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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB10

Required Scale Tests

AGENCY: Grain Inspection, Packers and Stockyards Administration, Agriculture.

ACTION: Correcting amendment.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published documents in the **Federal Register** on January 20, 2011, and on April 4, 2011, concerning required scale tests. Those documents defined ''limited seasonal basis'' incorrectly. This document corrects the error.

DATES: Effective on August 17, 2011.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

The Grain Inspection, Packers and Stockyards Administration published two documents in the **Federal Register** on January 20, 2011 (76 FR 3485) and on April 4, 2011 (76 FR 18348), concerning required scale tests. Those documents incorrectly defined limited seasonal basis in § 201.72(a) (9 CFR 201.72(a)). This document corrects § 201.72 by revising the last sentence of paragraph (a).

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Measurement standards, Trade practices.

Accordingly, 9 CFR part 201 is corrected by making the following correcting amendment:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. In § 201.72, revise the last sentence of paragraph (a) to read as follows:

§ 201.72 Scales; testing of.

(a) * * * *Except that* if scales are used on a limited seasonal basis (during any continuous 8-month period) for purposes of purchase, sale, acquisition, payment or settlement, the stockyard owner, swine contractor, market agency, dealer, live poultry dealer, or packer using such scales may use the scales within a 8-month period following each test.

* * * * *

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–20873 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0832; Directorate Identifier 2011–CE–025–AD; Amendment 39–16771; AD 2011–17–07]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain M7 Aerospace LP Models SA226–T, SA226–T(B), SA226–TC, and SA226–AT airplanes. This AD requires repetitive replacement and inspection of certain elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables, and checking and setting of flight control cable tension. This AD was prompted by a report of a failure of a rudder control cable. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective September 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 1, 2011.

We must receive comments on this AD by October 3, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact M7 Aerospace, LC, 10823 NE. Entrance Road, San Antonio, Texas 78216; telephone (210) 824–9421; *fax:* 800–347–5901; *e-mail: http://www.m7aerospace.com/page/1/contact_parts.jsp; Web site: http://www.m7aerospace.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–150 (c/o San Antonio MIDO (SW–MIDO–43)), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; *phone:* (210) 308–3365; *fax:* (210) 308–3370; *e-mail: andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of an M7 Aerospace LP Model SA226–T airplane experiencing loss of rudder control during single-engine occurrence training requiring applied full rudder to compensate for yaw effect. The airplane made an uneventful landing. A visual inspection found the left-hand primary rudder control cable had failed where the cable makes a 30 degree angle over a small pulley to accommodate re-routing of the control cable alongside the camera system installed in the center of the cabin.

AD 87–02–02 (52 FR 2511, January 23, 1987) requires periodic inspection or replacement of all flight control cables on Models SA226 and SA227 airplanes. This new AD action requires repetitive replacement of specific flight control cables on affected serial number Model SA226 airplanes that have been modified by installation of a camera system requiring rerouting of the affected flight control cables.

This condition, if not corrected, could result in loss of controlled flight due to failure of a rudder, aileron and/or elevator control cable.

Relevant Service Information

We reviewed M7 Aerospace LP Service Bulletin 226–27–072, dated June 27, 2011. The service information describes procedures for repetitive inspection and replacement of all elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if an elevator cable or another cable in certain situations breaks, the outcome can be catastrophic. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0832; Directorate Identifier 2011–CE–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Logbook check	1 work-hour × $85 per hour = $85	Not Applicable	$85	$340.
Inspection of all elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables.	80 to 100 work-hours × $85 per hour = $6,800 to $8,500.	Not Applicable	$6,800 to $8,500	$27,200 to $34,000.
Replacement of all elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables.	120 to 180 work-hours × $85 per hour = $10,200 to $15,300.	$18,800	$29,000 to $34,100	$116,000 to $136,400.
Check (set) flight control cable tension.	20 to 25 work-hours × $85 per hour = $1,700 to $2,125.	Not Applicable	$1,700 to $2,125	$6,800 to $8,500.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–17–07 M7 Aerospace LP: Amendment 39–16771; Docket No. FAA–2011–0832; Directorate Identifier 2011–CE–025–AD.

(a) Effective Date

This AD is effective September 1, 2011.

(b) Affected ADs

AD 87–02–02 (52 FR 2511, January 23, 1987) requires repetitive inspection or replacement of all flight control cables on Models SA226 and SA227 airplanes. This new action requires repetitive replacement of specific flight control cables on affected serial number Model SA226 airplanes that have been modified by installation of a camera system requiring rerouting of the affected flight control cables.

(c) Applicability

This AD applies to the following M7 Aerospace LP airplanes, certificated in any category, as identified in Table 1 of this AD:

TABLE 1—APPLICABILITY

Model—	Serial Nos.—
SA226–T	T265, T267.
SA226–T(B)	T(B)348.
SA226–TC	TC277.
SA226–AT	AT071, AT072, AT073.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code: 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report of a failure of a rudder control cable. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done, following M7 Aerospace LP Service Bulletin 226–27–072, dated June 27, 2011. If the hours time-in-service (TIS) of the control cables can not be positively determined by the logbook, then you must use hours TIS of the airplane to comply with the requirements of this AD.

(g) Inspection

(1) *For cables with more than 6,000 hours TIS:* Inspect cables for deficiencies within 10 hours TIS after September 1, 2011 (the effective date of this AD).

(2) If any deficiencies are found during the inspection required in paragraph (g)(1) of this AD, before further flight replace cables.

(h) Replacement

(1) Replace primary control cables within the initial compliance times as listed below and repetitively thereafter at intervals not to exceed 3,500 hours time-in-service (TIS):

(i) *For cables with less than or equal to 3,500 hours TIS:* Replace cables when the control cables reach a total of 3,500 hours TIS or 150 hours TIS after September 1, 2011 (the effective date of this AD), whichever occurs later.

(ii) *For cables with less than or equal to 5,000 hours TIS but greater than 3,500 hours TIS:* Replace cables within 150 hours TIS after September 1, 2011 (the effective date of this AD).

(iii) *For cables with more than 5,000 hours TIS:* Replace cables within 50 hours TIS after September 1, 2011 (the effective date of this AD).

(2) Between 50 hours TIS and 200 hours TIS after installing any new control cable as required in paragraphs (g)(2) or (h)(1) of this AD, check (set) flight control cable tension.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–150 (c/o San Antonio MIDO (SW–MIDO–43)), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; *phone:* (210) 308–3365; *fax:* (210) 308–3370; *e-mail: andrew.mcanaul@faa.gov.*

(k) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of M7 Aerospace LP Service Bulletin 226–27–072, dated June 27, 2011, on September 1, 2011.

(2) For service information identified in this AD, contact M7 Aerospace, LC, 10823 NE. Entrance Road, San Antonio, Texas 78216; telephone (210) 824–9421; *fax:* 800–347–5901; *e-mail: http://www.m7aerospace.com/page/1/contact_parts.jsp; Web site: http://www.m7aerospace.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on August 2, 2011.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20127 Filed 8–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 159

[USCBP–2010–0008; BP Dec. 11–17]

RIN 1515–AD67 (formerly RIN 1505–AC21)

Courtesy Notice of Liquidation

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

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (''CFR'') pertaining to the method by which U.S. Customs and Border Protection (''CBP'') issues courtesy notices of liquidation to importers of record whose entry summaries are filed in the Automated Broker Interface (''ABI''). Courtesy notices of liquidation

provide informal, advance notice of the liquidation date and are not required by statute. For importers of record whose entry summaries are electronically filed in ABI, CBP currently provides an electronic courtesy notice to the ABI filer (importer of record or a broker that files as the agent of the importer of record) and a paper courtesy notice to the importer of record. In an effort to streamline the notification process and reduce printing and mailing costs, CBP will discontinue mailing paper courtesy notices of liquidation. All ABI filers (importers of record and brokers that file as the agent of an importer of record) will receive electronic courtesy notices. In addition, all importers of record with an Automated Commercial Environment (''ACE'') Secure Data Portal Account can monitor the liquidation of their entries by using the reporting tool in the ACE Secure Data Portal Account. Importers of record whose entries are not filed through ABI will continue to receive paper courtesy notices of liquidation.

DATES: *Effective date:* September 30, 2011. *Implementation date:* The first day on or after September 30, 2011, that CBP can provide importers with complete liquidation reports, including liquidation dates, electronically through the ACE Portal. CBP will confirm the date of implementation through electronic notification (see CBP.gov).

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202–863–6509.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2010, U.S. Customs and Border Protection (''CBP'') published a proposed rule in the **Federal Register** (75 FR 12483) proposing to amend title 19 of the Code of Federal Regulations (''19 CFR'') to discontinue mailing paper courtesy notices to importers of record whose entry summaries are filed in the Automated Broker Interface (''ABI''). The proposed amendments were intended to streamline the notification process and reduce printing and mailing costs, as provided in the proposed rule. *See* 75 FR 12483.

While CBP is not statutorily required to provide advance notice of the liquidation date to the importer or his agent, CBP does issue informal, courtesy notices of liquidation (hereinafter ''courtesy notice'' or ''courtesy notices''). *See* 19 CFR 159.9(d).

Currently, CBP issues electronic courtesy notices to all ABI filers: importers of record who file their own entries and customs brokers who file as the duly authorized agents of the importer of record. CBP's Technology Center also mails paper courtesy notices, on CBP Form 4333–A, to all importers of record whose entry summaries are scheduled to liquidate by each port of entry. As a result, two courtesy notices are issued for importers of record whose electronic entry summaries are filed in ABI: An electronic courtesy notice to the ABI filer, that is either the importer of record or a customs broker filing on behalf of the importer of record, and a paper courtesy notice to the importer of record. Therefore, this renders duplicative the paper courtesy notice sent by CBP to importers of record that file their own entries in ABI because, as an ABI filer, they already receive an electronic courtesy notice. *See* 19 CFR part 143.

Under the proposed rule, when electronic entry summaries are filed in ABI, ABI filers would only receive electronic courtesy notices; paper courtesy notices would not also be sent to importers of record that do not file their own entries. Importers of record filing a paper formal entry with CBP would continue to receive a mailed courtesy notice. *See* 19 CFR parts 141 and 142. In addition, all importers of record with an Automated Commercial Environment (''ACE'') Secure Data Portal Account can monitor the liquidation of their entries by using the reporting tool in the ACE Secure Data Portal Account.

Cost Savings

The following analysis details the cost savings that would be realized by the agency as a result of eliminating paper courtesy notices to importers of record who personally receive an electronic courtesy notice or whose broker receives an electronic courtesy notice on their behalf. In FY 2009, CBP sent approximately 7.2 million paper courtesy notices. Under this rule, CBP estimates that over 90 percent of paper courtesy notices will be eliminated. For the purpose of this analysis, we assume 6.5 million paper notices (90 percent) will be eliminated. Additionally, we assume that the number of notices does not change from year to year.

Quantified Savings

1. Postage

By decreasing the number of paper courtesy notices distributed, CBP will significantly reduce postage costs required to mail the notices. Current U.S. Postal Service first-class letter rates are 44 cents within the United States, 75 cents to Canada, 79 cents to Mexico, and 98 cents to the rest of the world. Exhibit 1 shows the total estimated savings on postage in 2010, an estimated $3 million.

EXHIBIT 1—TOTAL SAVINGS ON POSTAGE IN 2010 (UNDISCOUNTED)

Notice destination	Number of notices	Total cost
Domestic	5,899,816	$2,595,919
Canada	379,301	284,475
Mexico	57,371	45,323
Other Foreign	167,193	163,849
Total	6,503,681	3,089,566

2. Forms

CBP estimates that each courtesy notice form costs $0.027. Decreasing the number of paper forms by 6.5 million will save the agency approximately $175,599 per year.

3. Labor

CBP estimates the cost of contractors employed to print the paper courtesy notices is $0.08 per copy. Based on this estimate, the cost savings on labor for printing is approximately $520,294 per year.

Total Quantified Savings

Exhibit 2 displays all of the cost savings that have been quantified for this analysis.

EXHIBIT 2—TOTAL SAVINGS FROM REDUCING PAPER COURTESY NOTICES IN 2010 (UNDISCOUNTED)

Cost	Annual savings
Postage	$3,089,566
Forms	175,599
Labor	520,294
Total	3,785,460

We total these savings over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in the OMB's Circular A–4. Total estimated savings range from $28.4 million to $33.3 million over the period of analysis. Annualized savings are $3.8 million. Total present value and annualized savings are presented in Exhibit 3.

EXHIBIT 3—TOTAL PRESENT VALUE AND ANNUALIZED COSTS OF ADDITIONAL DATA ELEMENTS, 2010–2019

Total present value costs ($ millions)		Annualized costs ($ millions)	
3%	7%	3%	7%
$33.3	$28.4	$3.8	$3.8

Additional Savings Not Quantified

CBP has service contracts with fixed monthly costs for the equipment used to print and mail the paper courtesy notices. Current maintenance costs are approximately $45,048 per year for two printers and approximately $3,478 per year for a finishing machine. CBP is exploring lower cost options to replace these machines, but we are unable to quantify these savings or predict when they might occur. Additional costs associated with the printing and distribution of paper courtesy notices include labor by government employees on the CBP Mail Management Team and mainframe processing time. Reducing the number of paper notices will allow both Mail Management Team and mainframe resources to be used for other purposes. While we do not have enough data to quantify these savings at this time, they are important to consider in the analysis of the total impact of the reduction of paper courtesy notices.

Summary of Cost Savings

CBP estimates that this rule will save the agency $3.8 million annually by eliminating 90 percent, or approximately 6.5 million, of the paper courtesy notices currently sent to importers. If more than 90 percent are eliminated, savings could be higher. Quantified savings include reduced postage, forms, and contract labor costs. Additional savings may be realized by reducing maintenance costs on equipment used to produce the paper notices and allowing more efficient use of other government resources.

CBP solicited public comments on the proposed rule.

Discussion of Comments

Eight commenters responded to the solicitation of public comments in the proposed rule. Several of these commenters applauded CBP's effort to achieve cost savings by eliminating the mailing of paper. However, three commenters objected to CBP entirely eliminating the paper courtesy notice for ABI filers for several reasons discussed below, and four commenters requested that the courtesy mailing continue until CBP develops an alternative means of notifying importers of the liquidation of their entries.

Comment

Several commenters stated that the proposal will make importers of record reliant upon their brokers for liquidation information. Importers stated that they use the liquidation information on the courtesy notices to: monitor their entries for fraudulent activities; determine liquidation dates, protest deadlines, and contingent liability periods; check for errors; and track the status of antidumping and countervailing duty entries.

Without the courtesy notice, importers who are ABI filers state that they would need to contact their brokers for the liquidation information. However, a commenter noted that many importers utilize more than one customs broker to make their entries, and sometimes, the importer's broker will use outport brokers (those from other customs broker districts) to make entry on behalf of the importer for whom they have a power of attorney.

Moreover, it was noted that brokers sometimes fail to provide importers with timely notification of liquidation information. When such instances occur, the broker's liability is limited to $50, whereas importers may lose their ability to challenge a CBP decision, thereby potentially resulting in a loss of millions of dollars.

CBP Response

Pursuant to 19 CFR 111.39, ''[a] broker must not withhold information relative to any customs business from a client who is entitled to that information.'' Liquidation information is information related to ''customs business''; therefore, brokers cannot withhold this information from their importer clients.

In addition, ACE is being reprogrammed to allow all importers of record to monitor liquidation of entries filed under their importer of record number(s) through the ACE Portal. Importers can establish an ACE Portal Account to access reports that will help them monitor entry filings for potential fraudulent entries and access liquidation dates for entries filed by any filer using the importer of record number belonging to the importer, regardless of the filer code used.

Furthermore, whether or not the importer has an ACE Portal Account, the importer may gain limited access to a broker's ACE Portal Account to obtain reports for entries filed by the broker using the importer of record number belonging to that importer, if the broker that filed the entry grants the importer such access.

Given data storage limitations, at this time, the ACE Portal only contains entry data for entries filed in the current CBP fiscal year and the previous four CBP fiscal years. (The CBP fiscal year runs from October 1 through September 30.) Importers needing liquidation dates for entries filed beyond that time period may contact their broker, who can obtain that information by running an ABI query. As for antidumping and countervailing duty entries, depending on the entry date, importers may be able to check their status via a report in the ACE Portal. Please note that contractual terms of liability between importers and brokers are not controlled by CBP.

Additional information on the ACE Portal capabilities and instructions for applying for access to the ACE Portal, which is accessible free of charge, are available on the following Web site: *http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_app_info/.*

The instructions for managing ACE Portal user accounts are available on the following Web site: *http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_welcome/ace_welcome_package/.*

Comment

One commentator was concerned about the accessibility of liquidation information entered with a filer code that subsequently became inactive at the time of liquidation.

CBP Response

Even if the filer code is no longer active, the importer will be able to access the liquidation date associated with the importer's importer of record

number using the reporting tool in the ACE Portal.

Comment

Several commenters suggested alternatives to CBP's proposal, such as: creating a system for importers to obtain the liquidation information that is available on the courtesy notices; sending courtesy notifications via e-mail; surveying importers who file their entries via ABI to determine whether they wish to discontinue receiving mailed courtesy notices allowing importers to opt out of receiving paper courtesy notices at the time CBP assigns an importer of record number for importers, or notifying the importers at that time that that they will have either to rely upon ABI for liquidation information or participate in ACE; ensuring that the information listed in ACE is accurate, particularly the data regarding older entries; and developing an electronic bulletin notice of liquidation.

Also, several commenters suggested delaying implementation of the proposal until ACE becomes capable of issuing complete liquidation reports and/or until all entry filers begin using ACE.

CBP Response

On the effective date of this document, through the ACE Portal reporting mechanism, CBP will be able to make available complete liquidation reports to importers with ACE accounts, including liquidation dates for all entries. Furthermore, an e-mail courtesy notification of liquidation would just duplicate this information.

CBP does not plan on surveying the trade community to determine which ABI-filing importers wish to discontinue receiving mailed courtesy notices, which CBP believes would not garner further substantial input. CBP agrees that training will help importers transition into using the ACE system. Currently, CBP provides Web-based training for new ACE Account holders, and help desk support to aid with account access, account management, and report generation in the ACE Portal. Please see the following Web site for further information: *https://nemo.customs.gov/ace_online/.*

Although this training resource and the ACE Portal are already available and functional, importers will have until September 17, 2011 to enroll in the ACE Portal Account and familiarize themselves with the reporting system.

Moreover, CBP has considered the option of posting an electronic bulletin notice of liquidation and will continue to explore the feasibility of that option. Courtesy notices of liquidations, rather than the statutorily mandated bulletin notice of liquidation, are the focus of this rulemaking. Accordingly, this suggestion is outside the scope of this rulemaking.

The purpose of this proposal is to reduce printing and mailing costs by eliminating duplicative notice to importers that file their entries via ABI. Therefore, CBP does not intend to provide importers with the option of receiving paper courtesy notices or opting out of receiving paper courtesy notices.

Regarding the suggestion that CBP should ensure that the information in ACE is accurate, particularly regarding older entries, CBP agrees that maintaining accurate data in any system of record is of paramount concern. As discussed above, the entry data in the ACE Portal is confined to the current CBP fiscal year and the previous four CBP fiscal years because of data storage limitations. ABI filers may run an ABI query for liquidation dates for entries filed beyond that time period. Please note that for a historical report on all of an importer's importation activity over a set time period, an importer can file a request with CBP for an ITRAC (Importer Trade Activity) report for a fee, see *http://www.cbp.gov/xp/cgov/admin/fl/foia/itrac/itrac.xml.* If one is a C–TPAT member, this report is provided free of cost.

Finally, the ACE report contains the same data elements as the paper courtesy notice, with the exception of: (1) Importer address; (2) series; (3) refer inquiries to; and (4) liquidation code. The ''importer address'' data element will not appear in the ACE Portal report because the report will not be mailed. The ''series'' data element will not appear because it has not been used since 1986 when the entry format configuration was changed to eliminate the series, that is, the ''2-digit Fiscal Year'' code which appeared in the 5th and 6th place of the entry number format. The ''refer inquiries to'' data element will not appear in the ACE Portal report; however, the report will provide the name and code for the port of entry. Importers can refer any inquiries to the appropriate port of entry using the following Web site: *http://www.cbp.gov/xp/cgov/toolbox/contacts/ports/.* Finally, the ''liquidation code'' data element is an internal CBP-assigned code used for managing various liquidation types and will not appear in the report.

Comment

One commenter indicated that courtesy notices deemed undeliverable by the U.S. Postal Service help the Revenue Division update its importer address database.

CBP Response

The Revenue Division now relies on the importer to keep its address and contact information current with CBP.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt the proposed rule published in the **Federal Register** (75 FR 12483) on March 16, 2010, without substantive change. Accordingly, the effective date will be September 30, 2011. The implementation date will be the first day on or after September 30, 2011, that CBP can provide importers with complete liquidation reports, including liquidation dates, electronically through the ACE Portal. CBP will confirm implementation through electronic notification (see *http://www.cbp.gov*).

Executive Order 12866

This final rule is not a ''significant regulatory action'' per Executive Order 12866 because it will not result in savings or expenditures totaling $100 million or more in any one year. The Office of Management and Budget (''OMB'') has not reviewed this regulation under that order. The final rule will result in cost savings as discussed earlier in the preamble.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This final rule will eliminate paper courtesy notices that are sent to importers who file entry summaries via ABI or who hire a third party to file via ABI on their behalf. The primary impact of this final rule will be the savings realized by CBP as a result of eliminating a large portion of its annual printing and mailing costs associated with paper courtesy notices. Those importers that do not file using ABI will continue to receive paper courtesy notices. Those importers that file via ABI themselves will not be significantly impacted because they will continue to receive an electronic notification. Those importers that hire a broker to file via ABI on their behalf (with the broker

filing as an agent and not an importer of record) will now have to obtain the notification from their broker or view the information via CBP's ACE Portal. To the extent that brokers send the notification to the importer, they will bear a small cost, but because of the low cost of forwarding this information either electronically or by mail, this cost does not rise to the level of significance. CBP solicited comments on the economic impact of this rule on small entities in the Notice of Proposed Rulemaking, but did not receive any of substance. For these reasons, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

As there is no collection of information in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

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

List of Subjects in 19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

Amendments to the CBP Regulations

For the reasons set forth in the preamble, part 159 of title 19 of the CFR (19 CFR part 159) is amended as set forth below.

PART 159—LIQUIDATION OF DUTIES

■ 1. The general authority citation for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

■ 2. In § 159.9, paragraph (d) is revised to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

* * * * *

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all entries scheduled to be liquidated or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to an authorized electronic data interchange system if the entry summary was filed electronically in accordance with part 143 of this chapter or on CBP Form 4333–A if the entry was filed on paper pursuant to parts 141 and 142 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

§ 159.11 [Amended]

■ 3. In § 159.11, paragraph (a) is amended in the last sentence, by removing the words ''on CBP Form 4333–A''.

§ 159.12 [Amended]

■ 4. In § 159.12:

■ a. Paragraph (f)(1) is amended, in the last sentence, by removing the words ''on CBP Form 4333–A'';

■ b. Paragraph (g) is amended, in the last sentence, by removing the words ''on CBP Form 4333–A''.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: August 12, 2011.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–20957 Filed 8–16–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9542]

RIN 1545–BE77

Elections Regarding Start-Up Expenditures, Corporation Organizational Expenditures, and Partnership Organizational Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to elections to deduct start-up expenditures, organizational expenditures of corporations, and organizational expenses of partnerships. The American Jobs Creation Act of 2004 amended the Internal Revenue Code to permit the optional deduction of a limited amount of these types of expenses that are paid or incurred after October 22, 2004. The regulations affect taxpayers that pay or incur these expenses and provide guidance on how to elect to deduct the expenses in accordance with the new rules.

DATES: *Effective Date:* These regulations are effective on August 16, 2011.

Applicability Dates: For dates of applicability, see §§ 1.195–1(d), 1.248–1(f), and 1.709–1(b)(5).

FOR FURTHER INFORMATION CONTACT: R. Matthew Kelley, (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1) under sections 195, 248, and 709 of the Internal Revenue Code to reflect amendments made by section 902 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418) (the Act). The amendments made by section 902 of the Act are effective for amounts paid or incurred after October 22, 2004, the date of the enactment of the Act.

