions that would be subject to the Rule's catalog disclosure requirements.[88] Staff additionally estimates that the average catalog contains approximately 500 televisions and that entry of the required information takes one minute per covered product. The cumulative disclosure burden for catalog sellers is thus 1,667 hours (200 retailer catalogs × 500 televisions per catalog × 1 minute each per television shown). In addition, the final Rule requires manufacturers to post images of their EnergyGuide labels on their Web sites. Given approximately 2,000 total models at five minutes per model, the staff estimates that this requirement will entail a burden of 167 hours, for a total of 1,834 hours associated with the catalog requirement.[89] Assuming that the additional disclosure requirement will be implemented by graphic designers at an hourly wage rate of $23.44 per hour,[90] associated labor cost would approximate $42,989 per year.

Estimated annual non-labor cost burden: Manufacturers are not likely to require any significant capital costs to comply with the final amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 33,000,000 units and $.03 per label, is $990,000 (33,000,000 × $.03).

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[91]

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the label design will be significant. The Commission plans to provide businesses with ample time to implement the requirements. The Commission estimates that these new requirements will apply to about 30 product manufacturers and an additional 200 online and paper catalog sellers of covered products. Out of these companies, the Commission expects that approximately 150 catalog sellers qualify as small businesses. In addition, the Commission does not expect that the requirements specified in the final amendments will have a significant impact on these entities.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission is adopting these amendments to the Appliance Labeling Rule in order to establish labeling requirements for televisions, pursuant to the Commission's rulemaking authority under the Energy Independence and Security Act of 2007.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. The Commission received comments from CERC regarding the impacts of potential retailer requirements on small businesses. However, as discussed in section IV.F of this notice, the final amendments do not adopt those requirements. The Commission also received comments on required disclosures for catalog sellers and the effective date of the final amendments, which are issues that could affect small retail businesses. These issues are discussed in sections IV.F and IV.H of this notice.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, television manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees) or if their sales are less than $8.0 million annually. The threshold for television retailers is $9.0 million. The Commission estimates that fewer than 150 retailer entities subject to the final amendments qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the final Rule will involve some increased costs related to testing, drafting labels, affixing labels to products, and maintaining test records. All of these burdens and the skills required to comply are discussed in the previous section of this document, regarding the Paperwork Reduction Act, and there should be no difference in that burden as applied to small businesses. As explained earlier, the Commission estimates that there are about 150 catalog sellers under the final amendments that would qualify as such entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the final amendments.

F. Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should delay the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. After considering the comments, the Commission has set the Rule's effective date at six months after publication of this notice in the **Federal Register**, which should coincide with the beginning of the annual production cycle for televisions. This should reduce the impacts on manufacturers in response. In addition, the Commission

[88] The number of catalog dealers has increased from the estimate in the NPRM due to revised staff estimates of online sellers.

[89] Unlike retail Web sites that already have established Web pages for the products they offer, some manufacturers may have to create new Web pages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

[90] *See* National Compensation Survey, *supra* note 84, at 3–12.

[91] 5 U.S.C. 603–605.

has set the effective date for the catalog disclosure requirements two months after the labeling requirement for manufacturers. This will provide catalog sellers (which are likely to include small businesses) with additional time to ensure their compliance with the Rule. Finally, the amendments also require manufacturers to post label images online to make it easier for online retailers to post labels for the products they sell.

IX. Final Rule

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

■ For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, add paragraph (u) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(u) *Television (TV)* means a commercially available electronic product designed primarily for the display and reception of audiovisual signals from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other transmission of analog and/or digital signals, consisting of a tuner/receiver and a display encased in a single housing. This definition does not cover models that are designed to operate on built-in rechargeable batteries or inserted batteries.

■ 3. In § 305.4, add paragraph (e)(4) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(4) Televisions manufactured before May 10, 2011.