As amended by section 902(a) of the Act, section 195(b) allows an electing taxpayer to deduct, in the taxable year in which the taxpayer begins an active trade or business, an amount equal to the lesser of (1) the amount of the start-up expenditures that relate to the active trade or business, or (2) $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000. The remainder of the start-up expenditures is deductible ratably over the 180-month period beginning with the month in which the active trade or business begins.

As amended by section 902(b) of the Act, section 248(a) allows an electing corporation to deduct, in the taxable year in which the corporation begins business, an amount equal to the lesser of (1) the amount of the organizational expenditures of the corporation, or (2) $5,000, reduced (but not below zero) by the amount by which the organizational expenditures exceed $50,000. The remainder of the organizational expenditures is deductible ratably over the 180-month period beginning with the month in which the corporation begins business.

As amended by section 902(c) of the Act, section 709(b) allows an electing partnership to deduct, in the taxable year in which the partnership begins business, an amount equal to the lesser of (1) the amount of the organizational expenses of the partnership, or (2) $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000. The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business.

On July 8, 2008, temporary regulations (TD 9411) regarding elections to deduct start-up and organizational expenditures under sections 195, 248, and 709 were published in the **Federal Register** (73 FR 38910). A notice of proposed rulemaking (REG–164965–04) cross-referencing the temporary regulations was published in the **Federal Register** (73 FR 38940) on the same day. One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. After consideration of the comment, the regulations are adopted as amended by this Treasury decision. The comment is discussed elsewhere in this preamble.

These regulations apply to expenditures paid or incurred after August 16, 2011. However, taxpayers may apply all the provisions of these regulations to expenditures paid or incurred under sections 195, 248, and 709 after October 22, 2004, provided the period of limitations on assessment of tax has not expired for the year the election under section 195, 248, or 709 is deemed made. Expenditures paid or incurred on or before October 22, 2004, may be amortized over a period of not less than 60 months as provided for under prior law.

Summary of Comment

The commentator recommended that the final regulations clarify what is meant in the proposed regulations by ''clearly electing to capitalize'' start-up and organizational costs. The commentator noted that it is unclear whether a taxpayer that unintentionally does not deduct or amortize start-up and organizational costs could be considered to have ''clearly elected to capitalize'' them. The IRS and the Treasury Department agree with the recommendation to clarify the election requirements, and the final regulations provide that a taxpayer wishing to make an election to capitalize start-up and organizational costs must ''affirmatively elect to capitalize'' the costs on a timely filed Federal income tax return.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is R. Matthew Kelley of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.195–1 is revised to read as follows:

§ 1.195–1 Election to amortize start-up expenditures.

(a) *In general.* Under section 195(b), a taxpayer may elect to amortize start-up expenditures as defined in section 195(c)(1). In the taxable year in which a taxpayer begins an active trade or business, an electing taxpayer may deduct an amount equal to the lesser of the amount of the start-up expenditures that relate to the active trade or business, or $5,000 (reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000). The remainder of the start-up expenditures is deductible ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

(b) *Time and manner of making election.* A taxpayer is deemed to have made an election under section 195(b) to amortize start-up expenditures as defined in section 195(c)(1) for the taxable year in which the active trade or business to which the expenditures relate begins. A taxpayer may choose to forgo the deemed election by affirmatively electing to capitalize its start-up expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the active trade or business to which the expenditures relate begins. The election either to amortize start-up expenditures under section 195(b) or to capitalize start-up expenditures is irrevocable and applies to all start-up expenditures that are related to the active trade or business. A change in the characterization of an item as a start-up expenditure is a change in method of accounting to which sections 446 and 481(a) apply if the taxpayer treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the active trade or business begins also is treated as a change in method of accounting if the taxpayer amortized start-up expenditures for two or more taxable years.

(c) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of $5,000 or less. Corporation X, a calendar year taxpayer, incurs $3,000 of start-up expenditures after October 22, 2004, that relate to an active trade or business that begins on July 1, 2011. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2011. Therefore, Corporation X may deduct the entire amount of the start-up expenditures in 2011, the taxable year in which the active trade or business begins.

Example 2. Expenditures of more than $5,000 but less than or equal to $50,000. The facts are the same as in *Example 1* except that Corporation X incurs start-up expenditures of $41,000. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2011. Therefore, Corporation X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2011 ($36,000/180 × 6 = $1,200) in 2011, the taxable year in which the active trade or business begins. Corporation X may amortize the remaining $34,800 ($36,000 − $1,200 = $34,800) ratably over the remaining 174 months.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Corporation X determines in 2013 that Corporation X incurred $10,000 for an additional start-up expenditure erroneously deducted in 2011 under section 162 as a business expense. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2011, including the additional $10,000 of start-up expenditures. Corporation X is using an impermissible method of accounting for the additional $10,000 of start-up expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2013.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2012, Corporation X deducted the start-up expenditures allocable to January through December of 2012 ($36,000/180 × 12 = $2,400). In addition, in 2013 it is determined that Corporation X actually began business in 2012. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2012. Corporation X impermissibly deducted start-up expenditures in 2011, and incorrectly determined the amount of start-up expenditures deducted in 2012. Therefore, Corporation X is using an impermissible method of accounting for the start-up expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2013.

Example 5. Expenditures of more than $50,000 but less than or equal to $55,000. The facts are the same as in *Example 1* except that Corporation X incurs start-up expenditures of $54,500. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2011. Therefore, Corporation X may deduct $500 ($5,000 − $4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2011 ($54,000/180 × 6 = $1,800) in 2011, the taxable year in which the active trade or business begins. Corporation X may amortize the remaining $52,200 ($54,000 − $1,800 = $52,200) ratably over the remaining 174 months.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Corporation X incurs start-up expenditures of $450,000. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2011. Therefore, Corporation X may deduct the amounts allocable to July through December of 2011 ($450,000/180 × 6 = $15,000) in 2011, the taxable year in which the active trade or business begins. Corporation X may amortize the remaining $435,000 ($450,000 − $15,000 = $435,000) ratably over the remaining 174 months.

(d) *Effective/applicability date.* This section applies to start-up expenditures paid or incurred after August 16, 2011. However, taxpayers may apply all the provisions of this section to start-up expenditures paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b) of this section is deemed made has not expired. For start-up expenditures paid or incurred on or before September 8, 2008, taxpayers may instead apply § 1.195–1, as in effect prior to that date (§ 1.195–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

§ 1.195–1T [Removed]

■ **Par. 3.** Section 1.195–1T is removed.

■ **Par. 4.** Section 1.248–1 is amended by revising paragraphs (a) and (c), and adding paragraphs (d), (e), and (f) to read as follows:

§ 1.248–1 Election to amortize organizational expenditures.

(a) *In general.* Under section 248(a), a corporation may elect to amortize organizational expenditures as defined in section 248(b) and § 1.248–1(b). In the taxable year in which a corporation begins business, an electing corporation may deduct an amount equal to the lesser of the amount of the organizational expenditures of the corporation, or $5,000 (reduced (but not below zero) by the amount by which the organizational expenditures exceed $50,000). The remainder of the organizational expenditures is deducted ratably over the 180-month period beginning with the month in which the corporation begins business. All organizational expenditures of the corporation are considered in determining whether the organizational expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

* * * * *

(c) *Time and manner of making election.* A corporation is deemed to have made an election under section 248(a) to amortize organizational expenditures as defined in section 248(b) and § 1.248–1(b) for the taxable year in which the corporation begins business. A corporation may choose to forgo the deemed election by affirmatively electing to capitalize its organizational expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the corporation begins business. The election either to amortize organizational expenditures under section 248(a) or to capitalize organizational expenditures is irrevocable and applies to all organizational expenditures of the corporation. A change in the characterization of an item as an organizational expenditure is a change in method of accounting to which sections 446 and 481(a) apply if the corporation treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the corporation begins business also is treated as a change in method of accounting if the corporation amortized organizational expenditures for two or more taxable years.

(d) *Determination of when corporation begins business.* The deduction allowed under section 248 must be spread over a period beginning with the month in which the corporation begins business. The determination of the date the corporation begins business presents a question of fact which must be determined in each case in light of all the circumstances of the particular case. The words ''begins business,'' however, do not have the same meaning as ''in existence.'' Ordinarily, a corporation begins business when it starts the business operations for which it was organized; a corporation comes into existence on the date of its incorporation. Mere organizational activities, such as the obtaining of the corporate charter, are not alone sufficient to show the beginning of business. If the activities of the corporation have advanced to the extent necessary to establish the nature of its business operations, however, it will be deemed to have begun business. For example, the acquisition of operating assets which are necessary to the type of business contemplated may constitute the beginning of business.

(e) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of $5,000 or less. Corporation X, a calendar year taxpayer, incurs $3,000 of organizational expenditures after October 22, 2004, and begins business on July 1, 2011. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct the entire amount of the organizational expenditures in 2011, the taxable year in which Corporation X begins business.

Example 2. Expenditures of more than $5,000 but less than or equal to $50,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of $41,000. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2011 ($36,000/180 × 6 = $1,200) in 2011, the taxable year in which Corporation X begins business. Corporation X may amortize the remaining $34,800 ($36,000 − $1,200 = $34,800) ratably over the remaining 174 months.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Corporation X determines in 2013 that Corporation X incurred $10,000 for an additional organizational expenditure erroneously deducted in 2011 under section 162 as a business expense. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011, including the additional $10,000 of organizational expenditures. Corporation X is using an impermissible method of accounting for the additional $10,000 of organizational expenditures and must change its method

under § 1.446–1(e) and the applicable general administrative procedures in effect in 2013.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2012, Corporation X deducted the organizational expenditures allocable to January through December of 2012 ($36,000/180 × 12 = $2,400). In addition, in 2013 it is determined that Corporation X actually began business in 2012. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2012. Corporation X impermissibly deducted organizational expenditures in 2011, and incorrectly determined the amount of organizational expenditures deducted in 2012. Therefore, Corporation X is using an impermissible method of accounting for the organizational expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2013.

Example 5. Expenditures of more than $50,000 but less than or equal to $55,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of $54,500. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct $500 ($5,000 − $4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2011 ($54,000/180 × 6 = $1,800) in 2011, the taxable year in which Corporation X begins business. Corporation X may amortize the remaining $52,200 ($54,000 − $1,800 = $52,200) ratably over the remaining 174 months.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of $450,000. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct the amounts allocable to July through December of 2011 ($450,000/180 × 6 = $15,000) in 2011, the taxable year in which Corporation X begins business. Corporation X may amortize the remaining $435,000 ($450,000 − $15,000 = $435,000) ratably over the remaining 174 months.

(f) *Effective/applicability date.* This section applies to organizational expenditures paid or incurred after August 16, 2011. However, taxpayers may apply all the provisions of this section to organizational expenditures paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (c) of this section is deemed made has not expired. For organizational expenditures paid or incurred on or before September 8, 2008, taxpayers may instead apply § 1.248–1, as in effect prior to that date (§ 1.248–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

§ 1.248–1T [Removed]

■ **Par. 5.** Section 1.248–1T is removed.

■ **Par. 6.** Section 1.709–1 is amended by revising paragraph (b) to read as follows:

§ 1.709–1 Treatment of organization and syndication costs.

* * * * *

(b) *Election to amortize organizational expenses*—(1) *In general.* Under section 709(b), a partnership may elect to amortize organizational expenses as defined in section 709(b)(3) and § 1.709–2(a). In the taxable year in which a partnership begins business, an electing partnership may deduct an amount equal to the lesser of the amount of the organizational expenses of the partnership, or $5,000 (reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000). The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses of the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004.

(2) *Time and manner of making election.* A partnership is deemed to have made an election under section 709(b) to amortize organizational expenses as defined in section 709(b)(3) and § 1.709–2(a) for the taxable year in which the partnership begins business. A partnership may choose to forgo the deemed election by affirmatively electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election either to amortize organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership. A change in the characterization of an item as an organizational expense is a change in method of accounting to which sections 446 and 481(a) apply if the partnership treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the partnership begins business also is treated as a change in method of accounting if the partnership amortized organizational expenses for two or more taxable years.

(3) *Liquidation of partnership.* If there is a winding up and complete liquidation of the partnership prior to the end of the amortization period, the unamortized amount of organizational expenses is a partnership deduction in its final taxable year to the extent provided under section 165 (relating to losses). However, there is no partnership deduction with respect to its capitalized syndication expenses.

(4) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of $5,000 or less. Partnership X, a calendar year taxpayer, incurs $3,000 of organizational expenses after October 22, 2004, and begins business on July 1, 2011. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct the entire amount of the organizational expenses in 2011, the taxable year in which Partnership X begins business.

Example 2. Expenditures of more than $5,000 but less than or equal to $50,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $41,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2011 ($36,000/180 x 6 = $1,200) in 2011, the taxable year in which Partnership X begins business. Corporation X may amortize the remaining $34,800 ($36,000 − $1,200 = $34,800) ratably over the remaining 174 months.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Partnership X realizes in 2013 that Partnership X incurred $10,000 for an additional organizational expense erroneously deducted in 2011 under section 162 as a business expense. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011, including the additional $10,000 of organizational expenses. Partnership X is using an impermissible method of accounting for the additional $10,000 of organizational expenses and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2013.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2012, Partnership X deducted the organizational expenses allocable to January through December of 2012 ($36,000/180 × 12 = $2,400). In addition, in 2013 it is determined that Partnership X actually began business in 2012. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2012. Partnership X impermissibly deducted organizational expenses in 2011, and incorrectly determined the amount of organizational expenses deducted in 2012. Therefore, Partnership X is using an impermissible method of accounting

for the organizational expenses and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2013.

Example 5. Expenditures of more than $50,000 but less than or equal to $55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $54,500. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct $500 ($5,000 − $4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2011 ($54,000/180 × 6 = $1,800) in 2011, the taxable year in which Partnership X begins business. Corporation X may amortize the remaining $52,200 ($54,000 − $1,800 = $52,200) ratably over the remaining 174 months.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $450,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct the amounts allocable to July through December of 2011 ($450,000/180 × 6 = $15,000) in 2011, the taxable year in which Partnership X begins business. Corporation X may amortize the remaining $435,000 ($450,000 − $15,000 = $435,000) ratably over the remaining 174 months.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after August 16, 2011. However, taxpayers may apply all the provisions of this section to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b)(2) of this section is deemed made has not expired. For organizational expenses paid or incurred on or before September 8, 2008, taxpayers may instead apply § 1.709–1, as in effect prior to that date (§ 1.709–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

§ 1.709–1T [Removed]

■ **Par. 7.** Section 1.709–1T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 9, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–20872 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0545; FRL–9447–4]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District (SCAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the SCAQMD portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on October 5, 2010 and concern volatile organic compound (VOC) emissions from architectural coatings. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on September 16, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0545 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: David Grounds, EPA Region IX, (415) 972–3019, *grounds.david@epa.gov.*

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

Table of Contents

I. Proposed Action

On October 5, 2010 (75 FR 61367), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1113	Architectural Coatings	07/13/07	03/07/08

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Dan Pourreau and Dave Roznowski, Lyondell Chemical; letter dated October 25, 2010.

2. David Darling, American Coatings Association; letter dated November 3, 2010.

The comments and our responses are summarized below.

Comment #1: Lyondell Chemical commented that, in 2009, they requested that EPA remove all reporting and recordkeeping requirements for tertiary-butyl acetate (TBAc), but has not yet received a formal response from EPA. Lyondell's comment requests that EPA respond to the 2009 request by removing the unique tracking requirement for TBAc and moving TBAc to the 40 CFR 51.100(s)(1) list of exempt compounds. Lyondell further requests that EPA remove the proposed recommendation to include a recordkeeping requirement for future Rule 1113 revisions, because this is complicating the rule development process and making TBAc a less attractive VOC-compliance option than it should be regarding Rule 1113 as well as coatings subject to other South Coast rules.

In support of these requests, Lyondell states that EPA is not using the TBAc data for modeling purposes and does not require reporting for any other exempt compound with ''borderline'' reactivity, that TBAc has low toxicity and negligible environmental impact, and that reporting and tracking its emissions does not help protect human health or the environment. Lyondell also states most States do not track and report TBAc emissions. Lyondell feels that tracking and reporting TBAc emissions is a new and burdensome

requirement, and that Lyondell has provided and continues to provide TBAc sales data by State to the EPA, so requiring that users and the States also report emissions is redundant, an unnecessary bureaucratic burden, and fraught with error.

American Coatings Association (ACA) similarly objects to EPA's recordkeeping recommendations on the grounds that the reporting and recordkeeping requirements created in 2004 specifically for TBAc in 40 CFR 51.100(s)(5) are burdensome, arbitrary, contrary to the goals of the CAA, and should be rescinded.

Response #1: Similar comments were summarized and replied to in EPA's final action to revise treatment of TBAc in 40 CFR 51.100(s)(5) (See 69 FR 69298, November 29, 2004). The comments have not provided new information that changes EPA's previous response to these issues. In addition, we note that TBAc is only addressed in recommendations discussed in the preamble to today's action. Today's final action does not require any revisions to South Coast's treatment of TBAc.

Comment #2: ACA states it is questionable whether the Averaging Compliance Option is an Economic Incentive Program (EIP) as defined in EPA's guidance. Emissions occur during the activity of applying coatings, which is not regulated under Rule 1113. The limits of Rule 1113 apply to the VOC contents, not emissions, of coating expressed as mass of VOC per volume of coating, not activity level. ACA further comments that, given the extremely low limits of Rule 1113, additional discounting is not feasible for specific compliance, averaging compliance, or a combination of the two.

Response #2: As ACA noted, part of the regulatory approach in architectural coatings requires manufacturers to meet specified VOC standards in their products. EPA's EIP guidance applies broadly and is not limited to only direct emitters of pollution. EIP is defined as a program which may include State established measures directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or provide more flexible, lower-cost approaches to meeting environmental goals. The Averaging Compliance Option in Rule 1113 provides manufacturers a more flexible and potentially lower cost approaches to meeting the standards. As such, Rule 1113 is an EIP. Please see page 158 of the EIP Guidance (see *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf*).

Comment #3: ACA states that a shorter averaging period is not feasible because of the complexity involved in gathering and verifying retail sales data, and making program adjustments to ensure continuous compliance.

Response #3: The recommendation was made based on the EIP guidance. However, after a review of the provision, we feel an averaging period longer than 30 days is acceptable for this rule. Therefore, we are no longer recommending the district reduce the averaging period to 30 days or less and we have communicated this to the district.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(354)(i)(A)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(A) * * *

(*5*) Rule 1113, ''Architectural Coatings,'' amended on July 13, 2007.

* * * * *

[FR Doc. 2011–20842 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0725; FRL–8884–4]

Fluoxastrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fluoxastrobin in or on squash/cucumber subgroup 9B. Arysta LifeScience North America, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 17, 2011. Objections and requests for hearings must be received on or before October 17, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0725. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; e-mail address: *garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0725 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 17, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0725, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 23, 2010 (75 FR 57942) (FRL–8845–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7726) by Arysta LifeScience North America, LLC, 15401 Weston Pkwy., Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by establishing a tolerance for residues of the fungicide, fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on raw agricultural commodities listed under crop squash/cucumber subgroup 9B at 0.50 parts per million (ppm). That notice referenced a summary of the petition prepared by Arysta LifeScience, North America, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has made the following changes to the proposed fluoxastrobin tolerance. A minor change has been made to the commodity name to conform to the Agency's Food and Feed Commodity Vocabulary.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluoxastrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluoxastrobin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fluoxastrobin has a low order of acute toxicity via the oral, dermal and inhalation routes of exposure. Fluoxastrobin is a moderate eye irritant but is neither a dermal irritant nor a skin sensitizer.

Fluoxastrobin appears to have mild or low toxicity following repeated administration in all tested species other than the dog. In both the 90-day and 1-year oral feeding dog studies, there was liver toxicity in the form of cholestasis as evidenced by hepatocytomegaly and cytoplasmic granular changes associated with increased liver weight and increased serum liver alkaline phosphatase (ALP). In addition, several phase I and phase II liver drug metabolizing enzymes were induced.

In the rat and rabbit developmental toxicity studies and the 2-generation reproduction rat study, there was no increased susceptibility to prenatal or postnatal exposure to fluoxastrobin and no effects on reproduction.

Fluoxastrobin is not acutely neurotoxic in rats up to a single high dose of 2,000 milligrams/kilogram/day (mg/kg/day) or by repeated dietary feeding in the rat subchronic neurotoxicity screening study where the top dose was nearly half the limit dose of 1,000 mg/kg/day. Other studies in rats including the subchronic, chronic toxicity/carcinogenicity, 2-generation reproduction, and developmental toxicity were tested to or above the limit dose with no indication of clinical signs, histopathology or other signs of toxicity that could be attributed to neurotoxicity. Also, in both the 90-day and 1-year dog studies, neurologic examinations, including mental status/behavior, gait characteristics, postural status and reactions, and spinal/cranial reflexes, were carried out and were found to be within normal limits.

Fluoxastrobin is not immunotoxic based on repeated dosing studies in rats and mice. In the 90-day oral toxicity rat study, there was no difference between the controls and treated animals in spleen cell count, macrophage activities after phorbol myristate acetate (PMA) stimulation and plaque-forming cell assay after challenge with sheep erythrocytes. Slight decreases were noted in immunoglobulin G concentration in the high dose males but not females. An unacceptable subchronic immunotoxicity study in mice found no apparent decrease on B-cell activated, T-cell mediated immunoglobulin M (IgM) response to sheep red blood cell (SRBC) at doses as high as 2,383 mg/kg/day.

Fluoxastrobin and major metabolites were negative in a battery of genotoxicity tests. The carcinogenic potential of fluoxastrobin was adequately tested in rats and mice of both sexes. The results demonstrated a lack of treatment-related increase in tumor incidence in rats or mice. There was no mutagenicity concern and no structure activity relationship alert. It was concluded that there was no incidence of carcinogenicity for fluoxastrobin.

Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of September 16, 2005 (70 FR 54640) (FRL–7719–9).

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin

of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment is shown in Table 1. of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOXASTROBIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	None: There was no indication of an adverse effect attributable to a single dose. An aRfD was not established.		
Acute dietary (General population including infants and children).	None: There was no indication of an adverse effect attributable to a single dose. An aRfD was not established.		
Chronic dietary (All populations)	NOAEL = 1.5 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.015 mg/kg/day ... cPAD = 0.015 mg/kg/day	Chronic toxicity in the dog. LOAEL = M/F 8.1/7.7 mg/kg/day based on body weight reductions and hepatocytomegaly and cytoplasmic changes associated with increased serum liver alkaline phosphatase indicative of cholestasis.
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 3.0 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day subchronic dog LOAEL = M/F 24.8/24.2 mg/kg/day (800 ppm) based on dose-related reductions in net body weight gain and food efficiency in addition to toxicity findings in the liver (cholestasis) in both sexes, and kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Dermal short-term (1 to 30 days) ..	None: There were no systemic or dermal toxicity findings in a 28-day dermal toxicity study in the rat up to the limit dose (1000 mg/kg/day) and there were no developmental or neurotoxicity concerns raised in other studies.		
Dermal intermediate-term (1 to 6 months).	NOAEL = 3.0 mg/kg/day (dermal absorption rate = 2.3%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day subchronic dog LOAEL = M/F 24.8/24.2 mg/kg/day (800 ppm) based on dose-related reductions in net body weight gain and food efficiency in addition to toxicity findings in the liver (cholestasis) in both sexes, and kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 3.0 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day subchronic dog LOAEL = M/F 24.8/24.2 mg/kg/day (800 ppm) based on dose-related reductions in net body weight gain and food efficiency in addition to toxicity findings in the liver (cholestasis) in both sexes, and kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Cancer (Oral, dermal, inhalation) ..	Classification: ''Not likely to be carcinogenic to humans.''		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerance as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a conservative dietary exposure assessment for fluoxastrobin. The assumptions of this dietary assessment included tolerance level residues and 100 percent crop treated (PCT).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluoxastrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* Based on laboratory studies, fluoxastrobin persists in soils for several months to several years and is slightly to moderately mobile in soil.

The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 52.9 parts per billion (ppb) for surface water and 0.23 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 53 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluoxastrobin is currently registered for the following uses that could result in residential exposures: Spot treatment and/or broadcast control of diseases on turf, including lawns and golf courses. EPA assessed residential exposure using the following assumptions: Because of the potential for application four times per year, exposure duration is expected to be short-term and intermediate-term. A short-term dermal endpoint was not identified; therefore, only intermediate-term dermal risks as well as short-and intermediate-term inhalation risks were assessed. Homeowner residential applicators are expected to be adults.

There is also the potential for homeowners and their families (of varying ages) to be exposed as a result of entering areas that have previously been treated with fluoxastrobin. Exposure might occur on areas such as lawns used by children or recreational areas such as golf courses used by adults and youths. Potential routes of exposure include dermal (adults and children) and incidental oral ingestion (children). Since no acute hazard has been identified, an assessment of episodic granular ingestion was not conducted. While it is assumed that most residential use will result in short-term (1 to 30 days) post-application exposures, it is believed that intermediate-term exposures (greater than 30 days up to 180 days) are also possible. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicity database for fluoxastrobin, including acceptable developmental toxicity studies in rats and rabbits, as well as a 2-generation reproductive toxicity study, provides no indication of prenatal and/or postnasal sensitivity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluoxastrobin is complete except for a functional immunotoxicity study as required by the recent changes to the pesticide data requirements. The Agency does have an immunotoxicity study for fluoxastrobin but it has deficiencies that make it unacceptable at this time. Nonetheless, the Agency does not believe that conducting a new immunotoxicity study will result in a lower NOAEL than the regulatory dose for risk assessment. First, the available data do not indicate that fluoxastrobin results in primary immune system effects; a NOAEL for decreased spleen weight in the absence of histopathological findings (male rats) was 53 mg/kg/day. Secondly, no apparent decrease in B-cell activated, T-cell mediated IgM response to SRBC was seen in mice at doses as high as

2,383 mg/kg/day. The Agency therefore believes that no additional safety factor is needed to account for the lack of this study, but the registrant will be required to upgrade it.

ii. There is no indication that fluoxastrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilized tolerance-level residues and 100 PCT information for all commodities. Use of these screening-level assessment values helps ensure that chronic exposures and risks will not be underestimated. EPA additionally made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluoxastrobin in drinking water. EPA used similarly conservative assumptions to assess residential post-application exposure of children as well as incidental oral exposure of toddlers to fluoxastrobin. These assessments will not underestimate the exposure and risks posed by fluoxastrobin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 47% of the cPAD for children (1–2 years old), the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure take into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluoxastrobin is currently registered for uses that could result in both short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures of adults and children to fluoxastrobin. Because all short- and intermediate-term quantitative hazard assessments (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening-level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term exposure estimates (*i.e.,* the highest exposure estimates) in the risk assessments for adults. The Agency believes that most residential exposure will be short-term, based on the use pattern.

There is potential short- and intermediate-term exposure to fluoxastrobin via the dietary (which is considered background exposure) and residential (which is considered primary) pathways. For adults, these pathways lead to exposure via the oral (background), and dermal and inhalation (primary) routes. For children, these pathways lead to exposure via the oral (background), and incidental oral and dermal (primary) routes.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 630 for adults; 170 for children (1–2 years old). Because EPA's level of concern for fluoxastrobin is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluoxastrobin is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluoxastrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for animal commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no established Mexican, Canadian, or Codex maximum residue limits (MRLs) or tolerances for fluoxastrobin on the squash/cucumber subgroup 9B.

C. Revisions to Petitioned-For Tolerances

EPA converted ''crop subgroup 9B squash/cucumbers'' to ''squash/cucumber subgroup 9B'' to conform it to the Agency's Food and Feed Commodity Vocabulary.

V. Conclusion

Therefore, a tolerance is established for residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, including its metabolites

and degradates, in or on squash/cucumber subgroup 9B at 0.50 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.609 is amended by alphabetically adding the following commodity to the table in paragraph (a)(1) to read as follows:

§ 180.609 Fluoxastrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Squash/cucumber subgroup 9B	0.50
* * * * *	

* * * * *

[FR Doc. 2011–20835 Filed 8–16–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0621; FRL–8882–7]

Metconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of metconazole in or on the bushberry subgroup 13–07B and the tuberous and corm vegetable subgroup 1C. The Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 17, 2011. Objections and requests for hearings must be received on or before October 17, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0621. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I Get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the harmonized test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0621 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 17, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0621, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 8, 2010 (75 FR 54629) (FRL–8843–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7743) by Interregional Research Project Number 4 (IR–4) Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450. The petition requested that 40 CFR 180.617 be amended by establishing tolerances for residues of the fungicide metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1 *H* -1,2,4-triazol-1-ylmethyl) cyclopentanol), measured as the sum of *cis*- and *trans* isomers, in or on bushberry subgroup 13–07B at 0.35 parts per million (ppm); and tuberous and corm vegetable subgroup 1C at 0.02 ppm. That notice referenced a summary of the petition prepared by Valent, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being established for the tuberous and corm vegetables subgroup 1C and the bushberry subgroup 13–07B. Additionally, the commodity definition for the tuberous and corm vegetables subgroup 1C is being corrected. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for metconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with metconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acute oral and dermal toxicities to metconazole are moderate, while acute inhalation toxicity is low. Metconazole is a moderate eye irritant and a mild skin irritant. It is not a skin sensitizer. The liver is the primary target organ in the mouse, rat and dog following oral exposure to metconazole via subchronic or chronic exposure durations. Developmental studies in rats and

rabbits show some evidence of developmental effects, but only at dose levels that are maternally toxic. Metconazole did not demonstrate the potential for neurotoxicity in the four species (mouse, rat, dog and rabbit) tested. Metconazole is considered non-genotoxic and liver tumors seen in a chronic mouse study appear to have been formed via a mitogenic mode of action and therefore, metconazole is classified as ''not likely to be carcinogenic to humans'' at levels that do not cause mitogenesis. There was no evidence of immunotoxicity at dose levels that produced systemic toxicity. No immunotoxic effects are evident for metconazole at dose levels as high as 52 milligrams/kilogram/day (mg/kg/day) in rats, which is 12 times higher than the chronic dietary point of departure (4.3 mg/kg/day). Metconazole did not demonstrate neurotoxicity in the subchronic neurotoxicity study or the other submitted studies including acute, subchronic and chronic studies in several species, developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. No effects were noted on brain weights and no clinical signs possibly related to neurotoxicity were noted up to and including the high doses in all studies.

Specific information on the studies received and the nature of the adverse effects caused by metconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2010–0621 on pages 44–50 of the document titled ''Metconazole: Human Health Risk Assessment for Proposed Uses on Tuberous and Corm Vegetables Subgroup 1C and Bushberry Subgroup 13–07B.''

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for metconazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR METCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (General Population, including Infants and Children).	An appropriate dose/endpoint attributable to a single dose was not observed in the available oral toxicity studies reviewed.		
Acute dietary (Females 13–49 years of age).	NOAEL = 12 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.12 mg/kg/day aPAD = 0.12 mg/kg/day	Developmental toxicity in rats: LOAEL = 30 mg/kg/day based on increases in skeletal variations.
Chronic dietary (All populations)	NOAEL = 4.3 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.04 mg/kg/day cPAD = 0.04 mg/kg/day	Chronic oral toxicity study in rats: LOAEL = 13.1 mg/kg/day based on increased liver Males (M) weights and associated hepatocellular lipid vacuolation (M) and centrilobular hypertrophy (M). Similar effects were observed in Females (F) at 54 mg/kg/day, plus increased spleen weight.
Incidental oral short-term (1 to 30 days).	NOAEL = 9.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	28-Day oral toxicity study in rats: LOAEL = 90.5 mg/kg/day based on decreased body weight (M), increased liver and kidney weight and hepatocellular hypertrophy and vacuolation (M/F).
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 6.4 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-Day oral toxicity study in rats: LOAEL = 19.2 mg/kg/day based on increased spleen wt (F) and hepatic vacuolation (M).
Inhalation short-term (1 to 30 days).	NOAEL= 9.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	28-Day oral toxicity study in rats: LOAEL = 90.5 mg/kg/day based on decreased body weight (M), increased liver and kidney weight and hepatocellular hypertrophy and vacuolation (M/F).

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR METCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation (1 to 6 months)	NOAEL= 6.4 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-Day oral toxicity study in rats: LOAEL = 19.2 mg/kg/day based on increased spleen wt (F) and hepatic vacuolation (M).
Cancer (Oral, dermal, inhalation) ..	Classification: ''Not likely to be Carcinogenic to Humans.''		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = actue, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to metconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing metconazole tolerances in 40 CFR 180.617. EPA assessed dietary exposures from metconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for metconazole for the general U.S. population including infants and children; therefore, a quantitative acute dietary exposure assessment is unnecessary for these population subgroups. However, such effects were identified for metconazole for females 13–49 years of age. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that metconazole residues are present in all registered and proposed food commodities at tolerance levels and that 100% of the crops were treated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that metconazole residues are present in all registered and proposed food commodities at tolerance levels and that 100% of the crops were treated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that metconazole does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for metconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of metconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models the estimated drinking water concentrations (EDWCs) of metconazole for acute exposures are estimated to be 45.48 parts per billion (ppb) for surface water and 0.064 ppb for ground water. For chronic exposures for non-cancer assessments they are estimated to be 38.16 ppb for surface water and 0.064 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 45.48 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 38.16 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Metconazole is currently registered for the following uses that could result in residential exposures: Turf and ornamentals. EPA assessed residential exposure using the following assumptions: Adults, adolescents, and children may be exposed to metconazole from its currently registered uses on turf and ornamentals. No dermal toxicity endpoints for short- and intermediate-term durations were identified up to the limit dose. Therefore, only residential handler and postapplication inhalation exposures for adults, and residential post-application incidental oral exposures for children have been assessed. For adults applying metconazole to turf, short- and intermediate-term exposures were assessed for mixer/loader/applicators with a low pressure handwand sprayer. Post-application risks to children following the application of metconazole to home lawns were calculated for short- and intermediate-term incidental oral exposures. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Metconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in

rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Metconazole is a triazole-derived pesticide. Triazole-derived pesticides can form the common metabolite, 1,2,4-triazole and three triazole conjugates (triazole alanine, triazole acetic acid, and triazolylpyruvic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including metconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA SF for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification Number EPA–HQ–OPP– 2005–0497 and an update to assess the addition of the commodities included in this action may be found in docket ID number EPA–HQ–OPP–2010–0621 in the document titled ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment To Address Tolerance Petitions for Metconazole.''

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Acceptable developmental toxicity studies are available in the rat and rabbit as well as a 2-generation reproductive toxicity study in the rat. There is no evidence of susceptibility following *in utero* exposure in the rabbit. In the rat there is qualitative evidence of susceptibility, however the concern is low since the developmental effects are characterized as variations (not malformations), occur in the presence of maternal toxicity, the NOAELs are well defined, and the dose/endpoint is used for acute dietary risk assessment for the sensitive population. There is no evidence of increased susceptibility in the offspring based on the result of the 2-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for metconazole is complete except for a neurotoxicity study. Changes to 40 CFR 180.158 make the acute neurotoxicity testing (OPPTS Guideline 870.6200) required for pesticide registration. Although this study is not yet available for metconazole, the available data do not show any evidence of neurotoxicity. Metconazole did not demonstrate neurotoxicity in the subchronic neurotoxicity study or the other submitted studies including acute, subchronic and chronic studies in several species, developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. No effects were noted on brain weights and no clinical signs possibly related to neurotoxicity were noted up to and including the high doses in all studies. Therefore, EPA does not believe that conducting the acute neurotoxicity study will result in an endpoint lower than the ones used in risk assessment for metconazole. Consequently, an additional database uncertainty factor does not need to be applied.

ii. There is no evidence of susceptibility following *in utero* exposure in the rabbit. In the rat there is qualitative evidence of susceptibility, however the concern is low since the developmental effects are characterized as variations (not malformations), occur in the presence of maternal toxicity, the NOAELs are well defined, and the dose/endpoint is used for acute dietary risk assessment for the sensitive population. There is no evidence of increased susceptibility in the offspring based on the result of the 2-generation reproduction study.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 percent crop treated and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to metconazole in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by metconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to metconazole will occupy 3.8% of the aPAD for females 13–49, the only population subgroup of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to metconazole from food and water will utilize 12.6% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of metconazole is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and

intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Metconazole is currently registered for uses that could result in short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to metconazole.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded, that the short-and intermediate-term aggregate MOEs from dietary exposure (food + drinking water) and non-occupational/residential handler exposure (inhalation) for adults are 1,700 for both.

The short-and intermediate-term aggregate MOEs from dietary exposure (food + drinking water) and non-occupational/residential post-application exposure (incidental oral) for children 1–2 years old are 420 and 460, respectively. Because EPA's level of concern for metconazole is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, metconazole is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to metconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography method with nitrogen-phosphorus-detection (GC/NPD) is available for data collection and enforcement of tolerances for residues of metconazole parent isomers (*cis*- and *trans*-metconazole) in plant commodities based on Valent Method RM–41C–1, ''Determination of *cis* and *trans*-Metconazole in Crops.'' An adequate high performance liquid chromatography (HPLC) method is available for data collection and enforcement of tolerances for residues of 1,2,4-triazole (T), triazole alanine (TA), and triazole acetic acid (TAA). The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for metconazole on potato or blueberry or the respective crop subgroups.

C. Revisions to Petitioned-For Tolerances

IR–4 proposed establishing tolerances on the bushberry subgroup 13–07B at 0.35 ppm and the tuberous and corm vegetable subgroup 1C at 0.02 ppm. Upon review, these levels are being revised to 0.40 ppm and 0.04 ppm, respectively. EPA used the tolerance spreadsheet in the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data* to determine the appropriate tolerance level for bushberries. The tolerance spreadsheet was not used to calculate the tolerance for tuberous and corm vegetables because residues in potatoes were below the LOQ (< 0.04 ppm). The proposed tolerance of 0.02 ppm for tuberous and corm vegetables is too low. The tolerance should be established at 0.04 ppm, reflecting the combined LOQs of the metconazole enforcement method of 0.02 ppm for each of the *cis*- and *trans*-isomers of metconazole. Also, the correct commodity definition for tuberous and corm vegetables subgroup 1C is ''Vegetable, tuberous and corm, subgroup 1C'' and is being changed accordingly. Finally, EPA has revised the tolerance expression in paragraph (a)(1) to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of metconazole not specifically mentioned; and

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. Because the tolerance expressions in paragraphs (a)(1) and (a)(2) are now identical, EPA is combining (a)(1) and (a)(2) into a newly designated paragraph (a) and placing all the commodities from these two paragraphs into a single table.

V. Conclusion

Therefore, tolerances are established for residues of metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of *cis*- and *trans*- isomers, in or on the bushberry subgroup 13–07B at 0.40 ppm, and vegetable, tuberous and corm, subgroup 1C at 0.04 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments,

on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 9, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.617 is amended by revising paragraph (a) to read as follows:

§ 180.617 Metconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of metconazole, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified below is to be determined by measuring only metconazole [5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol] as the sum of its *cis*- and *trans*-isomers in or on the following commodities:

Commodity	Parts per million
Almond, hulls	4.0
Banana [1]	0.1
Barley, grain	2.5
Barley, hay	7.0
Barley, straw	7.0
Beet, sugar, dried pulp	0.70
Beet, sugar, molasses	0.08
Beet, sugar, roots	0.07
Bushberry subgroup 13–07B	0.40
Canola seed	0.04
Cattle, meat byproducts	0.04
Corn, field, forage	3.0
Corn, field, grain	0.02
Corn, field, stover	4.5
Corn, pop, grain	0.02
Corn, pop, stover	4.5
Corn, sweet, forage	3.0
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	4.5
Cotton, gin byproducts	8.0
Cotton, undelinted seed	0.25
Egg	0.04
Fruit, stone, group 12	0.20
Goat, meat byproducts	0.04
Grain, aspirated grain fractions	7.0
Horse, meat byproducts	0.04
Nut, tree, group 14	0.04
Oat, grain	1.0
Oat, hay	17
Oat, straw	6.0
Peanut	0.04
Peanut, refined oil	0.05
Pistachio	0.04
Rye, grain	0.25
Rye, straw	14
Sheep, meat byproducts	0.04
Soybean, forage	3.0
Soybean, hay	6.0
Soybean, hulls	0.08
Soybean, seed	0.05
Vegetable, tuberous and corn, subgroup 1C	0.04
Wheat, grain	0.15
Wheat, hay	16
Wheat, milled byproducts	0.20
Wheat, straw	18

[1] No U.S. registration as of August 30, 2006.

* * * * *

[FR Doc. 2011–20841 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0481; FRL–8874–9]

Thiamethoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of thiamethoxam in or on peanut; peanut, hay; peanut, meal; alfalfa, forage; alfalfa, hay; and in food/feed commodities in food/feed handling establishments. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 17, 2011. Objections and requests for hearings must be received on or before October 17, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: This final rule addresses three petitions for tolerances. EPA has established a docket under docket identification (ID) number EPA–HQ–OPP–2011–0481 which contains only this final rule and is a summary docket used to lead the user to the individual docket established for each of the three petitions for tolerances addressed in this final rule: EPA–HQ–OPP–2010–0041 (peanut), EPA–HQ–OPP–2010–0324 (alfalfa), EPA–HQ–OPP–2010–0602 (food/feed commodities in food/feed handling establishments). The user should look in the individual dockets to view the previous **Federal Register** publications and supporting documents for each tolerance petition. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket

Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8735; *e-mail address: chao.julie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0481 (summary docket) or the individual docket for a specific new use: EPA–HQ–OPP–2010–0041 (peanut), EPA–HQ–OPP–2010–0324 (alfalfa), or EPA–HQ–OPP–2010–0602 (food/feed commodities in food/feed handling establishments) in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 17, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0481 (summary docket) or the individual docket for a specific new use: EPA–HQ–OPP–2010–0041 (peanut), EPA–HQ–OPP–2010–0324 (alfalfa), –HQ–OPP–2010–0602 (food/feed commodities in food/feed handling establishments) by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

This final rule addresses three petitions for tolerances.

1. *Peanut.* In the **Federal Register** of March 24, 2010 (75 FR 14154) (FRL–8815–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7657) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.565 be amended by establishing tolerances for residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine and its metabolite, *N*-(2-chloro-thiazol-5-ylmethyl)-*N*′-methyl-*N*′-nitro-guanidine, in or on peanut at 0.05 parts per million (ppm) and peanut hay at 0.25 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that a tolerance must also be established for peanut meal at 0.15 ppm. The reasons for this change are explained in Unit IV.D.

2. *Alfalfa.* In the **Federal Register** of June 8, 2010 (75 FR 32463) (FRL–8827–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7707) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.565 be amended by establishing tolerances for residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine and its metabolite, *N*-(2-chloro-thiazol-5-ylmethyl)-*N*′-methyl-*N*′-nitro-guanidine, in or on alfalfa, forage at 0.05 ppm and alfalfa, hay at 0.12 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received from a private citizen who opposes any pesticide that leaves a residue on food. The Agency has received this same comment from this commenter on numerous previous occasions and rejects it for reasons previously stated. 70 FR 1349, 1354 (January 7, 2005).

3. *Food/feed commodities in food/feed handling establishments.* In the **Federal Register** of June 22, 2011 (76 FR 36479) (FRL–8878–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7734) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.565 be amended by establishing tolerances for residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine and its metabolite, *N*-(2-chloro-thiazol-5-ylmethyl)-*N*′-methyl-*N*′-nitro-guanidine, in or on food commodities and feed

commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.01 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received from a private citizen who opposes any pesticide that leaves a residue on food. The Agency has received this same comment from this commenter on numerous previous occasions and rejects it for reasons previously stated. 70 FR 1349, 1354 (January 7, 2005).

Based upon review of the data supporting the petition, EPA has determined that the tolerance for food commodities and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments be raised to 0.02 ppm. The reasons for this change are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for thiamethoxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with thiamethoxam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Thiamethoxam shows toxicological effects primarily in the liver, kidney, testes, and hematopoietic system. In addition, developmental neurological effects were observed in rats. This developmental effect is being used to assess risks associated with acute exposures to thiamethoxam, and the liver and testicular effects are the bases for assessing longer term exposures. Although thiamethoxam causes liver tumors in mice, the Agency has classified thiamethoxam as ''not likely to be carcinogenic to humans'' based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. The non-cancer (chronic) assessment is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action for cancer. Refer to the **Federal Register** of June 22, 2007 (72 FR 34401) (FRL–8133–6) for more information regarding the cancer classification of thiamethoxam.

Thiamethoxam produces a metabolite known as CGA–322704 (referred to in the remainder of this rule as clothianidin). Clothianidin is also registered as a pesticide. While some of the toxic effects observed following testing with the thiamethoxam and clothianidin are similar, the available information indicates that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately. A separate risk assessment of clothianidin has been completed in conjunction with the registration of clothianidin. The most recent assessments, which provide details regarding the toxicology of clothianidin, are available in the docket EPA–HQ–OPP–2008–0945, at *http:/// www.regulations.gov.* Refer to the documents ''Clothianidin: Human Health Risk Assessment for Proposed Uses on Berries (Group 13–07H), Brassica Vegetables (Group 5), Cotton, Cucurbit Vegetables (Group 9), Fig, Fruiting Vegetables (Group 8), Leafy Green Vegetables (Group 4A), Peach, Pomegranate, Soybean, Tree Nuts (Group 14), and Tuberous and Corm Vegetables (Group 1C)''; and ''Clothianidin: Human Health Risk Assessment for Proposed Seed Treatment Uses on Root and Tuber Vegetables (Group 1), Bulb Vegetables (Group 3), Leafy Green Vegetables (Group 4A), Brassica Leafy Vegetables (Group 5), Fruiting Vegetables (Group 8), Cucurbit Vegetables (Group 9), and Cereal Grains (Group 15, except rice).''

Specific information on the studies received and the nature of the adverse effects caused by thiamethoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 22, 2007.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http:// www.epa.gov/pesticides/factsheets/ riskassess.htm.*

A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 22, 2007.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiamethoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing thiamethoxam tolerances in 40 CFR 180.565. EPA assessed dietary exposures from thiamethoxam in food as follows.

For both acute and chronic exposure assessments for thiamethoxam, EPA combined residues of clothianidin coming from thiamethoxam with residues of thiamethoxam *per se.* As discussed in this unit, thiamethoxam's major metabolite is CGA–322704, which is also the registered active ingredient clothianidin. Available information indicates that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately; however, these exposure assessments for this action incorporated the total residue of thiamethoxam and clothianidin from use of thiamethoxam because the total residue for each commodity for which thiamethoxam has a tolerance has not been separated between thiamethoxam and its clothianidin metabolite. The combining of these residues, as was done in this assessment, results in highly conservative estimates of dietary exposure and risk. A separate assessment was done for clothianidin.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for thiamethoxam. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues of thiamethoxam and clothianidin. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam and 100% of crops with registered or requested uses of clothianidin are treated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance level and/or anticipated residues from thiamethoxam field trials. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam and 100% of crops with registered or requested uses of clothianidin are treated.

A complete listing of the inputs used in these assessments can be found in the following documents: ''Thiamethoxam. Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments for the Section 3 Registration as a Seed Treatment for Alfalfa and Peanuts, and for Use in Food Handling Establishments,'' available in the dockets EPA–HQ–OPP–2009–0041, EPA–HQ–OPP–2010–0324, and EPA–HQ–OPP–2010–0602, at *http://www.regulations.gov;* and ''Clothianidin Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments,'' available in the docket EPA–HQ–OPP–2008–0771, at *http://www.regulations.gov.*

iii. *Cancer.* EPA concluded that thiamethoxam is ''not likely to be carcinogenic to humans'' based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse, and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. The non-cancer (chronic) assessment is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action for cancer and thus a separate exposure assessment pertaining to cancer risk is not necessary. Because clothianidin is not expected to pose a cancer risk, a quantitative dietary exposure assessment for the purposes of assessing cancer risk was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* Thiamethoxam is expected to be persistent and mobile in terrestrial and aquatic environments. These fate properties suggest that thiamethoxam has a potential to move into surface water and shallow ground water. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water. Because the Agency does not have comprehensive monitoring data, the Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiamethoxam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiamethoxam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

For surface water, the estimated drinking water concentrations (EDWCs) are based on thiamethoxam concentrations in water from rice paddies and cranberry bogs that drains into adjacent surface water bodies (often referred to as ''tail water''). Because the uses on rice and cranberries involve flooding, for which Pesticide Root Zone Model/Exposure/Analysis Modeling System (PRZM/EXAMS) is not currently parameterized, these uses were assessed using the modified Tier I Rice Model and the Provisional Cranberry Model. Exposure estimates were refined with a default percent cropped area factor of 87%. The Tier I Rice Model is expected to generate conservative EDWCs that exceed peak measured concentrations of pesticides in water bodies well downstream of rice paddies by less than one order of magnitude to multiple orders of magnitude.