* * * * *

■ 4. In § 305.5, add paragraph (d) to read as follows:

Testing

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

* * * * *

(d) Determinations of estimated annual energy consumption and the estimated annual operating (energy) costs of televisions must be based on the procedures contained in the EnergyStar Version 4.2 test, which is comprised of the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug–2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010). Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. The Director of the Federal Register has approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the United States Environmental Protection Agency, ENERGY STAR Hotline (6202J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at *http://www.energystar.gov/ia/partners/product_specs/program_reqs/Televisions_Program_Requirements.pdf* [*Telephone:* ENERGY STAR Hotline: 1–888–782–7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580 [*Telephone:* 1–202–326–2830]; and at the National Archives and Records Administration, at *http://www.archives.gov/federal-register/cfr/ibr-locations.html* [*Telephone:* 1–202–741–6030].

§ 305.8 [Amended]

■ 5. Amend § 305.8(a)(1) in the first sentence by adding the word "televisions," after the term "urinals,".

§ 305.10 [Amended]

■ 6. Amend § 305.10(a) in the first sentence by removing the words "or ceiling fans" and adding, in their place, the words "ceiling fans, or televisions".

■ 7. Add § 305.17 to read as follows:

§ 305.17 Television labeling.

(a) *Layout.* All energy labels for televisions shall use one of three shapes: a vertical rectangle, a horizontal rectangle, and a triangle as detailed in Prototype Labels 8, 9, and 10 in Appendix L. All label size, positioning, spacing, type sizes, positioning of headline, copy, and line widths must be consistent with the prototype and sample labels in Appendix L. The minimum label size for the vertical rectangle label is 1.5″ x 5.5″. The minimum size for the horizontal rectangle label is 1.5″ x 5.23″. The minimum size for the triangle label is 4.5″ x 4.5″ (right angle sides).

(b) *Type style and setting.* The Arial series typeface or equivalent shall be used exclusively on the label. Prototype Labels 8, 9, and 10 in Appendix L contain specific directions for type style and setting and indicate the specific sizes, leading, faces, positioning, and spacing to be used. No hyphenations should be used in setting headline or copy text.

(c) *Colors.* The basic colors of all labels and icons covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be printed process black.

(d) *Label types.* The labels must be affixed to the product in the form of either an adhesive label, cling label, or alternative label as follows:

(1) *Adhesive label.* All adhesive labels shall be applied so they can be easily removed without the use of tools or liquids, other than water, but shall be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer and consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25 x 38) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(2) *Cling label.* Labels may be affixed, using the screen's static charge, to the product in the form of a cling label. The cling label shall be affixed in a manner that prevents dislodgment during normal handling throughout the chain of distribution to the retailer and consumer.

(3) *Alternative label.* In lieu of an adhesive or cling label, labels may be affixed using an alternative method to secure the label to the product as long as the method will prevent dislodgment during normal handling throughout the chain of distribution to the retailer and consumer. The label may not be affixed using a hang tag as described in § 305.11(d)(2). The label shall consist of paper stock having a basic weight of not

less than 110 pounds per 500 sheets (25 ½″; x 30 ½″) or other material of equivalent durability.

(e) *Placement—(1) In general.* All labels must be clear and conspicuous to consumers viewing the television screen from the front.

(2) *Adhesive label.* The adhesive label shall be in the shape of a horizontal or vertical rectangle and shall be located on the bezel in the bottom right-hand corner of the television. The horizontal rectangular label shall be located on the far right of the bottom bezel and the vertical rectangular label shall be located on the bottom of the right-hand bezel. Another location on the bezel may be used if the television's configuration prevents such placement.

(3) *Cling label.* The cling label shall be in the shape of a triangle and shall be located in the bottom right-hand corner of the screen.

(4) *Alternative label.* The alternative label shall be in the shape of either a horizontal rectangle, vertical rectangle, or triangle. It shall be visible from the front of the television and located in the bottom right-hand corner of the television. Another prominent location visible from the front of the television may be used if the television's configuration or the mechanism to secure the alternative label prevents such placement.

(f) *Label content.* The television label shall contain the following information:

(1) Headlines, texts, and statements as illustrated in the prototype and sample labels in Appendix L to this part.

(2) Name of manufacturer or private labeler. This requirement shall, in the case of a corporation, be satisfied only by the actual corporate name, which may be preceded or followed by the name of a particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(3) Model number(s) as designated by the manufacturer or private labeler.