For ground water, the EDWCs are based on thiamethoxam concentrations resulting from use on dry bulb onions. Exposure in ground water due to leaching was assessed with the Screening Concentration in Groundwater (SCI–GROW) models.

Based on the Tier I Rice Model and SCI–GROW models, the EDWCs of thiamethoxam for acute exposures are 131.77 parts per billion (ppb) for tail water (i.e. surface water) and 4.66 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are 11.31 ppb for tail water and 4.66 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The most conservative EDWCs in both the acute and chronic exposure scenarios were for rice tail water, and represent worst case scenarios. Therefore, for the acute dietary risk assessments for

thiamethoxam, the upper-bound EDWC value of 131.77 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessments for thiamethoxam, the upper-bound EDWC value of 11.31 ppb was used to assess the contribution to drinking water.

The registrant has conducted small-scale prospective ground water studies in several locations in the United States to investigate the mobility of thiamethoxam in a vulnerable hydrogeological setting. A review of those data show that generally, residues of thiamethoxam, as well as clothianidin, are below the limit of quantification (0.05 ppb). When quantifiable residues are found, they are sporadic and at low levels. The maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for clothianidin. These values are well below the modeled estimates summarized in this unit, indicating that the modeled estimates are, in fact, protective of what actual exposures are likely to be.

Clothianidin is not a significant degradate of thiamethoxam in surface or ground water sources of drinking water and, therefore, was not included in the EDWCs used in the thiamethoxam dietary assessments. For the clothianidin assessments, the acute EDWC value of 7.29 ppb for clothianidin was incorporated into the acute dietary assessment and the chronic EDWC value of 5.88 ppb for clothianidin was incorporated into the chronic dietary assessment.

A complete listing of the inputs used in these assessments can be found in the following documents: ''Thiamethoxam. Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments for the Section 3 Registration as a Seed Treatment for Alfalfa and Peanuts, and for Use in Food Handling Establishments,'' available in the dockets EPA–HQ–OPP–2009–0041, EPA–HQ–OPP–2010–0324, and EPA–HQ–OPP–2010–0602, at *http://www.regulations.gov;* and ''Clothianidin Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments,'' available in the docket EPA–HQ–OPP– 2008–0771, at *http://www.regulations.gov.*

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiamethoxam is currently registered for the following uses that could result in residential exposures: Turfgrass on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes, and sod farms; indoor crack and crevice or spot treatments to control insects in residential settings. EPA assessed residential exposure using the following assumptions: Thiamethoxam is registered for use on turfgrass (on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes and sod farms) and for indoor use to control insects in residential settings. Thiamethoxam is applied by commercial applicators only. Therefore, exposures resulting to homeowners from applying thiamethoxam were not assessed. However, entering areas previously treated with thiamethoxam could lead to exposures for adults and children. As a result, risk assessments have been completed for postapplication scenarios.

Short-term exposures (1 to 30 days of continuous exposure) may occur as a result of activities on treated turf. Short-term and intermediate-term exposures (30 to 90 days of continuous exposure) may occur as a result of entering indoor areas previously treated with a thiamethoxam indoor crack and crevice product. The difference between short- and intermediate-term aggregate risk is the frequency of hand-to-mouth events for children. For short-term exposure there are 20 events per hour and for intermediate-term exposure there are 9.5 events per hour. The doses and end-points for short- and intermediate-term aggregate risk are the same.

EPA combined all non-dietary sources of post application exposure to obtain an estimate of potential combined exposure. These scenarios consisted of adult and toddler dermal postapplication exposure and oral (hand-to-mouth) exposures for toddlers. Since postapplication scenarios for turf occur outdoors, the potential for inhalation exposure is negligible and therefore does not require an inhalation exposure assessment. Since thiamethoxam has a very low vapor pressure (6.6×10^{-9} Pa @ 25 °C), inhalation exposure is also expected to be negligible as a result of indoor crack and crevice use. Therefore, a quantitative postapplication inhalation exposure assessment was not performed.

A complete listing of the inputs used in these assessments can be found in the following documents: ''Thiamethoxam: Occupational and Residential Exposure/Risk Assessment for Proposed Section 3 Registration for Seed Treatment Use on Peanut and Alfalfa'' available in the dockets EPA–HQ–OPP–2010–0041 and EPA–HQ–OPP–2010–0324 at *http://www.regulations.gov;* and ''Thiamethoxam: Occupational and Residential Exposure/Risk Assessment for Proposed Section 3 Registration for Use in Food/Feed Handling Establishments'' available in the docket EPA–HQ–OPP–2010–0602 at *http://www.regulations.gov.*

Thiamethoxam use on turf or as an indoor crack and crevice or spot treatment does not result in significant residues of clothianidin. In addition, clothianidin residential and aggregate risks are not of concern. For further details, refer to the documents ''Clothianidin: Human Health Risk Assessment for Proposed Uses on Berries (Group 13–07H), Brassica Vegetables (Group 5), Cotton, Cucurbit Vegetables (Group 9), Fig, Fruiting Vegetables (Group 8), Leafy Green Vegetables (Group 4A), Peach, Pomegranate, Soybean, Tree Nuts (Group 14), and Tuberous and Corm Vegetables (Group 1C)''; and ''Clothianidin: Human Health Risk Assessment for Proposed Seed Treatment Uses on Root and Tuber Vegetables (Group 1), Bulb Vegetables (Group 3), Leafy Green Vegetables (Group 4A), Brassica Leafy Vegetables (Group 5), Fruiting Vegetables (Group 8), Cucurbit Vegetables (Group 9), and Cereal Grains (Group 15, except rice),'' available in the docket EPA–HQ–OPP–2008–0945, at *http://www.regulations.gov.*

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Thiamethoxam is a member of the neonicotinoid class of pesticides and produces, as a metabolite, another neonicotinoid, clothianidin. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin,

thiamethoxam, and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nicotinic acetylcholine receptors, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for thiamethoxam is based on unrelated effects in mammals, including effects on the liver, kidney, testes, and hematopoietic system.

Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (*e.g.,* testicular tubular atrophy with thiamethoxam; mineralized particles in thyroid colloid with imidacloprid).

Thus, EPA has not found thiamethoxam or clothianidin to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that thiamethoxam and clothianidin do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the developmental studies, there is no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to *in utero* exposure to thiamethoxam. The developmental NOAELs are either higher than or equal to the maternal NOAELs. The toxicological effects in fetuses do not appear to be any more severe than those in the dams or does. In the rat DNT study, there was no quantitative evidence of increased susceptibility.

There is evidence of increased quantitative susceptibility for male pups in two 2-generation reproductive studies. In one study, there are no toxicological effects in the dams whereas for the pups, reduced bodyweights are observed at the highest dose level, starting on day 14 of lactation. This contributes to an overall decrease in bodyweight gain during the entire lactation period. Additionally, reproductive effects in males appear in the F1 generation in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups (increased incidence of testicular tubular atrophy at 1.8 milligrams/kilogram/day (mg/kg/day)) when compared to the parents (hyaline changes in renal tubules at 61 mg/kg/day; NOAEL is 1.8 mg/kg/day).

In a more recent 2-generation reproduction study, the most sensitive effect was sperm abnormalities at 3 mg/kg/day (the NOAEL is 1.2 mg/kg/day) in the F1 males. This study also indicates increased susceptibility for the offspring for this effect.

Although there is evidence of increased quantitative susceptibility for male pups in both reproductive studies, NOAELs and LOAELs were established in these studies and the Agency selected the NOAEL for testicular effects in F1 pups as the basis for risk assessment. The Agency has confidence that the NOAEL selected for risk assessment is protective of the most sensitive effect (testicular effects) for the most sensitive subgroup (pups) observed in the toxicological database.

3. *Conclusion.* i. In the final rule published in the **Federal Register** of January 5, 2005 (70 FR 708) (FRL–7689–7), EPA had previously determined that the FQPA SF should be retained at 10X for thiamethoxam, based on the following factors: Effects on endocrine organs observed across species; significant decrease in alanine amino transferase levels in companion animal studies and in dog studies; the mode of action of this chemical in insects (interferes with the nicotinic acetylcholine receptors of the insect's nervous system); the transient clinical signs of neurotoxicity in several studies across species; and the suggestive evidence of increased quantitative susceptibility in the rat reproduction study. Since that determination, EPA has received and reviewed a city DNT study in rats, and an additional reproduction study in rats.

Taking the results of these studies into account, as well as the rest of the data on thiamethoxam, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X (June 23, 2010, 75 FR 35653; FRL–8830–4); (June 22, 2007, 72 FR 34401). That decision is based on the following findings:

a. The toxicity database for thiamethoxam is largely complete, including acceptable/guideline developmental toxicity, 2-generation reproduction, and DNT studies designed to detect adverse effects on the developing organism, which could result from the mechanism that may have produced the decreased alanine amino transferase levels.

The registrant must now submit, as a condition of registration, an immunotoxicity study.

This study is now required under 40 CFR part 158.

The available data for thiamethoxam show the potential for immunotoxic effects. In the subchronic dog study, leukopenia (decreased white blood cells) was observed in females only, at the highest dose tested (HDT) of 50 mg/kg/day; the NOAEL for this effect was 34 mg/kg/day. The overall study NOAEL was 9.3 mg/kg/day in females (8.2 mg/kg/day in males) based on hematology and other clinical chemistry findings at the LOAEL of 34 mg/kg/day (32 mg/kg/day in males). In the subchronic mouse study, decreased spleen weights were observed in females at 626 mg/kg/day; the NOAEL for this effect was the next lowest dose of 231 mg/kg/day. The overall study NOAEL was 1.4 mg/kg/day (males) based on increased hepatocyte hypertrophy observed at the LOAEL of 14.3 mg/kg/day. The decreased absolute spleen weights were considered to be treatment related, but were not statistically significant at 626 mg/kg/day or at the HDT of 1,163 mg/kg/day. Since spleen weights were not decreased relative to body weights, the absolute decreases may have been related to the

decreases in body weight gain observed at higher doses.

Overall, the Agency has a low concern for the potential for immunotoxicity related to these effects for the following reasons: In general, the Agency does not consider alterations in hematology parameters alone to be a significant indication of potential immunotoxicity. In the case of thiamethoxam, high-dose females in the subchronic dog study had slight microcytic anemia as well as leukopenia characterized by reductions in neutrophils, lymphocytes and monocytes; the leukopenia was considered to be related to the anemic response to exposure. Further, endpoints and doses selected for risk assessment are protective of the observed effects on hematology. Spleen weight decreases, while considered treatment-related, were associated with decreases in body weight gain, and were not statistically significant. In addition, spleen weight changes occurred only at very high doses, more than 70 times higher than the doses selected for risk assessment. Therefore, an additional 10X safety factor is not warranted for thiamethoxam at this time.

b. For the reasons discussed in Unit III.D.2., there is low concern for an increased susceptibility in the young.

c. Although there is evidence of neurotoxicity after acute exposure to thiamethoxam at doses of 500 mg/kg/day including drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength, no evidence of neuropathology was observed. These effects occurred at doses at least fourteen-fold and 416-fold higher than the doses used for the acute, and chronic risk assessments, respectively; thus, there is low concern for these effects since it is expected that the doses used for regulatory purposes would be protective of the effects noted at much higher doses.

In the DNT study, there was no evidence of neurotoxicity in the dams exposed up to 298.7 mg/kg/day; a dose that was associated with decreases in body weight gain and food consumption. In pups exposed to 298.7 mg/kg/day, there were significant reductions in absolute brain weight and size (*i.e.,* length and width of the cerebellum was less in males on day 12, and there were significant decreases in Level 3–5 measurements in males and in Level 4–5 measurements in females on day 63). However, there is low concern for this increased qualitative susceptibility observed in the DNT study because the doses and endpoints selected for risk assessment are protective of the effects in the offspring. As noted previously, the Agency selected the NOAEL for testicular effects in F1 pups based on two reproductive toxicity studies for risk assessment to be protective of all sensitive subpopulations.

d. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed using tolerance-level and/or anticipated residues that are based on reliable field trial data observed in the thiamethoxam field trials. Although there is available information indicating that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately, the residues of each have been combined in these assessments to ensure that the estimated exposures of thiamethoxam do not underestimate actual potential thiamethoxam exposures. An assumption of 100 PCT was made for all foods evaluated in the assessments. For the acute and chronic assessments, the EDWCs of 131.77 ppb and 11.3 ppb, respectively, were used to estimate exposure via drinking water. Compared to the results from small scale prospective ground water studies where the maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for clothianidin, the modeled estimates are protective of what actual exposures are likely to be. Similarly conservative residential standards of procedures, as well as a chemical specific turf transfer residue (TTR) study were used to assess postapplication exposure to children and incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by thiamethoxam.

ii. In the final rule published in the **Federal Register** of February 6, 2008 (73 FR 6851) (FRL–8346–9), EPA had previously determined that the FQPA SF for clothianidin should be retained at 10X because EPA had required the submission of a DNT study to address the combination of evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin database, and evidence showing that juvenile rats in the 2-generation reproduction study appear to be more susceptible to these potential immunotoxic effects. In the absence of a DNT study, EPA concluded that there was sufficient uncertainty regarding immunotoxic effects in the young that the 10X FQPA factor should be retained as a database uncertainty factor.

Since that determination, EPA has received and reviewed an acceptable/guideline DNT study, which demonstrated no treatment-related effects. Taking the results of this study into account, as well as the rest of the data on clothianidin, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF for clothianidin were reduced to 1X (February 11, 2011, 76 FR 7712) (FRL–8858–3). That decision is based on the following findings:

a. The toxicity database for clothianidin is complete. As noted, the prior data gap concerning developmental immunotoxicity has been addressed by the submission of an acceptable DNT study.

b. A rat DNT study is available and shows evidence of increased quantitative susceptibility of offspring. However, EPA considers the degree of concern for the DNT study to be low for prenatal and postnatal toxicity because the NOAEL and LOAEL were well characterized, and the doses and endpoints selected for risk assessment are protective of the observed susceptibility; therefore, there are no residual concerns regarding effects in the young.

c. While the rat multi-generation reproduction study showed evidence of increased quantitative susceptibility of offspring compared to adults, the degree of concern is low because the study NOAEL and LOAEL have been selected for risk assessment purposes for relevant exposure routes and durations. In addition, the potential immunotoxic effects observed in the study have been further characterized with the submission of a DNT study that showed no evidence of susceptibility. As a result, there are no concerns or residual uncertainties for prenatal and postnatal toxicity after establishing toxicity endpoints and traditional UFs to be used in the risk assessment for clothianidin.

d. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on assumptions that were judged to be highly conservative and health-protective for all durations and population subgroups, including tolerance-level residues, adjustment factors from metabolite data, empirical processing factors, and 100 PCT for all commodities. Additionally, EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to clothianidin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children and adults as well as incidental oral exposure of toddlers. These assessments will not

underestimate the exposure and risks posed by clothianidin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiamethoxam will occupy 9.5% of the aPAD for all infants (<1 year), the population group receiving the greatest exposure. Acute dietary exposure from food and water to clothianidin is estimated to occupy 23% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiamethoxam from food and water will utilize 43% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic exposure to clothianidin from food and water will utilize 19% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiamethoxam and clothianidin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to thiamethoxam. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures for thiamethoxam result in aggregate MOEs of: 370 for the general U.S. population; 490 for all infants (<1 year); 440 for children 1 to 2 years; 450 for children 3–5 years; 370 for children 6–12 years; 380 for youth 13–19 years, adults 20–49 years, adults 50+ years, and females 13–49 years. Because EPA's level of concern for thiamethoxam is a MOE of 100 or below, these MOEs are not of concern.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures for clothianidin result in aggregate MOEs of: 1,700 for the general U.S. population; 480 for all infants (<1 year); 380 for children 1 to 2 years; 500 for children 3–5 years; 1,400 for children 6–12 years; 2,200 for youth 13–19 years, adults 20–49 years, and females 13–49 years; 2,100 for adults 50+ years. Because EPA's level of concern for clothianidin is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to thiamethoxam.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 370 for the general U.S. population; 540 for all infants (<1 year); 470 for children 1 to 2 years; 490 for children 3–5 years; 370 for children 6–12 years; 380 for youth 13–19 years, adults 20–49 years, adults 50+ years, and females 13–49 years. Because EPA's level of concern for thiamethoxam is a MOE of 100 or below, these MOEs are not of concern.

Using the exposure assumptions described in this unit for intermediate exposures, EPA has concluded the combined intermediate food, water, and residential exposures for clothianidin result in aggregate MOEs of 1,700 for the general U.S. population; 480 for all infants (<1 year); 380 for children 1 to 2 years; 500 for children 3–5 years; 1,400 for children 6–12 years; 2,200 for youth 13–19 years, adults 20–49 years, and females 13–49 years; 2,100 for adults 50+ years. Because EPA's level of concern for clothianidin is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified thiamethoxam as not likely to be a human carcinogen based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. Therefore, thiamethoxam is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiamethoxam or clothianidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography/ultraviolet (HPLC/UV) or mass spectrometry (MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; *telephone number:* (410) 305–2905; *e-mail address: residuemethods@epa.gov*.

For further details, refer to the document ''Thiamethoxam—Human Health Risk Assessment for New Seed Treatment Uses on Alfalfa and Peanuts, and Use in Food Handling Establishments'' in the dockets EPA–HQ–2010–0041, EPA–HQ–OPP–2010–0324, EPA–HQ–OPP–2010–0602, at *http://www.regulations.gov* and ''Thiamethoxam. Petition to Establish a Permanent Tolerance for Residues of the Insecticide Resulting from Food/Feed Use as a Seed Treatment on Bulb Onions. Response to Data Gaps from Conditional Registration of Various Food/Feed Crops (as Specified in HED Memo D281702; M. Doherty; 17 April 2007). Summary of Analytical Chemistry and Residue Data,'' available in the docket EPA–HQ–OPP–2009–0737, at *http://www.regulations.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/

World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for thiamethoxam.

C. Response to Comments

Comments were received in dockets EPA–HQ–OPP–2010–0324 and EPA–HQ–OPP–2010–0602 from a private citizen who opposes any pesticide that leaves a residue on food. The Agency has received these same comments from this commenter on numerous previous occasions and rejects them for reasons previously stated. 70 FR 1349, 1354 (January 7, 2005).

D. Revisions to Petitioned-For Tolerances

EPA made two revisions to the tolerances as proposed: The addition of a tolerance for peanut meal and an increase in the proposed tolerance for food commodities and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments.

In addition to the two requested raw agricultural commodity tolerances for peanut and peanut hay, EPA considered the residues on processed peanut commodities. The processed commodities associated with the proposed use on peanuts are peanut meal and refined oil. Two peanut field trials were conducted in the U.S. during the 1999 growing season in which peanut seeds treated at an exaggerated (roughly 6–6.5X) rate were grown for processing into peanut meal and refined oil. Thiamethoxam residues were not detected in the nutmeat nor processed fractions of peanuts grown from peanut seeds treated at the 6–6.5X rate. Residues were not detected in any of the peanut oil samples upon processing. Residues were observed in the nutmeat and meal of peanuts, grown from peanut seeds treated at roughly a 2X rate, from both field trials. The theoretical concentration factor for peanut meal (EPA Residue Chemistry Test Guideline 860.1520, Table 3) is 2.2X. The empirical concentration factors for thiamethoxam in meal (range 2.0–3.1X, average 2.6X) conform well to the theoretical value. A tolerance is not required in peanut oil. However, based on the highest average field trial combined residues of 0.05 ppm (0.09 ppm at a 2X rate) in peanut nutmeat, and the theoretical concentration factor for peanut meal of 2.2X, EPA is setting a tolerance of 0.15 ppm in peanut meal.

The submitted data for thiamethoxam use in food handling areas are acceptable and support the proposed use (spot, void, and crack and crevice treatment) in food handling establishments. An adequate variety of food commodities were exposed to thiamethoxam, in two different types of food handling establishments, at 1X the maximum proposed rate. Maximum thiamethoxam and clothianidin residues were each <0.01 ppm in food commodities exposed to 1X treatment in food handling areas (with the vast majority of samples containing non-detectable residues). The registrants proposed tolerance had failed to add these two sources together. EPA is setting a tolerance of 0.02 ppm in food commodities and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments based on the presence of detectable residues of thiamethoxam added to detectable residues of the metabolite clothianidin in various samples.

V. Conclusion

Therefore, tolerances are established for residues of thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine and its metabolite, *N*-(2-chloro-thiazol-5-ylmethyl)-*N*′-methyl-*N*′-nitro-guanidine, in or on peanut at 0.05 ppm; peanut hay at 0.25 ppm; peanut meal at 0.15 ppm; alfalfa, forage at 0.05 ppm; alfalfa, hay at 0.12 ppm; and food commodities and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.565 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
Alfalfa, forage	0.05
Alfalfa, hay	0.12
* * * * * * *	
Food commodities and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments	0.02
* * * * * * *	
Peanut	0.05
Peanut, hay	0.25
Peanut, meal	0.15
* * * * * * *	

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[FR Doc. 2011–20839 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1211]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin	City of Gulf Shores (11–04–1670P).	June 10, 2011; June 17, 2011; *The Islander*.	The Honorable Robert S. Craft Mayor, City of Gulf Shores P.O. Box 299 Gulf Shores, AL 36547.	June 6, 2011	015005
Baldwin	City of Orange Beach (11–04–4328P).	June 22, 2011; June 29, 2011; *The Islander*.	The Honorable Tony Kennon Mayor, City of Orange Beach 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	June 14, 2011	015011
Madison	City of Huntsville (10–04–7544P).	June 30, 2011; July 7, 2011; *The Huntsville Times*.	The Honorable Tommy Battle, Mayor, City of Huntsville, 308 Fountain Circle, P.O. Box 308, Huntsville, AL 35801.	November 4, 2011	010153
Madison	City of Huntsville (10–04–7862P).	June 22, 2011; June 29, 2011; *The Huntsville Times*.	The Honorable Tommy Battle, Mayor, City of Huntsville, 308 Fountain Circle, P.O. Box 308, Huntsville, AL 35801.	October 27, 2011	010153
Madison	City of Madison (10–04–7544P).	June 30, 2011; July 7, 2011; *The Huntsville Times*.	The Honorable Paul Finley, Mayor, City of Madison, 100 Hughes Road, Madison, AL 35758.	November 4, 2011	010308
California: Fresno	Unincorporated areas of Fresno County (10–09–3948P).	June 8, 2011; June 15, 2011; *The Fresno Bee*.	The Honorable Phil Larson, Chairman, Fresno County Board of Supervisors, 2281 Tulare Street, Room 300, Fresno, CA 93721.	October 13, 2011	065029
Florida:					
Bay	City of Panama City (11–04–5514P).	June 16, 2011; June 23, 2011; *The News Herald*.	The Honorable Gregory Brudnicki, Mayor, City of Panama City, 9 Harrison Avenue, Panama City, FL 32401.	June 9, 2011	120012
Orange	Unincorporated areas of Orange County (11–04–2514P).	April 7, 2011; April 14, 2011; *The Orlando Weekly*.	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	August 12, 2011	120179
Sarasota	City of Sarasota (11–04–4005P).	June 16, 2011; June 23, 2011; *The Sarasota Herald-Tribune*.	The Honorable Suzanne Atwell, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	June 9, 2011	125150
Georgia: Muscogee	City of Columbus-Muscogee County (Consolidated Government) (11–04–4624P).	June 8, 2011; June 15, 2011; *The Columbus Ledger-Enquirer*.	The Honorable Teresa Tomlinson, Mayor, City of Columbus-Muscogee County Consolidated Government, 100 10th Street, Columbus, GA 31901.	May 31, 2011	135158
Illinois:					
Will	Unincorporated areas of Will County (11–05–1594X).	June 23, 2011; June 30, 2011; *The Mokena Messenger*.	Mr. Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	October 28, 2011	170695
Will	Village of Mokena (11–05–1594X).	June 23, 2011; June 30, 2011; *The Mokena Messenger*.	The Honorable Joseph W. Werner, Mayor, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	October 28, 2011	170705
Kansas:					
Johnson	City of Lenexa (11–07–1137P).	June 1, 2011; June 8, 2011; *The Shawnee Dispatch*.	The Honorable Michael Boehm, Mayor, City of Lenexa, P.O. Box 14888, Lenexa, KS 66285.	October 6, 2011	200168
Johnson	City of Shawnee (11–07–1137P).	June 1, 2011; June 8, 2011; *The Shawnee Dispatch*.	The Honorable Jeff Meyers, Mayor, City of Shawnee, 11110 Johnson Drive, Shawnee, KS 66203.	October 6, 2011	200177
Kentucky: Fayette	Lexington-Fayette Urban County Government (11–04–0368P).	June 22, 2011; June 29, 2011; *The Lexington Herald-Leader*.	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	October 27, 2011	210067
Michigan:					
Macomb	City of St. Clair Shores (11–05–5445P).	July 6, 2011; July 13, 2011; *The St. Clair Shores Sentinel*.	The Honorable Robert A. Hison, Mayor, City of St. Clair Shores, 27600 Jefferson Circle Drive, St. Clair Shores, MI 48081.	June 22, 2011	260127
Shiawassee	Charter Township of Owosso (11–05–0616P).	June 3, 2011; June 10, 2011; *The Argus Press*.	Mr. Danny C. Miller, Supervisor, Owosso Charter Township, 2998 West M–2, P.O. Box 400, Owosso, MI 48867.	October 11, 2011	260809
Shiawassee	City of Owosso (11–05–0616P).	June 3, 2011; June 10, 2011; *The Argus Press*.	The Honorable Benjamin Frederick, Mayor, City of Owosso, 301 West Main Street, Owosso, MI 48867.	October 11, 2011	260596
Nevada: Clark	City of Las Vegas (11–09–1593P).	June 23, 2011; June 30, 2011; *The Las Vegas Review-Journal*.	The Honorable Oscar B. Goodman, Mayor, City of Las Vegas, 400 Stewart Avenue, Las Vegas, NV 89101.	June 16, 2011	325276
North Carolina:					
Union	Unincorporated areas of Union County (11–04–1541P).	June 2, 2011; June 9, 2011; *The Charlotte Observer* and *The Enquirer-Journal*.	Ms. Cynthia Coto, Union County Manager, Union County Government Center, 500 North Main Street, Room 918, Monroe, NC 28112.	October 7, 2011	370234

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Union	Village of Marvin (11–04–1541P).	June 2, 2011; June 9, 2011; *The Charlotte Observer* and *The Enquirer-Journal*.	The Honorable Nick Dispenziere, Mayor, Village of Marvin, 10004 New Town Road, Marvin, NC 28173.	October 7, 2011	370514
Wake	Town of Holly Springs (09–04–6226P).	May 27, 2011; June 3, 2011; *The News & Observer*.	The Honorable Richard G. "Dick" Sears, Mayor, Town of Holly Springs, 128 South Main Street, Holly Springs, NC 27540.	October 3, 2011	370403
Wake	Unincorporated areas of Wake County (09–04–6226P).	May 27, 2011; June 3, 2011; *The News & Observer*.	Mr. David Cooke, Wake County Manager, 337 South Salisbury Street, Suite 1100, Raleigh, NC 27602.	October 3, 2011	370368
Ohio:					
Clinton	Unincorporated areas of Clinton County (10–05–7060P).	June 2, 2011; June 9, 2011; *The Wilmington News Journal*.	Mr. Randy Riley, Clinton County Commissioners Board Member, 46 South South Street, 2nd Floor, Courthouse, Wilmington, OH 45177.	October 7, 2011	390764
Clinton	Village of Sabina (10–05–7060P).	June 2, 2011; June 9, 2011; *The Wilmington News Journal*.	The Honorable Dean Carnahan, Mayor, Village of Sabina, 99 North Howard Street, Sabina, OH 45169.	October 7, 2011	390627
Lake	Unincorporated areas of Lake County (10–05–5769P).	June 14, 2011; June 21, 2011; *The News-Herald*.	Mr. Raymond E. Sines, President, Lake County Board of Commissioners, 105 Main Street, Painesville, OH 44077.	July 1, 2011	390771
Oregon: Linn	City of Millersburg (11–10–0824P).	June 6, 2011; June 13, 2011; *The Democrat Herald*.	The Honorable Clayton Wood, Mayor, City of Millersburg, 4222 Northeast Old Salem Road, Albany, OR 97321.	October 12, 2011	410284
South Carolina:					
Lexington	City of Columbia (11–04–3465P).	May 5, 2011; May 12, 2011; *The Lexington County Chronicle*.	The Honorable Steve Benjamin, Mayor, City of Columbia, P.O. Box 147, 1737 Main Street, Columbia, SC 29201.	June 13, 2011	450172
Lexington	Unincorporated areas of Lexington County (11–04–3465P).	May 5, 2011;May 12, 2011; *The Lexington County Chronicle*.	The Honorable James E. Kinard, Jr., Chairman, Lexington County Council, 212 South Lake Drive, Lexington, SC 29072.	June 13, 2011	450129
Richland	Unincorporated areas of Richland County (11–04–1879P).	May 6, 2011; May 13, 2011; *The Columbia Star*.	The Honorable Paul Livingston, Chairman, Richland County Council, P.O. Box 192, 2020 Hampton, Street, 2nd Floor, Columbia, SC 29202.	September 12, 2011	450170
Texas:					
Dallas	City of Dallas (11–06–3043P).	June 9, 2011; June 16, 2011; *The Dallas Morning News*.	The Honorable Dwaine R. Caraway, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	October 14, 2011	480171
Dallas	City of Coppell (11–06–0227P).	June 10, 2011; June 17, 2011; *The Citizens' Advocate*.	The Honorable Doug Stover, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, TX 75019.	October 17, 2011	480170
Utah:					
Washington	City of St. George (11–08–0214P).	May 31, 2011; June 7, 2011; *The Spectrum*.	The Honorable Daniel D. McArthur, Mayor, City of St. George, 175 East 200 North, St., George, UT 84770.	May 24, 2011	490177
Washington	Unincorporated areas of Washington County (11–08–0214P).	May 31, 2011; June 7, 2011; *The Spectrum*.	The Honorable Dennis B. Drake, Chairman, Washington County, Board of Commissioners, 197 East Tabernacle Street, St. George, UT 84770.	May 24, 2011	490224
Wisconsin:					
Brown	Unincorporated areas of Brown County (11–05–4502P).	June 28, 2011; July 5, 2011; *The Green Bay Press Gazette*.	The Honorable Guy Zima, Chairman, Brown County Board, 305 East Walnut Street, Green Bay, WI 54301.	November 2, 2011	550020
Portage	City of Stevens Point (10–05–7569P).	July 15, 2011; July 22, 2011; *The Portage County Gazette*.	The Honorable Andrew Halverson, Mayor, City of Stevens Point, 1515 Strongs Avenue Steven, Point, WI 54481.	October 31, 2011	550342

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 5, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20865 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1186).	City of Surprise, (10–09–3551P).	January 27, 2011; February 3, 2011; *The Arizona Business Gazette.*	The Honorable Lyn Truitt, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85734.	June 3, 2011	040053
Maricopa (FEMA Docket No.: B–1191).	Town of Cave Creek, (10–09–2786P).	February 17, 2011; February 24, 2011; *The Arizona Business Gazette.*	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 Cave Creek Road, Cave Creek, AZ 85331.	June 24, 2011	040129
Maricopa (FEMA Docket No.: B–1186).	Unincorporated areas of Maricopa County, (10–09–3551P).	January 27, 2011; February 3, 2011; *The Arizona Business Gazette.*	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	June 3, 2011	040037
California:					
Humboldt (FEMA Docket No.: B–1027).	City of Eureka, (08–09–0189P, 08–09–0941P).	April 10, 2008; April 18, 2008; *The Eureka Reporter.*	The Honorable Frank Jager, Mayor, City of Eureka, 531 K Street, Eureka, CA 95501.	April 21, 2008	060062
Ventura (FEMA Docket No.: B–1191).	City of Camarillo, (10–09–2501P).	February 4, 2011; February 11, 2011; *The Ventura County Star.*	The Honorable Mike Morgan, Mayor, City of Camarillo, 601 Carmen Drive, Camarillo, CA 93010.	June 13, 2011	065020
Ventura (FEMA Docket No.: B–1191).	City of Moorpark, (10–09–2904P).	February 4, 2011; February 11, 2011; *The Ventura County Star.*	The Honorable Janice S. Parvin, Mayor, City of Moorpark, 799 Moorpark Avenue, Moorpark, CA 93021.	June 13, 2011	060712
Ventura (FEMA Docket No.: B–1191).	Unincorporated areas of Ventura County, (10–09–2501P).	February 4, 2011; February 11, 2011; *The Ventura County Star.*	The Honorable Linda Parks, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	June 13, 2011	060413

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Ventura (FEMA Docket No.: B–1191).	Unincorporated areas of Ventura County, (10–09–2904P).	February 4, 2011; February 11, 2011; *The Ventura County Star*.	The Honorable Linda Parks, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	June 13, 2011	060413
Colorado:					
Adams (FEMA Docket No.: B–1186).	City of Commerce City, (10–08–0226P).	February 1, 2011; February 8, 2011; *The Commerce City Sentinel*, *Express*.	The Honorable Paul Natale, Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	June 8, 2011	080006
Adams (FEMA Docket No.: B–1191).	City of Thornton, (10–08–0748P).	February 17, 2011; February 24, 2011; *The Northglenn-Thornton*, *Sentinel*.	The Honorable Mack Goodman, Mayor Pro Tem, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	June 24, 2011	080007
Adams (FEMA Docket No.: B–1191).	Unincorporated areas of Adams County, (10–08–0748P).	February 17, 2011; February 24, 2011; *The Northglenn-Thornton*, *Sentinel*.	The Honorable W. R. "Skip" Fischer Chairman, Adams County Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601.	June 24, 2011	080001
Douglas (FEMA Docket No.: B–1191).	Unincorporated areas of Douglas County, (11–08–0030P).	February 10, 2011; Feburary 17, 2011; *The Douglas County News-*, *Press*.	The Honorable Jill Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	June 17, 2011	080049
Douglas (FEMA Docket No.: B–1195).	Unincorporated areas of Douglas County, (11–08–0287P).	March 10, 2011; March 17, 2011; *The Douglas County News-*, *Press*.	The Honorable Jill Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	February 28, 2011	080049
Delaware: Sussex, (FEMA Docket No.: B–1157).	Unincorporated areas of Sussex County, (10–03–0270P).	June 16, 2010; June 23, 2010; *The Sussex Countian*.	The Honorable Vance Phillips, Council President, Sussex County, P.O. Box 589, Georgetown, DE 19947.	October 21, 2010	100029
Florida:					
Orange (FEMA Docket No.: B–1191).	City of Ocoee, (10–04–8380P).	February 22, 2011; March 1, 2011; *The Orlando Sentinel*.	The Honorable S. Scott Vandergrift, Mayor, City of Ocoee, 150 North Lakeshore Drive, Ocoee, FL 34761.	February 14, 2011	120185
Orange (FEMA Docket No.: B–1195).	Unincorporated areas of Orange County, (10–04–0673P).	February 10, 2011; February 17, 2011; *The Orlando Weekly*.	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	June 17, 2011	120179
Orange (FEMA Docket No.: B–1195).	Unincorporated areas of Orange County, (10–04–7471P).	February 10, 2011; February 17, 2011; *The Orlando Weekly*.	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	June 17, 2011	120179
Hawaii: Maui, (FEMA Docket No.: B–1195).	Unincorporated areas of Maui County, (10–09–3595P).	March 4, 2011; March 11, 2011; *The Maui News*.	The Honorable Alan M. Arakawa, Mayor, Maui County, 250 South High Street, Wailuku, HI 96793.	February 24, 2011	150003
New Mexico: Sandoval, (FEMA Docket No.: B–1124).	City of Rio Rancho, (10–06–0995P).	April 21, 2010; April 28, 2010; *The Rio Rancho Observer*.	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	August 26, 2010	350146
North Carolina: Wake, (FEMA Docket No.: B–1191).	Town of Apex, (10–04–4743P).	January 28, 2011; February 4, 2011; *The News & Observer*.	The Honorable Keith H. Weatherly, Mayor, Town of Apex, 73 Hunter Street, Apex, NC 27502.	June 6, 2011	370467
Oklahoma:					
Tulsa (FEMA Docket No.: B–1113).	City of Broken Arrow, (09–06–3069P).	February 23, 2010; March 2, 2010; *Tulsa Daily Commerce and*, *Legal News*.	The Honorable Mike Lester, Mayor, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012.	March 18, 2010	400236
Tulsa (FEMA Docket No.: B–1162.	City of Tulsa, (10–06–2150P).	August 6, 2010; August 13, 2010; *The Tulsa World*.	The Honorable Dewey Bartlett, Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	July 30, 2010	405381
Pennsylvania: York, (FEMA Docket No.: B–1116).	Township of Dover, (09–03–1919P).	March 5, 2010; March 12, 2010; *The York Daily Record*.	Mr. Curtis Kann, Chairperson, Township of Dover, Board of Supervisors, 2480 West Canal Road, Dover, PA 17315.	February 26, 2010	420920
Tennessee:					
Franklin (FEMA Docket No.: B–1195).	City of Decherd, (10–04–2240P).	March 4, 2011; March 11, 2011; *The Herald-Chronicle*.	The Honorable Betty Don Henshaw, Mayor, City of Decherd, 1301 West Main Street, Decherd, TN 37324.	February 24, 2011	470054
Franklin (FEMA Docket No.: B–1195).	City of Winchester, (10–04–2240P).	March 4, 2011; March 11, 2011; *The Herald-Chronicle*.	The Honorable Terry Harrell, Mayor, City of Winchester, 7 South High Street, Winchester, TN 37398.	February 24, 2011	470056
Sullivan (FEMA Docket No.: B–1191).	City of Kingsport, (10–04–7017P).	February 14, 2011; February 21, 2011; *The Kingsport Times-News*.	The Honorable Dennis R. Phillips, Mayor, City of Kingsport, 225 West Center Street, Kingsport, TN 37660.	June 21, 2011	470184
Texas:					
Bexar (FEMA Docket No.: B–1135).	City of San Antonio, (09–06–3107P).	April 23, 2010; April 30, 2010; *The San Antonio Express-*, *News*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	April 26, 2010	480045
Brazoria (FEMA Docket No.: B–1162).	City of Manvel, (10–06–1185P).	August 9, 2010; August 16, 2010; *The Alvin Sun*.	The Honorable Delores Martin, Mayor, City of Manvel, P.O. Box 187, Manvel, TX 77578.	August 26, 2010	480076
Brazoria (FEMA Docket No.: B–1162).	Unincorporated areas of Brazoria County, (10–06–1185P).	August 9, 2010; August 16, 2010; *The Facts*.	The Honorable Joe King, Brazoria County Judge, 111 East Locust Street, Angleton, TX 77515.	August 26, 2010	485458

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin (FEMA Docket No.: B–1116).	City of Allen, (09–06–3028P).	November 6, 2009; November 13, 2009; *The McKinney Courier-, Gazette*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	October 28, 2009	480131
Collin (FEMA Docket No.: B–1116).	City of McKinney, (09–06–3028P).	November 6, 2009; November 13, 2009; *The McKinney Courier-, Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, P.O. Box 517, McKinney, TX 75069.	October 28, 2009	480135
Collin (FEMA Docket No.: B–1113).	City of McKinney, (10–06–0322P).	February 4, 2010; February 11, 2010; *The McKinney Courier-, Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, P.O. Box 517, McKinney, TX 75069.	June 11, 2010	480135
Collin (FEMA Docket No.: B–1162).	City of Wylie, (10–06–1838P).	August 25, 2010; September 1, 2010; *The Wylie News*.	The Honorable Eric Hogue, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	December 30, 2010	480759
Dallas (FEMA Docket No.: B–1113).	City of Lancaster, (09–06–3164P).	December 29, 2009; January 5, 2010; *The Focus Daily News*.	The Honorable Marcus Knight, Mayor, City of Lancaster, P.O. Box 940, Lancaster, TX 75146.	May 5, 2010	480182
Denton FEMA Docket No.: B–1157).	City of Lewisville, (10–06–0364P).	June 9, 2010; June 16, 2010; *The Lewisville Leader*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	June 28, 2010	480195
Harris (FEMA Docket No.: B–1141).	City of Houston, (09–06–3048P).	May 25, 2010; June 1, 2010; *The Houston Chronicle*.	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	September 29, 2010	480296
Harris (FEMA Docket No.: B–1162).	Unincorporated areas of Harris County, (10–06–0320P).	September 7, 2010; September 14, 2010; *The Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	January 12, 2011	480287
Johnson (FEMA Docket No.: B–1162).	City of Mansfield, (10–06–0427P).	July 20, 2010; July 27, 2010; *The Fort Worth Star-, Telegram*.	The Honorable David Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	November 24, 2010	480606
Johnson (FEMA Docket No.: B–1162).	Unincorporated areas of Johnson County, (10–06–0427P).	July 20, 2010; July 27, 2010; *The Fort Worth Star-Telegram*.	The Honorable Roger Harmon, Johnson County Judge, 2 Main Street, Cleburne, TX 76033.	November 24, 2010	480879
Kerr (FEMA Docket No.: B–1124).	Unincorporated areas of Kerr County, (09–06–3314P).	April 20, 2010; April 27, 2010; *The Kerrville Daily Times*.	The Honorable Pat Tinley, Kerr County Judge, 700 East Main Street, Kerrville, TX 78028.	August 25, 2010	480419
Tarrant (FEMA Docket No.: B–1162).	City of Fort Worth, (10–06–1675P).	July 13, 2010; July 20, 2010; *The Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	November 17, 2010	480596
Tarrant (FEMA Docket No.: B–1162).	City of Watauga, (09–06–3519P).	June 8, 2010; June 15, 2010; *The Fort Worth Star-Telegram*.	The Honorable Henry Jeffries, Mayor, City of Watauga, 7105 Whitley Road, Watauga, TX 76148.	October 13, 2010	480613
Travis (FEMA Docket No.: B–1116).	City of Austin, (09–06–3398P).	March 10, 2010; March 17, 2010; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	July 15, 2010	480624
Williamson (FEMA Docket No.: B–1162).	City of Cedar Park, (09–06–3455P).	September 9, 2010; September 16, 2010; *The Hill Country News*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	January 14, 2011	481282
Williamson (FEMA Docket No.: B–1157).	City of Georgetown, (10–06–0373P).	July 7, 2010; July 14, 2010; *The Williamson County Sun*.	The Honorable George Garver, Mayor, City of Georgetown, P.O. Box 409, Georgetown, TX 78627.	November 11, 2010	480668
Utah: Washington (FEMA Docket No.: B–1195).	City of Washington, (10–08–1023P).	March 11, 2011; March 18, 2011; *The Spectrum*.	The Honorable Ken Neilson, Mayor, City of Washington, 111 North 100 East, Washington, UT 84780.	February 28, 2011	490182
Virginia: Frederick (FEMA Docket No.: B–1141).	City of Winchester, (10–03–0692P).	April 29, 2010; May 6, 2010; *The Winchester Star*.	The Honorable Elizabeth Minor, Mayor, City of Winchester, 15 North Cameron Street, Winchester, VA 22601.	April 22, 2010	510173

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 5, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20963 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
City of McGrath, Alaska Docket No.: FEMA–B–1126				
Alaska	City of McGrath	Kuskokwim River	Approximately 3.23 miles downstream of the confluence with the Takotna River.	+338
			Approximately 1.83 miles upstream of the confluence with the Takotna River.	+338

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of McGrath
Maps are available for inspection at City Hall, Takotna Avenue and F Street, McGrath, AK 99627.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Jones County, Texas, and Incorporated Areas Docket No.: FEMA–B–1122			
Lake Fort Phantom Hill	Just downstream of County Highway 1082	+1642	City of Abilene, Unincorporated.
	Approximately 300 feet downstream of County Road 341	+1656	Areas of Jones County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Abilene
Maps are available for inspection at City Hall, 555 Walnut Street, Abilene, TX 79601.

Unincorporated Areas of Jones County
Maps are available for inspection at the Jones County Courthouse, 1100 12th Street, Anson, TX 79501.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 5, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20867 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sharp County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1089			
Curia Creek	Approximately 1,490 feet downstream of State Highway 230.	+603	Unincorporated Areas of Sharp County.
	Just downstream of State Highway 230	+608	
Lick Fork	Just downstream of Gravel Pit Road	+595	Unincorporated Areas of Sharp County.
	Approximately 157 feet downstream of Gravel Pit Road	+597	
Right Prong Otter Creek	Approximately 500 feet upstream of Toshiming Trace	+491	Unincorporated Areas of Sharp County.
	Approximately 925 feet downstream of Waketa Drive	+530	
South Big Creek Tributary	Approximately 750 feet downstream of Jackson Spring Road.	+549	Unincorporated Areas of Sharp County.
	Approximately 600 feet downstream of Levee Road	+659	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES
Unincorporated Areas of Sharp County
Maps are available for inspection at 718 Ash Flat Drive, Ash Flat, AR 72513.

Butler County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1097			
Beaver Creek	Approximately 1,800 feet downstream of Utica Avenue	+896	Unincorporated Areas of Butler County.
	Approximately 1.2 miles upstream of Utica Avenue	+901	
Shell Rock River	Approximately 1.1 miles downstream of Cherry Street	+899	Unincorporated Areas of Butler County.
	Approximately 0.9 mile upstream of the dam	+909	
Shell Rock River	At the downstream side of Iowa Northern Railway	+923	Unincorporated Areas of Butler County.
	Approximately 1,000 feet upstream of Chicago and North Western Railroad.	+931	
Shell Rock River	Approximately 0.7 mile downstream of Traer Street	+955	Unincorporated Areas of Butler County.
	Approximately 700 feet upstream of State Highway 14	+960	
Shell Rock River Overflow Channel 2.	Approximately 900 feet downstream of Main Street	+955	Unincorporated Areas of Butler County.
	Approximately 400 feet upstream of Main Street	+958	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES
Unincorporated Areas of Butler County
Maps are available for inspection at the Butler County Courthouse, 428 6th Street, Allison, IA 50602.

Leake County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1108			
Pearl River	Approximately 1.0 mile downstream of State Highway 35	+341	City of Carthage.
	Approximately 1.0 mile upstream of State Highway 35	+343	
Tuscolameta Creek	Approximately 555 feet downstream of State Highway 35	+356	Town of Walnut Grove.
	Approximately 0.5 mile upstream of State Highway 35	+357	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Carthage
Maps are available for inspection at City Hall, 212 West Main Street, Carthage, MS 39051.

Town of Walnut Grove
Maps are available for inspection at the Town Hall, 139 Main Street, Walnut Grove, MS 38189.

Cherokee County, South Carolina, and Incorporated Areas
Docket No.: FEMA–B–1128

Broad River	At the confluence with the Pacolet River	+437	Unincorporated Areas of Cherokee County.
	Approximately 2.1 miles upstream of the confluence with Quinton Branch.	+458	
Kings Creek	At the confluence with the Broad River	+458	Unincorporated Areas of Cherokee County.
	Approximately 0.9 mile upstream of Old Chester Road	+493	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES
Unincorporated Areas of Cherokee County
Maps are available for inspection at the Cherokee County Administration Office, 210 North Limestone Street, Gaffney, SC 29340.