(4) Estimated annual energy costs determined in accordance with § 305.5 of this part and based on a usage rate of 5 hours in on mode and 19 hours in standby (sleep) mode per day, and an electricity cost rate of 11 cents per kWh.

(5) The applicable ranges of comparability for estimated annual energy costs based on the labeled product's diagonal screen size, according to the following table:

Screen size (diagonal)	Annual energy cost ranges for televisions	
	Low	High
0–16″ (0 to 16.49″)	$3	$6
17–20″ (16.5 to 20.49″)	4	11
21–23″ (20.5 to 23.49″)	4	13
24–29″ (23.5 to 29.49″)	9	19
30–34″ (29.5 to 34.49″)	11	25
35–39″ (34.5 to 39.49″)	17	31
40–44″ (39.5 to 44.49″)	15	43
45–49″ (44.5 to 49.49″)	18	51
50–54″ (49.5 to 54.49″)	21	67
55–59″ (54.5 to 59.49″)	24	73
60–64″ (59.5 to 64.49″)	31	79
65–69″ (64.5 to 69.49″)	35	83
69.5″ or greater	39	90

(6) Placement of the labeled product on the scale proportionate to the lowest and highest estimated annual energy costs as illustrated in Prototype Labels 8, 9, and 10 and Sample Labels 10, 11, and 12 in Appendix L. When the estimated annual energy cost of a given television model falls outside the limits of the current range for that product, the manufacturer shall place the product at the end of the range closest to the model's energy cost.

(7) The model's estimated annual energy consumption as determined in accordance with § 305.5 and based on a usage rate of 5 hours in on mode and 19 hours in sleep (standby) mode per day.

(8) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A manufacturer may include a part or publication number identification on the label, as long as it appears in the lower right-hand corner of the label and is set in 6-point type or smaller.

(ii) The manufacturer may include the ENERGY STAR logo on the label as illustrated in Sample Labels 10, 11, and 12 in Appendix L. The logo must be 0.375″ wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency covering the televisions to be labeled may add the ENERGY STAR logo to those labels.

(g) *Distribution of labels.* For each television model that a manufacturer distributes in commerce, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in catalogs that advertise televisions. The labels must remain on the Web site for two years after the manufacturer ceases the model's production.

■ 8. In § 305.20, add paragraphs (g) and (h) to read as follows:

§ 305.20 Paper catalogs and Web sites.

* * * * *

(g) *Televisions offered for sale on the Internet.* Any manufacturer, distributor, retailer, or private labeler that advertises televisions on the Internet in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* For each covered television, the Internet seller must display the EnergyGuide label prepared in accordance with § 305.17. The seller may hyperlink to the label as long as it leads directly to the label and the hyperlink is an icon in the form of Sample Icon 13 in Appendix L.

(2) *Format.* The EnergyGuide label or the icon must appear clearly and conspicuously, and in close proximity to the television's price, on each webpage that contains a detailed description of the television and its price. The scale size of the icon and/or the label prototypes in Appendix L may be altered to accommodate the webpage's design, as long as the icon and/or label remain clear and conspicuous to consumers viewing the page.

(h) *Televisions offered for sale in paper catalogs.* Any manufacturer, distributor, retailer, or private labeler that advertises televisions in a paper publication that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* For each covered television, the paper catalog must either:

(i) Display the EnergyGuide label prepared in accordance with § 305.17, or

(ii) (A) State the estimated annual energy cost determined in accordance with § 305.5, and

(B) State the following: "Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and 5 hours of use per day. For more information, visit *http://www.ftc.gov/energy*."

(2) *Format.* The required disclosure must appear clearly and conspicuously, and in close proximity to the television's price, on each page that displays the television and its price. If a catalog displays the EnergyGuide label pursuant to paragraph (h)(1)(i) of this section, the size of the label may be altered to accommodate the paper catalog's design, as long as the label remains clear and conspicuous to consumers. If a catalog includes the statements in paragraph (h)(1)(ii) of this section, the statements must be clear and conspicuous to consumers. If a catalog displays multiple covered televisions on a page, the statement in paragraph (h)(1)(ii)(B) of this section

may be displayed only once per page as long as it is clear and conspicuous.