Chester County, South Carolina, and Incorporated Areas
Docket No.: FEMA–B–1127

Broad River (Downstream)	Approximately 1.8 miles downstream of State Highway 72	+314	Unincorporated Areas of Chester County.
	Approximately 2.0 miles upstream of State Highway 72	+327	
Broad River (Upstream)	Approximately 1.6 miles downstream of State Highway 49	+363	Unincorporated Areas of Chester County.
	Approximately 2.2 miles upstream of State Highway 49	+417	
Dry Fork Creek	Approximately 68 feet upstream of the confluence with the Sandy River.	+397	City of Chester, Unincorporated Areas of Chester County.
	Approximately 1.3 miles upstream of U.S. Route 321	+545	
Fishing Creek	Approximately 1,219 feet downstream of U.S. Route 21	+355	Town of Great Falls, Unincorporated Areas of Chester County.
	Approximately 757 feet upstream of Humpback Bridge Road.	+484	
Rocky Creek	Approximately 273 feet downstream of Brooklyn Road	+297	Town of Great Falls, Unincorporated Areas of Chester County.
	Approximately 0.5 mile upstream of the confluence with Turkey Creek.	+317	
Tanyard Branch	At the confluence with Dry Fork Creek	+412	Unincorporated Areas of Chester County.
	Approximately 0.7 mile upstream of Hawthorne Road	+436	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Chester
Maps are available for inspection at City Hall, 100 West End Street, Chester, SC 29706.

Town of Great Falls
Maps are available for inspection at the Town Hall, 810 Dearborn Street, Great Falls, SC 29055.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Unincorporated Areas of Chester County			
Maps are available for inspection at the Chester County Government Complex, 1476 J.A. Cochran Bypass, Suite 63, Chester, SC 29706.			
Chesterfield County, South Carolina, and Incorporated Areas Docket No.: FEMA–B–1127			
Bear Creek	At the confluence with Thompson Creek	+114	Unincorporated Areas of Chesterfield County.
	Approximately 0.9 mile upstream of Evans Mill Road	+130	
Beaver Creek	At the confluence with Thompson Creek	+105	Unincorporated Areas of Chesterfield County.
	Approximately 1,960 feet downstream of Teals Mill Road	+116	
Great Pee Dee River	Approximately 200 feet downstream of the confluence with Thompson Creek.	+93	Town of Cheraw, Unincorporated Areas of Chesterfield County.
	At the State of North Carolina boundary	+110	
Huckleberry Branch	At the confluence with the Great Pee Dee River	+98	Town of Cheraw, Unincorporated Areas of Chesterfield County.
	Approximately 474 feet upstream of Chesterfield Highway	+189	
Huckleberry Branch Tributary	At the confluence with Huckleberry Branch	+133	Town of Cheraw, Unincorporated Areas of Chesterfield County.
	Approximately 831 feet upstream of Chesterfield Highway	+175	
Indian Creek	At the confluence with Thompson Creek	+122	Town of Chesterfield, Unincorporated Areas of Chesterfield County.
	Approximately 1,743 feet upstream of Avondale Road	+176	
Juniper Creek	At the confluence with Thompson Creek	+93	Town of Patrick, Unincorporated Areas of Chesterfield County.
	Approximately 2.3 miles upstream of U.S. Route 1	+212	
Juniper Creek Tributary 1	At the confluence with Juniper Creek	+117	Unincorporated Areas of Chesterfield County.
	Approximately 1,177 feet upstream of McBride Road	+168	
Juniper Creek Tributary 2	At the confluence with Juniper Creek	+128	Unincorporated Areas of Chesterfield County.
	Approximately 0.6 mile upstream of RD TT 18	+198	
Little Juniper Creek	At the confluence with Juniper Creek	+131	Unincorporated Areas of Chesterfield County.
	Approximately 1.3 miles upstream of U.S. Route 1	+160	
Mill Creek	At the confluence with Juniper Creek	+158	Unincorporated Areas of Chesterfield County.
	Approximately 0.9 mile upstream of Wilkes Pond Road	+189	
Thompson Creek	At the confluence with the Great Pee Dee River	+93	Town of Chesterfield, Unincorporated Areas of Chesterfield County.
	Approximately 1.4 miles upstream of North Page Street	+174	
Wilson Branch	At the confluence with Huckleberry Branch	+99	Town of Cheraw.
	Approximately 1,767 feet upstream of Jersey Street	+157	
Wilson Branch Tributary	At the confluence with Wilson Branch	+113	Town of Cheraw, Unincorporated Areas of Chesterfield County.
	Approximately 1,686 feet upstream of Jersey Street	+152	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Cheraw
Maps are available for inspection at the Town Hall, 200 Market Street, Cheraw, SC 29520.

Town of Chesterfield
Maps are available for inspection at the Town Hall, 112 East Main Street, Chesterfield, SC 29709.

Town of Patrick
Maps are available for inspection at the Town Hall, 129 Turnage Street, Patrick, SC 29584.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Chesterfield County			
Maps are available for inspection at the Chesterfield County Courthouse, 200 West Main Street, Chesterfield, SC 29709.			
Newberry County, South Carolina, and Incorporated Areas Docket No.: FEMA–B–1127			
Duncans Creek	Approximately 1,245 feet upstream of the confluence with the Enoree River.	+325	Town of Whitmire, Unincorporated Areas of Newberry County.
	Approximately 1,323 feet upstream of the confluence with South Fork Duncan Creek.	+360	
Lake Greenwood	Entire shoreline	+442	Unincorporated Areas of Newberry County.
Lake Murray	Approximately 0.9 mile upstream of Wheeland Hool Road	+362	Unincorporated Areas of Newberry County.
	Approximately 30 feet upstream of State Highway 391	+362	
Mud Creek	Approximately 0.4 mile downstream of New Hope Road	+279	Unincorporated Areas of Newberry County.
	Approximately 1.4 miles upstream of U.S. Route 176	+371	
Scotts Creek	At Glenn Road	+475	City of Newberry, Unincorporated Areas of Newberry County.
	Approximately 288 feet upstream of Pender Ridge Road	+509	
Timothy Creek	Approximately 251 feet downstream of Cannon Swamp Road.	+386	Unincorporated Areas of Newberry County.
	Approximately 1.6 miles upstream of Clara Brown Road	+498	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Newberry
Maps are available for inspection at City Hall, 1330 College Street, Newberry, SC 29108.

Town of Whitmire
Maps are available for inspection at the Town Hall, 210 Main Street, Whitmire, SC 29178.

Unincorporated Areas of Newberry County
Maps are available for inspection at the Newberry County Courthouse, 1223 College Street, Newberry, SC 29108.

Meade County, South Dakota, and Incorporated Areas Docket No.: FEMA–B–1089			
Bear Butte Creek	Approximately 3,000 feet downstream of Blanche Street	+3341	Unincorporated Areas of Meade County.
	Approximately 1,632 feet downstream of Blanche Street	+3351	
	Approximately 675 feet upstream of 14th Street	+3473	
	Approximately 630 feet upstream of 13th Street	+3480	
Blackhawk Creek	Approximately 20 feet downstream of Deadwood Avenue North.	+3382	Unincorporated Areas of Meade County.
	Approximately 3,800 feet upstream of Anderson Road	+3754	
Cook Canyon Creek	Approximately 2,550 feet upstream of Short Track Road	+3593	Unincorporated Areas of Meade County.
	Approximately 450 feet upstream of I–90	+3596	
Deadman Gulch	Approximately 180 feet upstream of Ballpark Road	+3506	Unincorporated Areas of Meade County.
	Approximately 250 feet downstream of I–90 West	+3530	
	Approximately 50 feet upstream of Elk Road	+3604	
	Approximately 100 feet upstream of Elk Road	+3808	
Dolan Creek	Approximately 500 feet upstream of West Farley Street	+3452	Unincorporated Areas of Meade County.
	Approximately 1,250 feet downstream of I–90	+3466	
	Approximately 80 feet upstream of Pine Glenn Drive	+3579	
	Approximately 160 feet upstream of Glenn Ridge Court	+3615	
East Vanocker Creek	Approximately 50 feet downstream of Chicago and Northwestern Railroad.	+3555	Unincorporated Areas of Meade County.
	Approximately 1,660 feet upstream of Chicago and Northwestern Railroad.	+3564	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Middle Cook Canyon Creek	Approximately 1,400 feet upstream of Short Track Road ..	+3562	Unincorporated Areas of Meade County.
	Approximately 1,950 feet upstream of Short Track Road ..	+3596	
South Cook Canyon Creek	Approximately 1,050 feet upstream of Short Track Road ..	+3552	Unincorporated Areas of Meade County.
	Approximately 1,835 feet upstream of Short Track Road ..	+3582	
South Dolan Creek	Approximately 2,050 feet upstream of Dolan Creek Road	+3572	Unincorporated Areas of Meade County.
	Approximately 2,400 feet upstream of Dolan Creek Road	+3575	
Vanocker Creek	Approximately 900 feet downstream of Harmon Street	+3462	Unincorporated Areas of Meade County.
	Approximately 125 feet downstream of Harmon Street	+3472	
	Approximately 30 feet upstream of Vanocker Canyon Road.	+3596	
	Approximately 200 feet upstream of Vanocker Canyon Road.	+3597	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Meade County

Maps are available for inspection at the Meade County Courthouse, 1425 Sherman Street, Sturgis, SD 57785.

Limestone County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1112

Salt River	Just upstream of State Highway 14	+473	Unincorporated Areas of Limestone County.
	Approximately 0.66 mile upstream of State Highway 14	+483	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Limestone County

Maps are available for inspection at the Limestone County Courthouse, 200 West State Street, Groesbeck, TX 76642.

Polk County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1060 & FEMA–B–1087

Balsam Lake	Entire shoreline	+1135	Unincorporated Areas of Polk County, Village of Balsam Lake.
Big Butternut Lake	Entire shoreline	+1216	Unincorporated Areas of Polk County, Village of Luck.
Clam Falls Flowage	Entire shoreline	+1030	Unincorporated Areas of Polk County.
Largon Lake	Entire shoreline	+1247	Unincorporated Areas of Polk County.
Little Butternut Lake	Entire shoreline	+1210	Unincorporated Areas of Polk County, Village of Luck.
Sand Lake	Entire shoreline	+1124	Unincorporated Areas of Polk County.
White Ash Lake	Entire shoreline	+1123	Unincorporated Areas of Polk County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

ADDRESSES

Unincorporated Areas of Polk County

Maps are available for inspection at the Polk County Government Center, 100 Polk County Plaza, Balsam Lake, WI 54810.

Village of Balsam Lake

Maps are available for inspection at the Village Hall, 404 Main Street, Balsam Lake, WI 54810.

Village of Luck

Maps are available for inspection at 401 Main Street, Luck, WI 54853.

Fremont County, Wyoming, and Incorporated Areas
Docket No.: FEMA–B–1104

Big (Middle) Popo Agie River ...	Approximately 80 feet upstream of the confluence with the North Popo Agie River.	+5239	City of Lander, Unincorporated Areas of Fremont County.
	Approximately 6,030 feet upstream of Field Station Road	+5978	
Dickinson Creek	Approximately 240 feet downstream of Fremont Street	+5398	City of Lander, Unincorporated Areas of Fremont County.
	Approximately 3,360 feet upstream of Fremont Street	+5438	
Fremont Street Split	Approximately 160 feet downstream of 3rd Street	+5389	City of Lander.
	Approximately 380 feet upstream of 4th Street	+5402	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lander

Maps are available for inspection at 240 Lincoln Street, Lander, WY 82520.

Unincorporated Areas of Fremont County

Maps are available for inspection at 450 North 2nd Street, Room 360, Lander, WY 82520.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 29, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20959 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–12–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 6101, 6103, 6104, and 6105

[GSA BCA Amendment 2011–01, BCA Case 2011–61–1; Docket Number 2011–001, Sequence 1]

RIN 3090–AJ16

Civilian Board of Contract Appeals; Rules of Procedure of the Civilian Board of Contract Appeals—Electronic Filing of Documents

AGENCY: Civilian Board of Contract Appeals, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This document revises the rules governing proceedings before the Civilian Board of Contract Appeals (Board). The rules are amended to provide procedures for the electronic filing of documents in proceedings before the Board. Electronic filing is increasingly available in judicial and administrative tribunals to provide parties with a faster, more efficient, and less costly way to submit their documents. In addition, although electronically filed documents will be docketed as received only during Board working hours, they may be transmitted at any time from any location with Internet access. This amendment is a non-substantive change to the Rules that is intended to improve the efficiency and effectiveness of the Board's programs by providing parties with an additional option for filing their documents with the Board. It does not affect any of the other methods currently available, including the delivery of documents in person, by courier or United States Postal Service, or by facsimile transmission.

DATES: *Effective Date:* August 17, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. J. Gregory Parks, Chief Counsel, Civilian Board of Contract Appeals, telephone (202) 606–8800, e-mail address *Greg.Parks@cbca.gov* for clarification of content. For information pertaining to status or publication schedules, contact

the Regulatory Secretariat at (202) 501–4755. Please cite BCA Case 2011–61–01.

SUPPLEMENTARY INFORMATION:

A. Regulatory Information

The Board is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Board finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM would be unnecessary. This amendment is a non-substantive change to the Rules, intended to improve the efficiency and effectiveness of the Board's programs by providing parties with an additional option for filing their documents. This option of electronic filing does not affect any of the other methods currently available to parties for the delivery of documents, including in person, by United States Postal Service or other courier service, or by facsimile transmission.

B. Background

The Civilian Board of Contract Appeals was established within the General Services Administration (GSA) by Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163 (now codified at 41 U.S.C. 7105(b)). In March 2011, the Civilian Board of Contract Appeals began accepting filings submitted by electronic mail (e-mail) under Section 6101.1(b)(5) of the Board's Rules of Procedure. However, appeal files submitted pursuant to Section 6101.4 of the Board's Rules of Procedure may not be submitted by electronic mail due to the size and complexity of these filings, and classified documents and files submitted *in camera* or under protective order pursuant to Section 6101.9(c) of the Board's Rules of Procedure may not be submitted by electronic mail due to the need to ensure their security. This final rule updates section 6101.1(b)(5) to include information regarding the filing of documents by e-mail and to provide direction concerning requirements for their submittal. Sections 6101.1(f), 6101.2(a)(1)(ii)(C), 6101.2(a)(1)(ii)(D), 6101.2(a)(2)(ii)(C), 6101.5(c), 6103.302(a)(1), 6103.302(b), 6104.402(a)(1)(i), 6104.402(a)(1)(ii), 6104.402(a)(3), 6105.502(a)(2)(iii)(A), 6105.502(a)(2)(iii)(B), and 6105.502(a)(2)(iv) are also amended to provide the e-mail address for receipt of filings for the Clerk of the Board and to request additional contact information for parties and their agents or representatives. Sections 6101.25(a)(1), 6103.306, 6104.406, and 6105.505 are amended to provide the current Internet address for the Board. In addition, section 6101.5(c) is amended to correct an error in printing by the Code of Federal Regulations.

C. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional costs on large or small businesses.

D. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6101, 6103, 6104, and 6105

Administrative practice and procedure, Agriculture, Freight forwarders, Government procurement, Travel and relocation expenses.

Dated: August 4, 2011.

Stephen M. Daniels,

Chairman, Civilian Board of Contract Appeals, General Services Administration.

Therefore, GSA amends 48 CFR parts 6101, 6103, 6104, and 6105 as set forth below:

PART 6101—CONTRACT DISPUTE CASES

■ 1. The authority citation for 48 CFR part 6101 is revised to read as follows:

Authority: 41 U.S.C. 7101–7109.

■ 2. Amend section 6101.1 by adding paragraph (b)(5)(iii); and by adding a new sentence at the end of paragraph (f) to read as follows:

6101.1 Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address [Rule 1].

* * * * *

(b) * * *

(5) * * *

(iii) Filings submitted by electronic mail (e-mail) are permitted, with the exception of appeal files submitted pursuant to 6101.4 (Rule 4), classified documents, and filings submitted *in camera* or under protective order pursuant to 6101.9(c) (Rule 9(c)). Filings by e-mail shall be submitted to: *cbca.efile@cbca.gov.* Filings must be in PDF format and may not exceed 18 megabytes (MB) total. Filings that are not in PDF format or over 18 MB will not be accepted. The filing of a document by e-mail occurs upon receipt by the Board on a working day, as defined in 6101.1(b)(9) (Rule 1(b)(9)). All e-mail filings received by 4:30 p.m., Eastern Time, on a working day will be considered to be filed on that day. E-mail filings received after that time will be considered to be filed on the next working day.

* * * * *

(f) * * * The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov.*

■ 3. Amend section 6101.2 by revising paragraphs (a)(1)(ii)(C), (a)(1)(ii)(D), and (a)(2)(ii)(C) to read as follows:

6101.2 Filing cases; time limits for filing; notice of docketing; consolidation [Rule 2].

(a) * * *

(1) * * *

(ii) * * *

(C) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the contracting officer whose decision is appealed and the date of the decision;

(D) If the appeal is from the failure of the contracting officer to decide a claim, the name, address, telephone number,

facsimile machine number, and e-mail address, if available, of the contracting officer who received the claim;

* * * * *

(2) * * *

(ii) * * *

(C) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the contracting officer whose decision is sought.

* * * * *

■ 4. Amend section 6101.5 by revising paragraph (c) to read as follows:

6101.5 Appearances; notice of appearance [Rule 5].

* * * * *

(c) *Withdrawal of appearance.* Any person who has filed a notice of appearance and who wishes to withdraw from a case must file a motion which includes the name, address, telephone number, facsimile machine number, and e-mail address, if available, of the person who will assume responsibility for representation of the party in question. The motion shall state the grounds for withdrawal unless it is accompanied by a representation from the successor representative or existing co-counsel that the established case schedule will be met.

■ 5. Amend section 6101.25 by adding two new sentences at the end of paragraph (a)(1) to read as follows:

6101.25 Decisions; settlements [Rule 25].

(a) * * *

(1) * * * In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *http://www.cbca.gov.*

* * * * *

PART 6103—TRANSPORTATION RATE CASES

■ 6. The authority citation for 48 CFR part 6103 is revised to read as follows:

Authority: 31 U.S.C. 3726(i)(1); 41 U.S.C. 7101–7109; Sec. 201(o), Pub. L. 104–316, 110 Stat. 3826.

■ 7. Amend section 6103.302 by revising paragraph (a)(1); and by adding a new sentence after the fifth sentence in paragraph (b) to read as follows:

6103.302 Filing claims [Rule 302].

(a) * * *

(1) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the claimant;

* * * * *

(b) * * * The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov.* * * *

* * * * *

■ 8. Amend section 6103.306 by revising the fourth sentence to read as follows:

6103.306 Decisions [Rule 306].

* * * The Board's Internet address is: *http://www.cbca.gov.*

PART 6104—TRAVEL AND RELOCATION EXPENSES CASES

■ 9. The authority citation for 48 CFR part 6104 is revised to read as follows:

Authority: Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535; 31 U.S.C. 3702; 41 U.S.C. 7101–7109.

■ 10. Amend section 6104.402 by revising paragraphs (a)(1)(i) and (a)(1)(ii); and by adding a new sentence after the fifth sentence of paragraph (a)(3) to read as follows:

6104.402 Filing claims [Rule 402].

(a) * * *

(1) * * *

(i) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the claimant;

(ii) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the agency employee who denied the claim;

* * * * *

(3) * * * The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov.* * * *

* * * * *

■ 11. Amend section 6104.406 by revising the fourth sentence to read as follows:

6104.406 Decisions [Rule 406].

* * * The Board's Internet address is: *http://www.cbca.gov.*

PART 6105—DECISIONS AUTHORIZED UNDER 31 U.S.C. 3529

■ 12. The authority citation for 48 CFR part 6105 is revised to read as follows:

Authority: 31 U.S.C. 3529; 31 U.S.C. 3702; 41 U.S.C. 7101–7109; Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535.

■ 13. Amend section 6105.502 by revising paragraphs (a)(2)(iii)(A) and (a)(2)(iii)(B); and adding a new sentence after the fifth sentence of paragraph (a)(2)(iv) to read as follows:

6105.502 Request for decision [Rule 502].

(a) * * *

(2) * * *

(iii) * * *

(A) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the official making the request;

(B) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the employee affected by the specific payment or voucher; and

* * * * *

(iv) * * * The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov.* * * *

* * * * *

■ 14. Amend section 6105.505 by revising the fourth sentence to read as follows:

6105.505 Decisions [Rule 505].

* * * The Board's Internet address is: *http://www.cbca.gov.*

[FR Doc. 2011–20874 Filed 8–16–11; 8:45 am]

BILLING CODE 6820–AL–P

Proposed Rules

Federal Register
Vol. 76, No. 159
Wednesday, August 17, 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 402

[Docket No. FCIC–11–0003]

RIN 0563–AC31

Catastrophic Risk Protection Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Catastrophic Risk Protection Endorsement. The intended effect of this action is to clarify existing policy provisions and to incorporate changes that are consistent with those made in the Common Crop Insurance Policy Basic Provisions and to incorporate provisions regarding catastrophic risk protection coverage for area yield plans from the Group Risk Plan (GRP) of Insurance Basic Provisions. The proposed changes will be effective for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business October 17, 2011 and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0003, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov*, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by e-mail at *rmaweb.content@rma.usda.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice*.

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

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. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss.

Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. 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 require 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 proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. 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 or to require the insurance provider to take specific action under the terms of the crop insurance policy, 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

FCIC proposes to amend the Catastrophic Risk Protection Endorsement (7 CFR part 402), to be effective for the 2013 and succeeding crop years. The proposed changes are as follows:

1. FCIC proposes to revise the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict to include the actuarial documents and the Commodity Exchange Price Provisions, if applicable, in the order of priority.

2. Section 1—FCIC proposes to remove the definitions of ''approved yield,'' ''county,'' ''FSA,'' ''household,'' ''limited resource farmer,'' and ''USDA'' because these terms are already defined in the applicable Basic Provisions.

FCIC also proposes to remove the definition of ''expected market price'' because the term is no longer applicable to any plan of insurance for which catastrophic risk protection coverage is available (*e.g.,* the Yield Protection plan of insurance uses a projected price).

FCIC proposes to remove the definition of ''Secretary'' because the term is not used in the Endorsement.

3. Section 2—FCIC proposes to revise section 2(a)(1) to clarify catastrophic risk protection coverage is not available under individual revenue plans of insurance such as Revenue Protection and Revenue Protection with Harvest Price Exclusion plans of insurance.

FCIC proposes to revise section 2(a)(2) to allow the Group Risk Plan of Insurance Basic Provisions, or its successor provisions, to elect the Catastrophic Risk Protection Endorsement. FCIC also proposes to clarify that catastrophic risk protection coverage is not available under area revenue plans of insurance such as Group Risk Income Protection—Harvest Price Option or Group Risk Income Protection plans of insurance or successor plans of insurance.

4. Section 3—FCIC proposes to revise section 3(a) to clarify this section is not applicable if the policyholder elected catastrophic risk protection coverage under the Group Risk Plan of Insurance Basic Provisions (7 CFR 407.9) and Crop Provisions, or its successor provisions. The Group Risk Plan of Insurance Basic Provisions and Crop Provisions do not have unit provisions. Therefore, the unit division provisions in section 3 cannot be used in lieu of the unit provisions of the Group Risk Plan of Insurance Basic Provisions.

5. Section 4—FCIC proposes to revise section 4(a) to allow the actuarial documents to revise the amount of protection offered under catastrophic risk protection coverage in the event this amount is changed in the future by Congress.

FCIC proposes to revise section 4(a) to replace the reference to ''expected market price'' with ''price election or projected price, as applicable.''

FCIC also proposes to revise section 4(a) to include information regarding the amount of protection a policyholder would receive if they elected catastrophic risk protection coverage under the Group Risk Plan of Insurance Basic Provisions or successor provisions. Currently, section 4(a) simply contains the catastrophic risk protection amount of coverage for policyholders insured under the Common Crop Insurance Policy. The information regarding the amount of catastrophic risk protection coverage for area yield plans is contained in the Group Risk Plan of Insurance Basic Provisions because section 4(a) of the Endorsement allows FCIC to determine a comparable amount of coverage. This change will place all the provisions regarding the catastrophic risk protection amount of coverage in one place.

FCIC proposes to revise section 4(b) to replace the reference to ''expected market price'' with ''price election.''

FCIC proposes to revise section 4(c) to replace the reference to ''Actuarial Table or the Special Provisions'' with ''actuarial documents.'' With the implementation of the new information technology system, FCIC will no longer have actuarial tables; all the information previously contained in the actuarial tables will now be contained in the actuarial documents filed electronically on RMA's Web site.

FCIC proposes to remove section 4(d) because information regarding the percentage of loss in applicable yield a policyholder must have suffered to be eligible for an indemnity is contained in section 4(a) which contains the coverage level. The amount determined by subtracting the coverage level from 100 percent is the amount of loss a policyholder must suffer before an indemnity is paid under catastrophic risk protection coverage.

6. Section 6—FCIC proposes to revise sections 6(b) and 6(b)(1) to replace the reference to ''Special Provisions'' with ''actuarial documents.''

Section 7—FCIC proposes to remove section 7(b) because undivided interest will no longer be available as a result of the USDA Acreage Crop Reporting Streamlining Initiative to establish common USDA data standards to support producer commodity reporting in support of USDA programs. FCIC also proposes to remove those provisions that suggest that approved insurance providers have the option to not offer catastrophic risk protection coverage. All approved insurance providers must offer catastrophic risk protection coverage for the policies they sell.

7. Section 9—FCIC proposes to revise section 9 to clarify the price references to include projected prices, dollar amounts of insurance, or dollar amounts

of protection because the term ''price election'' is not applicable to all plans of insurance.

List of Subjects in 7 CFR Part 402

Crop insurance, Reporting and recordkeeping requirements.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 402 as follows:

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

1. The authority citation for 7 CFR part 402 continues to read as follows:

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

2. Amend § 402.4 as follows:

a. Revise introductory text preceding section 1;

b. Remove the definitions in section 1 for ''approved yield,'' ''county,'' ''expected market price,'' ''FSA,'' ''household,'' ''limited resource farmer,'' ''Secretary,'' and ''USDA;''

c. Revise section 2(a) introductory text;

d. Revise section 3(a);

e. Revise section 4(a);

f. Amend section 4(b) by removing the phrase ''expected market price'' and adding the phrase ''price election'' in its place;

g. Amend section 4(c) by removing the phrase ''Actuarial Table or the Special Provisions'' and adding the phrase ''actuarial documents'' in its place;

h. Remove section 4(d);

i. Amend section 6(b) introductory text by removing the phrase ''Special Provisions'' and adding the phrase ''actuarial documents'' in its place;

j. Amend section 6(b)(1) by removing the phrase ''Special Provisions'' and adding the phrase ''actuarial documents'' in its place;

k. Revise section 7; and

l. Amend section 9 by adding the phrase '', projected prices, dollar amounts of insurance, or dollar amounts of protection'' after the phrase ''multiple price elections'' in the two instances that it appears.

The revised text reads as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

* * * * *

If a conflict exists among the policy provisions; the order of priority is: (1) This Endorsement; (2) the Special Provisions; (3) any other Actuarial Documents except the Special Provisions; (4) the Commodity Exchange Price Provisions, if applicable; and (5) any of the policies specified in section 2, with (1) controlling (2), etc.

* * * * *

2. Eligibility, Life of Policy, Cancellation, and Termination.

(a) You must have one of the following policies in force to elect this Endorsement:

(1) The Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) and applicable Crop Provisions (Catastrophic risk protection coverage is not available under individual revenue plans of insurance such as the Revenue Protection and Revenue Protection with Harvest Price Exclusion plans of insurance);

(2) The Group Risk Plan of Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions, or its successor provisions, if available for catastrophic risk protection coverage (Catastrophic risk protection coverage is not available under area revenue plans of insurance such as Group Risk Income Protection—Harvest Price Option or Group Risk Income Protection plans of insurance or successor plans of insurance); or

(3) Other crop policy only if catastrophic risk protection coverage is provided in the applicable crop policy.

* * * * *

3. Unit Division.

(a) This section is in lieu of the unit provisions specified in the applicable crop policy and is not applicable if you are insured under the Group Risk Plan of Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions, or its successor provisions.

* * * * *

4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) Unless otherwise specified in the actuarial documents, catastrophic risk protection coverage will offer protection equal to:

(1) Fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the price election or projected price, as applicable, if you are insured under the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) and applicable Crop Provisions;

(2) Sixty-five percent (65%) of the expected county yield indemnified at forty-five percent (45%) of the maximum protection per acre if you are insured under the Group Risk Plan of Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions, or its successor provisions; or

(3) A comparable coverage as established by FCIC for other crop policies only if catastrophic risk protection coverage is provided in the applicable crop policy.

* * * * *

7. Insured Crop.

(a) The crop insured is specified in the applicable crop policy, however notwithstanding any other policy provision requiring the same insurance coverage on all insurable acreage of the crop in the county, if you purchase additional coverage for a crop, you may separately insure acreage under catastrophic risk protection coverage that has been designated as ''high-risk'' land by FCIC, provided that you execute a High-Risk Land Exclusion Option and obtain a catastrophic risk protection coverage policy with the same approved insurance provider on or before the applicable sales closing date.

(b) You will be required to pay a separate administrative fee for both the additional coverage policy and the catastrophic risk protection coverage policy.

* * * * *

Signed in Washington, DC, on August 10, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–20850 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131491–10]

RIN 1545–BJ82

Health Insurance Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act, 2011. These proposed regulations provide guidance to individuals who enroll in qualified health plans through Affordable Insurance Exchanges and claim the premium tax credit, and to Exchanges that make qualified health plans available to individuals and

employers. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written (including electronic) comments must be received by October 31, 2011. Outlines of topics to be discussed at the public hearing scheduled for November 17, 2011, at 10 a.m. must be received by November 10, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–131491–10), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–131491–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–131491–10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Shareen S. Pflanz, (202) 622–4920, or Frank W. Dunham III, (202) 622–4960; concerning the submission of comments, the public hearing, and to be placed on the building access list to attend the public hearing, Funmi Taylor, (202) 622–7180 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 17, 2011. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.36B–5. The collection of information is necessary to properly reconcile the amount of the premium tax credit with advance credit payments made under section 1412 of the Patient Protection and Affordable Care Act (42 U.S.C. 18082). The collection of information is required to comply with the provisions of section 36B(f)(3) of the Internal Revenue Code (Code). The likely respondents are Affordable Insurance Exchanges established under section 1311 or 1321 of the Patient Protection and Affordable Care Act (42 U.S.C. 13031 or 42 U.S.C. 18041).

The burden for the collection of information contained in proposed regulation § 1.36B–5 will be reflected in the burden on a form that the IRS will create to request the information in the proposed regulation.

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 control number assigned by the Office of Management and Budget.

Background

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges (Exchanges). Exchanges will offer Americans competition and choice. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs and Exchanges will give individuals and small businesses the same purchasing power as big businesses. The Departments of Health and Human Services and Treasury are working in close coordination to release guidance related to Exchanges, in several phases. The first in this series was a Request for Comment relating to Exchanges, published in the **Federal Register** on August 3, 2010 (75 FR 45584). Second, Initial Guidance to States on Exchanges was issued on November 18, 2010. Third, proposed regulations on the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011 (76 FR 13553). Fourth, two proposed regulations were published in the **Federal Register** on July 15, 2011 (76 FR 41866 and 76 FR 41930) to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act. Fifth, three proposed regulations, including this one, are being published in the **Federal Register** on August 17, 2011 to provide guidance on the eligibility determination process related to enrollment in a qualified health plan or insurance affordability program; on Medicaid, the Children's Health Insurance Program (CHIP), and other State health coverage programs; and these proposed regulations on the premium tax credit.

Section 1401 of the Affordable Care Act amended the Code to add section 36B, allowing a refundable premium tax credit to help individuals and families afford health insurance coverage. Section 36B was subsequently amended by the Medicare and Medicaid Extenders Act of 2010, Public Law 111–309 (124 Stat. 3285 (2010)); the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112–9 (125 Stat. 36 (2011)); and the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38 (2011)). The section 36B credit is designed to make a qualified health plan affordable by reducing a taxpayer's out-of-pocket premium cost.

Under section 1411 of the Affordable Care Act (42 U.S.C. 18081), an Exchange makes an advance determination of credit eligibility for individuals enrolling in coverage through the Exchange and seeking financial assistance. Using information available at the time of enrollment, the Exchange determines (1) whether the individual meets the income and other requirements for advance credit payments, and (2) the amount of the advance payments. Advance payments are made monthly under section 1412 of the Affordable Care Act (42 U.S.C. 18082) to the issuer of the qualified health plan in which the individual enrolls.

Eligibility

To be eligible for a premium tax credit, an individual must be an applicable taxpayer. Under section 36B(c)(1), an applicable taxpayer is a taxpayer (1) With household income for the taxable year between 100 percent and 400 percent of the federal poverty line (FPL) for the taxpayer's family size, (2) who may not be claimed as a dependent by another taxpayer, and (3) who files a joint return if married.

Section 36B(c)(1)(B) provides that a taxpayer who is an alien lawfully present in the United States, whose household income is 100 percent of the FPL or less, and who is not eligible for Medicaid, nonetheless is treated as an applicable taxpayer. Under section 36B(e)(2), an individual is lawfully present if the individual is, and is reasonably expected to be for the entire period of enrollment for which the credit is claimed, a U.S. citizen or national or an alien lawfully present in the United States.

Under section 36B(d)(1), a taxpayer's family consists of the individuals for whom the taxpayer claims a personal exemption deduction under section 151 for the taxable year. Taxpayers may claim a personal exemption deduction for themselves, a spouse, and each of their dependents. Section 152 provides that a taxpayer's dependent may be a qualifying child or qualifying relative, including an unrelated individual who lives with the taxpayer. Family size is equal to the number of individuals in the taxpayer's family.

Section 36B(d)(2) defines household income as the modified adjusted gross income of all individuals included in family size who are required to file an income tax return. Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by amounts excluded from gross income under section 911 and tax-exempt interest a taxpayer receives or accrues during the taxable year.

Under section 36B(b)(1), a taxpayer's premium assistance credit amount is the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family. Section 36B(c)(2)(A) provides that a coverage month is any month for which the taxpayer or any family member is covered by a qualified health plan enrolled in through an Exchange and the premium is paid by the taxpayer or through an advance credit payment.

Under section 36B(c)(2)(B), a coverage month for an individual does not include a month in which the individual is eligible for minimum essential coverage, as defined in section 5000A(f), other than coverage offered in the individual market. Minimum essential coverage may be government-sponsored coverage such as Medicare, Medicaid, CHIP, TRICARE, and veterans' health care under Title 38 U.S.C. Certain employer-sponsored plans also may be minimum essential coverage. In general, under section 36B(c)(2)(C), an individual is eligible for employer-sponsored minimum essential coverage only if the employee's share of the premiums is affordable and the coverage provides minimum value. However, under section 36B(c)(2)(C)(iii), an individual is treated as eligible for employer-sponsored minimum essential coverage if the individual actually enrolls in an eligible employer-sponsored plan, even if the coverage does not meet the affordability and minimum value requirements.

Under section 5000A(f)(1)(E), the Department of Health and Human Services, in coordination with the Treasury Department, may designate other health benefits coverage as minimum essential coverage. Regulations under section 5000A are expected to provide additional guidance on minimum essential coverage.

Credit Computation

Section 36B(b)(1) provides that the premium assistance credit amount is the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family. The premium assistance amount for a coverage month is the lesser of (1) the premiums for the month for one or more qualified health plans that cover a taxpayer or family member, or (2) the excess of the adjusted monthly premium for the second lowest cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B))) (the benchmark plan) that applies to the taxpayer over 1/12 of the product of the taxpayer's household income and the applicable percentage for the taxable year. The adjusted monthly premium, in general, is the premium an insurer would charge for the plan adjusted only for the ages of the covered individuals.

Therefore, the monthly premium assistance amount is the lesser of the premium for the qualified health plan in which a taxpayer or family member enrolls, or the excess of the premium for the benchmark plan over the applicable percentage of the taxpayer's household income. In general, this percentage of the taxpayer's household income represents the amount of the taxpayer's required out-of-pocket contribution to the premium cost if the taxpayer purchases the benchmark plan. The remainder of the premium for the benchmark plan is the premium assistance amount.

A taxpayer's applicable percentage increases as the taxpayer's household income as a percentage of the FPL (FPL percentage) for the taxpayer's family size increases. For 2014, the applicable percentage is 2 percent for taxpayers with household income up to 133 percent of the FPL and increases from 3 percent to 9.5 percent for taxpayers with household incomes between 133 percent and 400 percent of the FPL. The applicable percentages may be adjusted after 2014.

Taxpayers must pay the difference between the premium assistance amount and the premium for the plan they choose. The amount of a taxpayer's credit is limited to the amount of actual premiums for the taxable year.

Individuals not lawfully present are not eligible to enroll in a qualified health plan through an Exchange. Accordingly, section 36B(e)(1)(A) provides that, for a household with at least one individual not lawfully present, the portion (if any) of the premium attributable to that individual is not included in determining the taxpayer's credit. Section 36B(e)(1)(B) provides that the family size for computing the FPL percentage for a family with at least one unlawfully present individual is determined by excluding the unlawfully present individual. Household income for computing the FPL percentage and determining the applicable percentage is the product of the taxpayer's household income (determined without regard to section 36B(e)) and a fraction, the numerator of which is the FPL for the taxpayer's family size excluding individuals who are not lawfully present, and the denominator of which is the FPL for the taxpayer's family size including individuals who are not lawfully present.

Reconciliation

A taxpayer must reconcile the actual credit for the taxable year computed on the taxpayer's tax return with the amount of advance payments. If a taxpayer's credit amount exceeds the amount of the taxpayer's advance payments for the taxable year, the taxpayer may receive the excess as an income tax refund. If a taxpayer's advance payments exceed the taxpayer's credit amount, the taxpayer owes the excess as an additional income tax liability. However, section 36B(f)(2)(B) places a graduated set of caps on the additional tax liability for taxpayers with household income under 400 percent of the FPL. The repayment

limitation amounts range from $600 to $2,500 (one-half that amount for single taxpayers) depending on FPL, and are adjusted to reflect changes in the cost of living beginning in 2015.

Section 36B(g) directs the Secretary of the Treasury to issue regulations that provide for coordinating the premium tax credit with the program for advance payments and for reconciling the credit and advance payments when the taxpayer's filing status changes during the taxable year.

Information Reporting

Section 36B(f)(3) directs an Exchange to report to the IRS and taxpayers certain information relating to health plans provided through the Exchange, including the amount of any advance credit payments.

Explanation of Provisions

1. Eligibility for the Premium Tax Credit

The proposed regulations provide that a taxpayer is eligible for the credit for a taxable year if the taxpayer is an applicable taxpayer and the taxpayer or a member of the taxpayer's family (1) is enrolled in one or more qualified health plans through an Exchange established under section 1311 or 1321 of the Affordable Care Act (42 U.S.C. 13031 or 42 U.S.C. 18041) and (2) is not eligible for minimum essential coverage other than coverage in the individual market.

a. Applicable Taxpayer

i. Lawfully Present Aliens

In general, to be an applicable taxpayer, a taxpayer must have household income that is at least 100 percent but not more than 400 percent of the FPL. Under section 36B(c)(1)(B), a lawfully present alien with household income under 100 percent of the FPL and not eligible for Medicaid is treated as having household income of 100 percent of the FPL for purposes of qualifying as an applicable taxpayer. The proposed regulations provide that premium assistance amounts for these taxpayers are computed based on actual household income. The proposed regulations define lawfully present by reference to 45 CFR 152.2, which determines lawful presence for purposes of the Pre-Existing Condition Insurance Plan Program.

ii. Taxpayers With Household Income Under 100 Percent of the FPL

The proposed regulations clarify the treatment of a taxpayer who receives advance credit payments but has household income below 100 percent of the FPL for the taxable year.

Taxpayers with household incomes below 100 percent of the FPL (other than lawfully present aliens) are not eligible for the premium tax credit because they are eligible to receive assistance through Medicaid. However, an Exchange may approve a taxpayer for advance credit payments based on projecting a level of household income for the taxable year that makes the taxpayer ineligible for Medicaid. If, contrary to that projection, the taxpayer's actual household income for the taxable year is under 100 percent of the FPL (for example, because the taxpayer experiences a change in circumstances, such as a job loss, during the year), the taxpayer would not be an applicable taxpayer, and would not be eligible for the credit under the general rule. Accordingly, the proposed regulations provide a special rule treating a taxpayer with household income below 100 percent of the FPL as an applicable taxpayer if, when a taxpayer enrolls in a qualified health plan, an Exchange projects that household income for the taxpayer will be between 100 and 400 percent of the FPL for the taxable year and approves advance credit payments. Premium assistance amounts for these taxpayers also are computed based on actual household income and not a deemed household income that equals 100 percent of the FPL.

iii. Individuals Who Are Incarcerated or Not Lawfully Present

Under section 1312(f) of the Affordable Care Act, individuals who are incarcerated (other than pending disposition of charges) or not lawfully present in the United States may not enroll in a qualified health plan through an Exchange. However, these individuals may have family members who are eligible for Exchange coverage. Accordingly, the proposed regulations provide that an individual who is not lawfully present in the United States or is incarcerated, although not eligible to enroll in a qualified health plan, may be an applicable taxpayer if a family member is eligible to and does enroll in a qualified health plan.

b. Minimum Essential Coverage

i. Government-Sponsored Coverage

Under the proposed regulations, an individual generally is eligible for government-sponsored minimum essential coverage for any month that the individual meets the requirements for coverage under a government-sponsored program described in section 5000A(f)(1)(A). However, for purposes of the premium tax credit, an individual is eligible for minimum essential coverage under a veterans' health care program only if the individual is enrolled in a veteran's health care program identified as minimum essential coverage in regulations issued under section 5000A. The Commissioner may define eligibility for specific government-sponsored programs further in published guidance of general applicability, see § 601.601(d)(2) of this chapter. For example, it is expected that future guidance will provide that a person is eligible for Medicaid on the basis of being blind or disabled or needing long-term care services only when a State Medicaid agency or the Social Security Administration, as appropriate, determines that the individual is blind or disabled or requires long-term care services.

In general, an individual is treated as eligible for a government-sponsored program on the first day of the first full month in which the individual may receive benefits. Thus, taxpayers would not lose eligibility for the credit for a month in which the taxpayer or a family member is technically eligible for a government program but cannot yet receive benefits due to, for example, the need for administrative processing. However, an individual who fails to complete the requirements to obtain coverage available under a government-sponsored program (other than coverage under the veteran's health care program) reasonably promptly is treated as eligible for the coverage on the first day of the second calendar month following the event that establishes eligibility (such as reaching age 65 for Medicare).

An individual receiving advance credit payments may apply and be approved for government-sponsored minimum essential coverage such as Medicaid that, after approval, is effective retroactively (overlapping some advance payment coverage months). The proposed regulations provide that an individual in this situation is treated as eligible for minimum essential coverage no sooner than the first day of the first calendar month after the approval.

Comments are requested on whether rules should provide additional flexibility if operational challenges prevent timely transition from coverage under a qualified health plan to coverage under a government-sponsored program.

A taxpayer whom an Exchange has determined to be ineligible for Medicaid, CHIP, or a similar program at the time of enrollment may end up with household income for the taxable year within the eligibility criteria for these

programs. Therefore, the proposed regulations provide that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for the months of coverage under a qualified health plan if an Exchange determines that the individual is not eligible when the individual enrolls. If the individual subsequently enrolls in Medicaid, CHIP, or a similar program, however, the full months of enrollment in the government-sponsored coverage are not coverage months.

ii. Employer-Sponsored Coverage

A. In General

Section 5000A(f)(1)(B) provides that minimum essential coverage includes coverage under an eligible employer-sponsored plan. Under section 5000A(f)(2), an eligible employer-sponsored plan is a group health plan or group health insurance coverage offered by an employer to an employee that is a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(8))), any other plan or coverage offered in the small or large group market, or a grandfathered plan offered in the group market. Regulations under section 5000A are expected to provide that an employer-sponsored plan will not fail to be minimum essential coverage solely because it is a plan to reimburse employees for medical care for which reimbursement is not provided under a policy of accident and health insurance (a self-insured plan).

Continuation coverage required under federal law or required under a state law that provides comparable continuation coverage is eligible employer-sponsored coverage. The proposed regulations provide a special rule that an individual eligible to enroll in continuation coverage is eligible for minimum essential coverage only if the individual enrolls in the coverage.

The proposed regulations provide that an individual generally is eligible for minimum essential coverage through an eligible employer-sponsored plan for a month during a plan year if the individual had the opportunity to enroll in the plan, even if the enrollment period has since closed. Thus, once an individual fails to enroll in eligible employer-sponsored coverage during an employer-sponsored plan's enrollment period after having had the opportunity to do so (assuming the coverage is affordable and provides minimum value), the months during the plan year are not coverage months for the individual, notwithstanding that the individual is precluded from later enrolling in the employer-sponsored coverage for those months because the enrollment period has expired.

Under section 36B(c)(2)(C), an individual generally is eligible for employer-sponsored minimum essential coverage only if the employee's share of the premiums is affordable and the coverage provides minimum value. An individual is treated as eligible for minimum essential coverage through an eligible employer-sponsored plan, however, if the individual actually enrolls in the coverage, including coverage that does not meet the requirements for affordability and minimum value.

B. Affordability of Employer-Sponsored Coverage

Section 36B(c)(2)(C)(i) prescribes the standards for determining whether employer-sponsored coverage is affordable for an employee as well as for other individuals. In the case of an employee, under section 36B(c)(2)(C)(i), an employer-sponsored plan is not affordable if ''the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income'' for the taxable year. This percentage may be adjusted after 2014.[1]

In the case of an individual other than an employee, section 36B(c)(2)(C)(i) provides that ''this clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.'' The cross-referenced section 5000A(e)(1)(B) defines the term ''required contribution'' for this purpose as ''the portion of the annual premium which would be paid by the individual * * * for self-only coverage.''

Thus, the statutory language specifies that for both employees and others (such as spouses or dependents) who are eligible to enroll in employer-sponsored coverage by reason of their relationship to an employee (related individuals), the coverage is unaffordable if the required contribution for ''self-only'' coverage (as opposed to family coverage or other coverage applicable to multiple individuals) exceeds 9.5 percent of household income. See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 111th Congress, JCS–2–11 (March 2011) at 265 (stating that, for purposes of the premium tax credit provisions of the Act, ''[u]naffordable is defined as coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee's household income, based on the self-only coverage'').

Consistent with these statutory provisions, the proposed regulations provide that an employer-sponsored plan also is affordable for a related individual for purposes of section 36B if the employee's required contribution for self-only coverage under the plan does not exceed 9.5 percent of the applicable taxpayer's household income for the taxable year, even if the employee's required contribution for the family coverage does exceed 9.5 percent of the applicable taxpayer's household income for the year.

Although the affordability test for related individuals for purposes of the premium tax credit is based on the cost of self-only coverage, future proposed regulations under section 5000A are expected to provide that the affordability test for purposes of applying the individual responsibility requirement to related individuals is based on the employee's required contribution for employer-sponsored family coverage. Section 5000A addresses affordability for employees in section 5000A(e)(1)(B) and, separately, for related individuals in section 5000A(e)(1)(C).

C. Employee Affordability Safe Harbor

The proposed regulations provide an employee safe harbor for individuals who were offered eligible employer-sponsored coverage that ultimately proves to be affordable based on household income for the taxable year but who declined the offer because, at the time of enrollment in a qualified health plan, the Exchange determined that the employer coverage would be unaffordable. Under the safe harbor, an eligible employer-sponsored plan is treated as unaffordable for an entire plan year. Thus, for the months during the plan year (which may coincide or overlap with the taxable year) a taxpayer will not lose credit eligibility because, as a result of changes during the taxable year, the employer coverage would have been affordable based on the household income for that taxable year. The taxpayer may, however, lose credit eligibility for other reasons, for example if the taxpayer's household income for

[1] In addition, the statute provides for the Comptroller General, within 5 years of enactment, to conduct a study, including legislative recommendations, on the affordability of coverage, including whether the percentage of household income specified in section 36B(c)(2)(C) ''is the appropriate level for determining whether employer-provided coverage is affordable for an employee and whether such level may be lowered without significantly increasing the costs to the Federal Government and reducing employer-provided coverage.'' See section 1401(c)(1) of the Affordable Care Act.

the taxable year exceeds 400 percent of the FPL. Regulations under section 4980H are expected to provide that an employer is not subject to a penalty merely because an employee receives a premium tax credit under this employee safe harbor if the employer offered to its employees affordable coverage that otherwise meets the requirements of section 4980H.