■ 9. Amend Appendix L by adding Prototype Labels 8, 9, and 10, Sample Labels 10, 11, and 12, and Sample Icon 13:

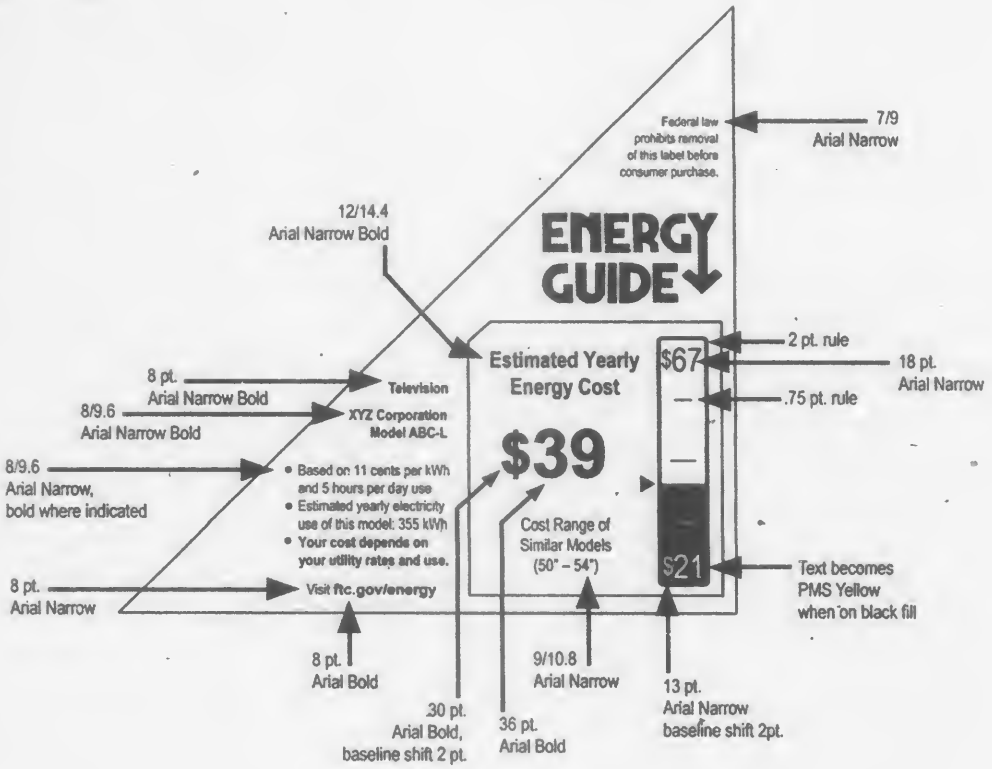
Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750–01–P

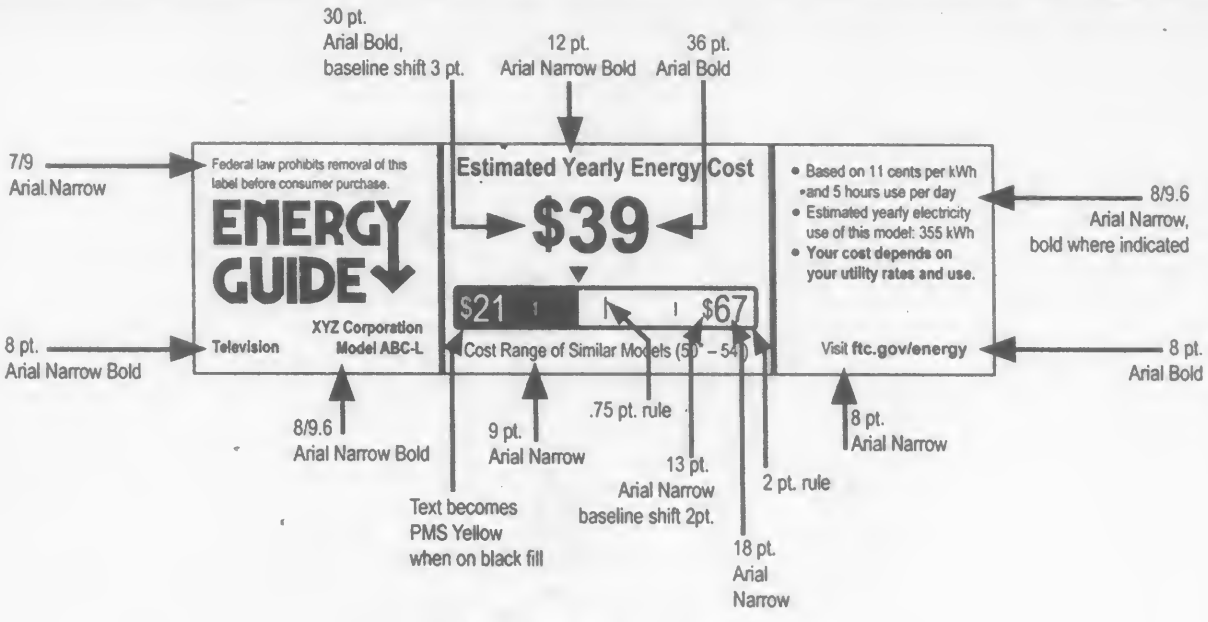
Prototype Label 8

Triangular Television Label



Minimum label size right angle triangle 4.5" x 4.5"

* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

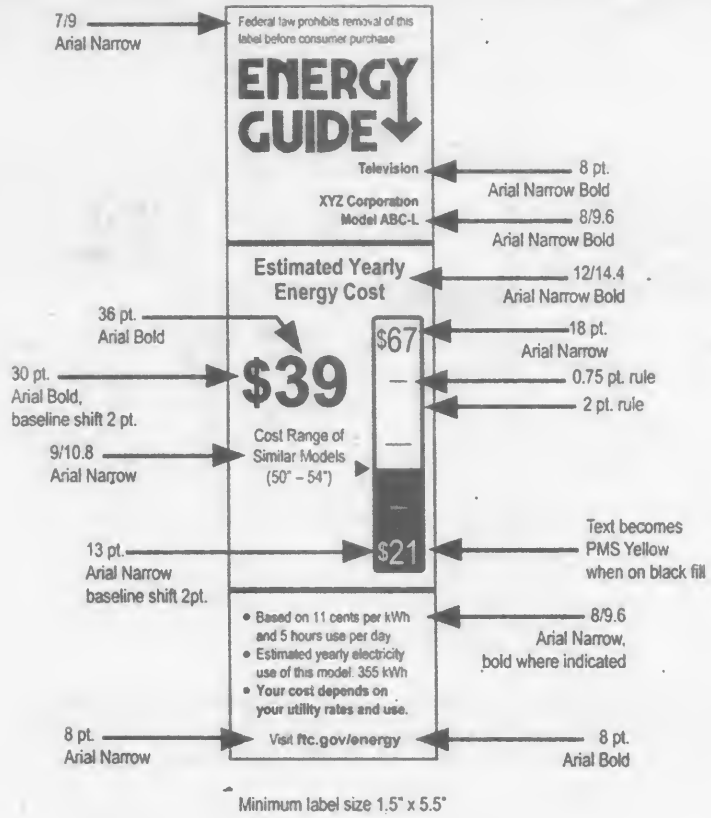


Minimum label size 1.5" x 5.23

* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

Prototype Label 9

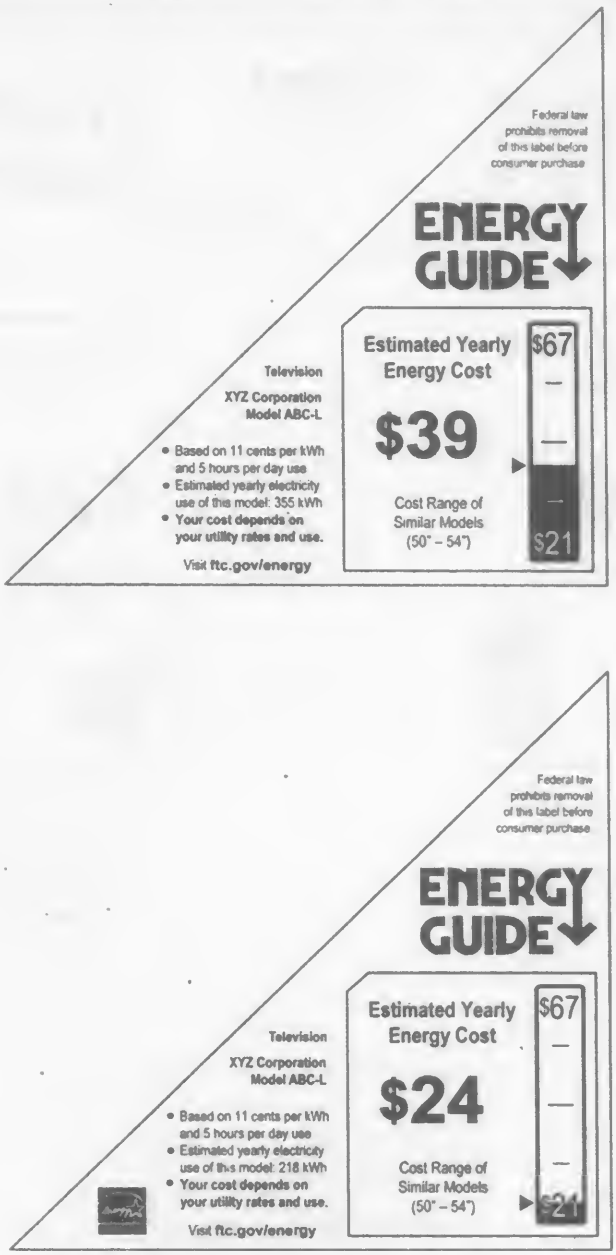
Horizontal Rectangular Television Label



* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

Prototype Label 10

Vertical Rectangular Television Label

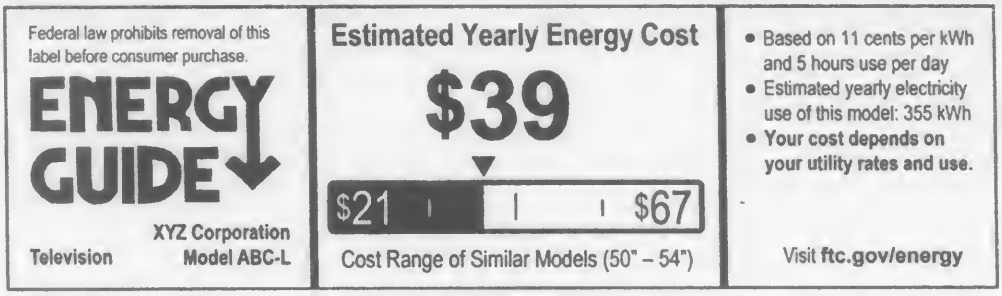


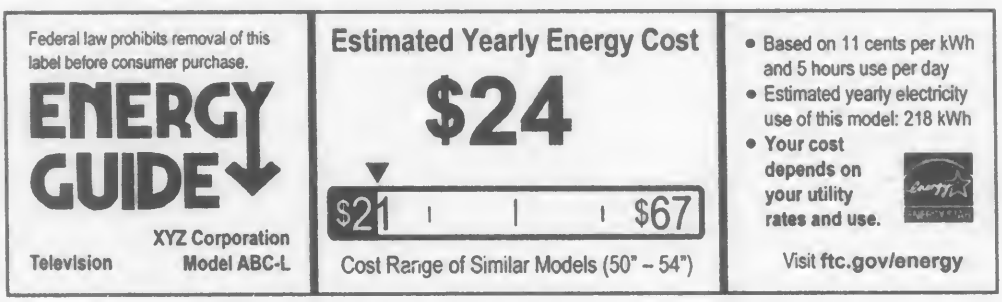
Sample Label 10

Triangular Television Labels

Sample Label 11

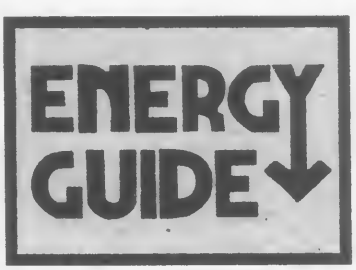
Vertical Television Labels





Sample Label 12

Horizontal Television Labels



Sample Icon 13

Website Link Icon

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–32704 Filed 1–5–11; 8:45 am]

BILLING CODE 6750–01–C

Reader Aids

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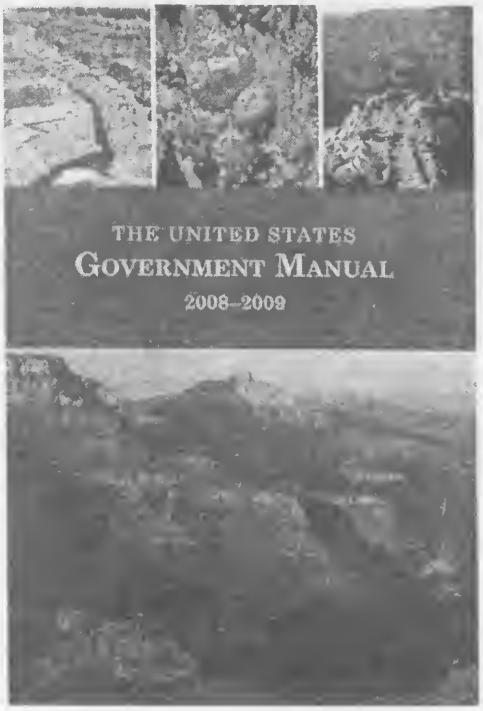

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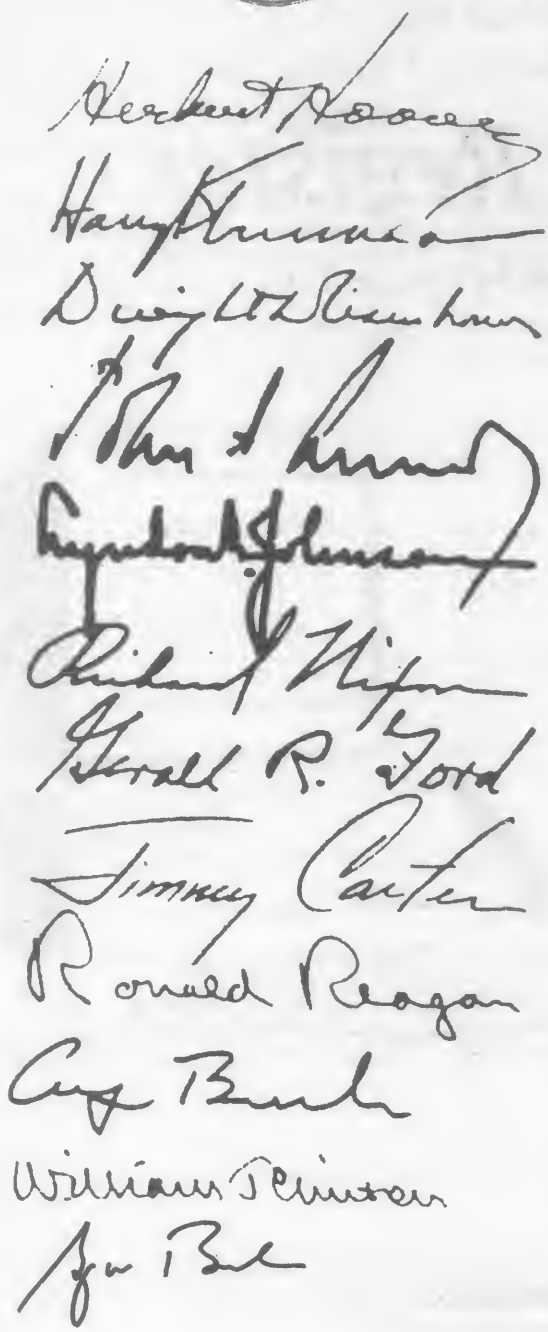

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