D. Affordability Safe Harbor for Employers

In general, an applicable large employer (as defined in section 4980H(c)(2)) that offers health coverage to its full-time employees and their dependents is subject to the assessable payment under section 4980H(b) if at least one full-time employee is certified to receive a premium tax credit or cost-sharing reduction because the employer-sponsored coverage either does not provide minimum value or is unaffordable to the employee.

Employers have commented that they will not know their employees' actual household income. As a result, even if an employer intends to offer affordable coverage to all full-time employees, one or more full-time employees may be certified to receive the premium tax credit, and the employer may be subject to the assessable payment under 4980H(b). Future proposed regulations under section 4980H are expected to provide an affordability safe harbor for employers. Under this anticipated safe harbor, an employer that meets certain requirements, including offering its full-time employees (and their dependents) the opportunity to enroll in eligible employer-sponsored coverage, will not be subject to an assessable payment under section 4980H(b) with respect to an employee who receives a premium tax credit or cost-sharing reduction for a taxable year if the employee portion of the self-only premium for the employer's lowest cost plan that provides minimum value does not exceed 9.5 percent of the employee's current W–2 wages from the employer.

Giving employers the ability to base their affordability calculations on their employees' wages (which employers know) instead of employees' household income (which employers generally do not know) is intended to provide a more workable and predictable method of facilitating affordable employer-sponsored coverage for the benefit of both employers and employees. Notwithstanding this safe harbor, employees' eligibility for a premium tax credit would continue to be based on affordability of employer-sponsored coverage relative to employees' household income. Accordingly, some employees—among the small percentage of employees whose household income is less than their wages from the employer—would receive a premium tax credit without resulting in an assessable payment by their employer. The Treasury Department and the IRS intend to issue a request for comments on this affordability safe harbor for employers.

E. Minimum Value

Section 36B(c)(2)(C)(ii) provides that an eligible employer-sponsored plan generally provides minimum value if the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of those costs. Under section 1302(d)(2) of the Affordable Care Act (42 U.S.C. 18022(d)(2)), regulations to be issued by the Secretary of Health and Human Services will apply in determining the percentage of ''the total allowed costs of benefits'' provided under a group health plan or health insurance coverage that are covered by that plan or coverage. The regulations under section 1302(d)(2) are expected to be proposed later this year and to reflect the fact that employer-sponsored group health plans and health insurance coverage in the large group market are not required to provide each of the essential health benefits or each of the 10 categories of benefits described in section 1302(b)(1) of the Affordable Care Act. It is also anticipated that the regulations will seek to further the objective of preserving the existing system of employer-sponsored coverage, but without permitting the statutory employer responsibility standards to be avoided. We also are contemplating whether to provide appropriate transition relief with respect to the minimum value requirement for employers currently offering health care coverage.

2. Computing the Premium Tax Credit

A taxpayer's credit is the sum of the premium assistance amounts for each coverage month in the taxable year. A premium assistance amount is computed for each coverage month during the taxable year based on several factors: household income, family size, applicable percentage, benchmark plan premium, and actual plan premium. A month during which no one in the taxpayer's family is enrolled in a qualified health plan through an Exchange is not a coverage month. A month is a coverage month only if the taxpayer pays the premium for coverage or receives the benefit of an advance payment. The premium assistance amount for a month that is not a coverage month is zero. Household income is determined on an annual basis and is prorated for each month to determine the monthly premium assistance amount. The applicable percentage is the same for each month because it is derived from annual household income and family size. A taxpayer's benchmark plan premium may change during the year if, for example, there are changes in the members of the household covered through the Exchange or the taxpayer moves to a new State with different plan rates.

a. Premiums Paid on Behalf of the Taxpayer

The proposed regulations provide that, in determining whether a month is a coverage month, premiums that another person pays for the coverage of the taxpayer or a family member are treated as paid by the taxpayer.

b. Applicable Benchmark Plan

Under section 36B(b)(2), the monthly premium for the applicable second lowest cost silver plan offered through an Exchange is the benchmark for computing a taxpayer's monthly premium assistance amount. To determine the amount of premium tax credit, a taxpayer must compute the difference between the premium for this plan and the applicable percentage of the taxpayer's household income, regardless of the qualified health plan the taxpayer purchases.

i. Multiple Categories of Coverage Offered on an Exchange

Section 36B(b)(3)(B)(ii) identifies only self-only and family as the categories of coverage for the benchmark plan. However, qualified health plans may offer other categories of coverage based on family composition, such as children only, two adults, or one adult plus children. See proposed 45 CFR 156.255(b). Thus, the proposed regulations define family coverage as any health insurance that covers more than one individual.

Under the proposed regulations, the ''applicable'' benchmark plan for a taxpayer is determined by finding the second lowest cost plan at the silver level that would cover those family members actually enrolled in a qualified health plan, not eligible for minimum essential coverage other than coverage in the individual market, not incarcerated, and lawfully present in the United States (the coverage family). Thus, the applicable benchmark plan is the self-only category of coverage for a taxpayer who files as single with no dependents, a taxpayer who purchases

self-only coverage, and a taxpayer whose family includes only one individual who is not eligible for minimum essential coverage or one lawfully present individual (thus excluding from the credit computation the portion of the premium attributable to an individual not lawfully present, as required by section 36B(e)(1)(A)). If an Exchange offers more categories of coverage than self-only and family, the applicable benchmark plan is the coverage category that applies to the members of the taxpayer's coverage family.

ii. Families Who Purchase More Than One Qualified Health Plan

Section 36B determines family size by reference to individuals for whom the taxpayer claims a personal exemption, and family coverage under some qualified health plans may not extend to certain tax dependents (for example, a niece). We note that the Department of Health and Human Services has requested comments in its proposed regulations on Exchanges on whether qualified health plans offered on an Exchange should be required to cover all members of the family if they live in the same Exchange service area. Pending the issuance of additional guidance on this issue by Health and Human Services, the proposed regulations provide that, if the applicable benchmark plan does not cover a taxpayer's full family, the applicable benchmark plan premium for these families is the sum of the premiums for the benchmark plans that cover the taxpayer's family (for example, for an uncle and two adult dependent nieces, a self-only benchmark plan for the uncle and a two-adult or family plan for the nieces). The applicable benchmark plan is similarly modified for taxpayers with family members residing in different rating areas (also known as Exchange service areas, see proposed 45 CFR155.20). However, the IRS and Treasury Department are considering other approaches for determining the applicable benchmark plan in these cases. For example, the applicable benchmark plan for these families could be the benchmark plan that would apply to the family composition (such as one adult plus children) if one plan covered all members of the taxpayer's family. Alternatively, the applicable benchmark plan premium could be the lesser of (1) the premium for a combination of plans that cover the taxpayer's entire family, or (2) the premium for a single plan that covers the taxpayer's entire family and is more expensive than the second lowest cost silver plan. Comments are requested on these and other possible approaches.

iii. One Qualified Health Plan Covering More Than One Family

If a single qualified health plan covers more than one taxpayer's family (for example a plan that covers adult children under age 26 who are not tax dependents), the allowable section 36B credit is computed for each applicable taxpayer covered by the plan. An individual applicable percentage is determined for each taxpayer based on the taxpayer's household income and family size, and the separate applicable benchmark plan. The premiums for the qualified health plan the taxpayers purchase are allocated to each taxpayer in proportion to the premiums for each taxpayer's benchmark plan to determine whether the premiums paid are less than the benchmark premium minus the taxpayer's applicable percentage of household income.

iv. Applicable Benchmark Plan That Terminates or Closes to Enrollment

A qualified health plan that is the second lowest cost silver plan for a particular category of coverage, or the lowest cost silver plan in that category, may close to enrollment or terminate during the taxable year. The proposed regulations clarify that an applicable benchmark plan is a plan offered through the Exchange when a taxpayer or family member enrolls in a qualified health plan. Unless the taxpayer or a family member is enrolled in the applicable benchmark plan, a plan does not cease to be the applicable benchmark plan solely because the plan or the lowest cost silver plan terminates or closes to further enrollment during the taxable year.

c. Pediatric Dental Coverage

Section 36B(b)(3)(E) provides that, for purposes of determining the amount of any monthly premium, if an individual enrolls in both a qualified health plan and a plan providing dental coverage as described in section 1311(d)(2)(B)(ii) of the Affordable Care Act (42 U.S.C. 13031(d)(2)(B)(ii)), the portion of the premium for the dental plan that is properly allocable to pediatric dental benefits that are essential health benefits is treated as a premium payable for the individual's qualified health plan. Thus, the portion of the premium for the separate pediatric dental coverage is added to the premium for the benchmark plan in computing the credit. Comments are requested on methods of determining the amount of the premium properly allocable to pediatric dental benefits.

3. Reconciling the Credit and Advance Credit Payments

The proposed regulations describe the requirements for reconciling advance payments of the credit with the actual credit amount and determining the amount of any resulting additional credit or additional income tax liability. The proposed regulations explain that the credit is computed by using the household income and family size for the taxable year, but premium assistance amounts for different coverage months may be based on different applicable benchmark plans if, for example, the taxpayer's family composition changes during the taxable year.

a. Changes in Filing Status

Section 36B(g)(2) directs the Secretary to provide regulations specifying how to reconcile advance payments with the actual credit when the taxpayer's filing status on the return claiming the credit differs from the filing status used to determine advance payments of the credit. Filing status may be any of the following: single, married filing jointly, married filing separately, head of household, or surviving spouse.

i. Computing the Credit When Taxpayer's Marital Status Changes

The proposed regulations provide that, for a taxpayer who has a change in marital status during the taxable year, the credit generally is computed according to the same rules that apply to other taxpayers, using the applicable benchmark plan or plans that apply to the taxpayer's marital status as of the first day of each month. However, the proposed regulations include special rules for computing the credit for taxpayers who divorce during the taxable year. Comments are requested on special rules for taxpayers who marry during the taxable year and for married taxpayers who face challenges in being able to file a joint return.

ii. Taxpayers Who Divorce During the Taxable Year

The proposed regulations provide that, for purposes of reconciliation, taxpayers who for some months during a taxable year were married (within the meaning of section 7703) and were covered by the same qualified health plan but are no longer married on the last day of the taxable year, may agree to allocate between themselves, in the same proportion, the premiums for the benchmark plan, premiums paid and advance credit payments made during the marriage. If the taxpayers do not agree on an allocation, the taxpayers must allocate 50 percent of these amounts to each taxpayer. If only one of

the formerly married taxpayers was enrolled in the plan, 100 percent of the benchmark premiums, premiums for the plan that taxpayer purchases, and advance payments are allocated to that taxpayer.

iii. Taxpayers Who Marry During the Taxable Year

For individuals who marry during a taxable year and receive advance credit payments during the time before they are married, the general rules for credit computation and reconciliation could lead to the individuals facing additional tax upon reconciliation, even if the Exchange accurately determines each individual's separate income for the year at the time of enrollment. This may occur, for example, in situations in which the combination of two individuals' household incomes and families results in the combined family having a higher FPL percentage than either of the component families would have had if the individuals had not married, and therefore having a higher applicable percentage or being ineligible for a credit. Comments are requested on rules providing relief to certain individuals who would owe additional tax because they marry during a taxable year when one or both individuals receive advance credit payments prior to marriage. Comments are requested on how the premium assistance credit amount should be computed in this circumstance, including how household income (which is required to be determined on an annual basis) and dependents for the taxable year would be taken into account in the credit computation.

iv. Married Taxpayers Filing Separately

Married taxpayers who file their returns as married filing separately are not applicable taxpayers and generally are ineligible for the premium tax credit for any month during the taxable year. The proposed regulations provide that taxpayers who receive advance credit payments and file their tax returns as married filing separately must allocate 50 percent of any advance credit payments to each spouse for purposes of determining their excess advance payment amounts as part of the reconciliation process. Although the taxpayers owe additional tax for the entire amount of the advance credit payments, the section 36B(f)(2)(B) repayment limitation applies to each taxpayer whose household income is below 400 percent of the federal poverty line based on the household income and family size reported on the return.

Some taxpayers who are married at the time they enroll in a qualified health plan and begin to receive advance credit payments may not be able to file a joint return for the coverage year. For example, in situations involving domestic abuse, when a divorce is pending but not yet final, or when one spouse is incarcerated, filing a joint return may not be possible or prudent. Comments are requested on rules to provide relief for those married taxpayers who have received advance credit payments but face challenges in being able to file a joint return. Comments are requested in particular on whether rules should take into account whether (1) The spouses have filed jointly for the preceding taxable year, (2) the spouses attested to an expectation to file jointly for purposes of receiving the advance credit payments, and (3) the spouses should be allowed relief of this type for more than one year.

Comments are requested on other rules for reconciling the credit with advance payments for taxpayers whose filing status changes during the taxable year.

b. Requirement To File a Return

The proposed regulations require every taxpayer receiving advance credit payments to file an income tax return on or before the fifteenth day of the fourth month following the close of the taxable year. The requirement to file a return applies whether or not a taxpayer is otherwise required to file a return under section 6012 or claims a premium tax credit for the taxable year. Under section 6081, the Commissioner may grant a reasonable extension of time for filing any income tax return.

Effective/Applicability Date

These regulations are proposed to apply for taxable years ending after December 31, 2013.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (either electronic or a signed paper original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 17, 2011, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments (electronic or a signed paper original and eight (8) copies) and an outline of topics to be discussed and the time devoted to each topic by November 10, 2011. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Shareen S. Pflanz, Frank W. Dunham III, and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.36B–4 also issued under 26 U.S.C. 36B(g).

Par. 2. Sections 1.36B–0, 1.36B–1, 1.36B–2, 1.36B–3, 1.36B–4, and 1.36B–5 are added to read as follows:

§ 1.36B–0 Table of contents.

This section lists the captions contained in §§ 1.36B–1 through 1.36B–5.

§ 1.36B–1 Premium tax credit definitions.

(a) *In general.* Section 36B allows a refundable premium tax credit for taxable years ending after December 31, 2013. The definitions in this section apply to this section and §§ 1.36B–2 through 1.36B–5.

(b) *Affordable Care Act.* The term *Affordable Care Act* refers to the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), as amended by the Medicare and Medicaid Extenders Act of 2010, Public Law 111–309 (124 Stat. 3285 (2010)), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112–9 (125 Stat. 36 (2011)), and the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38 (2011)).

(c) *Qualified health plan.* The term *qualified health plan* has the same meaning as in section 1301(a) of the Affordable Care Act (42 U.S.C. 18021(a)) but does not include a catastrophic plan described in section 1302(e) of the Affordable Care Act (42 U.S.C. 18022(e)).

(d) *Family and family size.* A taxpayer's family means the individuals for whom a taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year. Family size means the number of individuals in the family. Family and family size include an individual who is exempt from the requirement to maintain minimum essential coverage under section 5000A.

(e) *Household income*—(1) *In general.* Household income means the sum of—

(i) A taxpayer's modified adjusted gross income; plus

(ii) The aggregate modified adjusted gross income of all other individuals who—

(A) Are included in the taxpayer's family under paragraph (d) of this section; and

(B) Are required to file an income tax return for the taxable year (determined without regard to the exception under section (1)(g)(7) to the requirement to file a return).

(2) *Modified adjusted gross income.* Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by amounts excluded from gross income under section 911 and tax-exempt interest the taxpayer receives or accrues during the taxable year.

(f) *Dependent.* Dependent has the same meaning as in section 152.

(g) *Lawfully present.* Lawfully present has the same meaning as in 45 CFR 152.2.

(h) *Federal poverty line.* The federal poverty line means the most recently published poverty guidelines (updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2)) as of the first day of the regular enrollment period for coverage by a qualified health plan offered through an Exchange for a calendar year. Thus, the federal poverty line for computing the premium tax credit for a taxable year is the federal poverty line in effect on the first day of the initial or annual open enrollment period preceding that taxable year. See 45 CFR 155.410.

(i) [Reserved]

(j) *Advance credit payment.* Advance credit payment means an advance payment of the premium tax credit as provided in section 1412 of the Affordable Care Act (42 U.S.C. 18082).

(k) *Exchange.* Exchange has the same meaning as in 45 CFR 155.20.

(l) *Self-only coverage.* Self-only coverage means health insurance that covers one individual.

(m) *Family coverage.* Family coverage means health insurance that covers more than one individual.

(n) *Rating area.* Rating area means an Exchange service area, as described in 45 CFR 155.20.

(o) *Effective/applicability date.* This section and §§ 1.36B–2 through 1.36B–5 apply for taxable years ending after December 31, 2013.

§ 1.36B–2 Eligibility for premium tax credit.

(a) *In general.* An applicable taxpayer (within the meaning of paragraph (b) of this section) is allowed a premium assistance amount only for any month that the applicable taxpayer, or the applicable taxpayer's spouse or dependent—

(1) Is enrolled in one or more qualified health plans through an Exchange; and

(2) Is not eligible for minimum essential coverage (within the meaning of paragraph (c) of this section) other than coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

(b) *Applicable taxpayer*—(1) *In general.* Except as otherwise provided in this paragraph (b), an applicable taxpayer is a taxpayer whose household income is at least 100 percent but not more than 400 percent of the federal poverty line for the taxpayer's family size for the taxable year.

(2) *Married taxpayers must file joint return.* A taxpayer who is married (within the meaning of section 7703) at the close of the taxable year is an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(3) *Dependents.* An individual is not an applicable taxpayer if another taxpayer may claim a deduction under section 151 for the individual for a taxable year beginning in the calendar year in which the individual's taxable year begins.

(4) *Individuals not lawfully present or incarcerated.* An individual who is not lawfully present in the United States or is incarcerated (other than incarceration pending disposition of charges) may not be covered by a qualified health plan through an Exchange. However, the individual may be an applicable taxpayer if a family member is eligible to enroll in a qualified health plan. See sections 1312(f)(1)(B) and 1312(f)(3) of the Affordable Care Act (42 U.S.C. 18032(f)(1)(B) and (f)(3)) and § 1.36B–3(b)(2).

(5) *Individuals lawfully present.* If a taxpayer's household income is less than 100 percent of the federal poverty line for the taxpayer's family size and the taxpayer or a member of the taxpayer's family is an alien lawfully present in the United States, the taxpayer is treated as an applicable taxpayer if—

(i) The taxpayer or family member is not eligible for the Medicaid program; and

(ii) The taxpayer would be an applicable taxpayer if the taxpayer's household income for the taxable year was between 100 and 400 percent of the federal poverty line for the taxpayer's family size.

(6) *Special rule for taxpayers with household income below 100 percent of the federal poverty line for the taxable year.* A taxpayer (other than a taxpayer described in paragraph (b)(5) of this section) whose household income for a taxable year is less than 100 percent of the federal poverty line for the taxpayer's family size is treated as an applicable taxpayer if—

(i) The taxpayer or a family member enrolls in a qualified health plan through an Exchange;

(ii) An Exchange estimates at the time of enrollment that the taxpayer's household income will be between 100 and 400 percent of the federal poverty line for the taxable year;

(iii) Advance credit payments are authorized and paid for one or more months during the taxable year; and

(iv) The taxpayer would be an applicable taxpayer if the taxpayer's household income for the taxable year was between 100 and 400 percent of the federal poverty line for the taxpayer's family size.

(7) *Computation of premium assistance amounts for taxpayers with household income below 100 percent of the federal poverty line.* If a taxpayer is treated as an applicable taxpayer under paragraph (b)(5) or (b)(6) of this section, the taxpayer's actual household income for the taxable year is used to compute the premium assistance amounts under § 1.36B–3(d).

(c) *Minimum essential coverage*—(1) *In general.* Minimum essential coverage is defined in section 5000A(f) and regulations issued under that section. As described in section 5000A(f), government-sponsored programs, eligible employer-sponsored plans, grandfathered health plans, and certain other health benefits coverage are minimum essential coverage.

(2) *Government-sponsored minimum essential coverage*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, for purposes of section 36B, an individual is eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program described in section 5000A(f)(1)(A). The Commissioner may define eligibility for specific government-sponsored programs further in published guidance of general applicability, see § 601.601(d)(2) of this chapter.

(ii) *Special rule for coverage under the veteran's health care program under chapter 17 or 18 of Title 38, U.S.C.* An individual is eligible for minimum

essential coverage under the veteran's health care program authorized under chapter 17 or 18 of Title 38, U.S.C., only if the individual is enrolled in a veteran's health care program identified as minimum essential coverage in regulations issued under section 5000A.

(iii) *Time of eligibility*—(A) *In general.* An individual generally is treated as eligible for a government-sponsored program on the first day of the first full month in which the individual may receive benefits under the program. However, an individual who fails to complete the requirements necessary to receive benefits available under a government-sponsored program (other than a veteran's health care program) reasonably promptly is treated as eligible for government-sponsored minimum essential coverage as of the first day of the second calendar month following the event that establishes eligibility under paragraph (c)(2)(i) of this section.

(B) *Retroactive effect of eligibility determination.* If an individual receiving advance credit payments is determined to be eligible for government-sponsored minimum essential coverage that is effective retroactively (such as Medicaid), the individual is treated as eligible for minimum essential coverage under that program no earlier than the first day of the first calendar month beginning after the approval.

(iv) *Determination of Medicaid or Children's Health Insurance Program (CHIP) ineligibility.* An individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a qualified health plan if an Exchange determines that the individual is not eligible for the program when the individual enrolls in the qualified health plan.

(v) *Examples.* The following examples illustrate the provisions of this paragraph (c)(2).

Example 1. Delay in coverage effectiveness. On April 10, Taxpayer D applies for coverage under a government-sponsored health care program. D's application is approved on July 12 but her coverage is not effective until September 1. Under paragraph (c)(2)(iii)(A) of this section, D is eligible for government-sponsored minimum essential coverage on September 1.

Example 2. Time of eligibility. Taxpayer E turns 65 on June 3 and becomes eligible for Medicare. Under section 5000A(f)(1)(A), Medicare is minimum essential coverage. However, E must enroll in Medicare to receive benefits. E enrolls in Medicare on June 11 and may receive benefits immediately. Under paragraph (c)(2)(iii)(A) of this section, E is eligible for government-sponsored minimum essential coverage on July 1, the first day of the first full month that E may receive benefits under the program.

Example 3. Time of eligibility, individual fails to complete necessary requirements. The facts are the same as in *Example 2,* except that E fails to enroll in the Medicare coverage. E is treated as eligible for government-sponsored minimum essential coverage under paragraph (c)(2)(iii)(A) of this section as of August 1, the first day of the second month following the event that establishes eligibility (E turning 65).

Example 4. Retroactive effect of eligibility. On April 10, 2015, Taxpayer G applies for coverage under the Medicaid program. G's application is approved on May 15, 2015, and her Medicaid coverage is effective as of April 1, 2015. Under paragraph (c)(2)(iii)(B) of this section, G is eligible for government-sponsored minimum essential coverage on June 1, 2015, the first day of the first calendar month after approval.

Example 5. Determination of Medicaid ineligibility. In November 2014, Taxpayer H applies to the Exchange to enroll in a qualified health plan and for advance credit payments for 2015. The Exchange estimates that H's household income will be 140 percent of the federal poverty line for H's family size and determines that H is not eligible for Medicaid. The Exchange authorizes advance credit payments for H for 2015. H experiences a loss of household income in June 2015 but does not return to the Exchange in 2015 to apply for Medicaid benefits or report his change in income. H's household income for 2015 is 130 percent of the federal poverty line (within the Medicaid income threshold). Under paragraph (c)(2)(iv) of this section, H is treated as not eligible for Medicaid for 2015.

Example 6. Mid-year Medicaid eligibility redetermination. The facts are the same as in *Example 5,* except that H returns to the Exchange in July 2015 and the Exchange determines H is eligible for Medicaid. The Exchange discontinues H's advance credit payments effective August 1. Under paragraphs (c)(2)(iii)(B) and (c)(2)(iv) of this section, H is treated as not eligible for Medicaid for the coverage months when H is covered by a qualified health plan. H is eligible for government-sponsored minimum essential coverage for the coverage months after H is approved for Medicaid, August through December 2015.

(3) *Employer-sponsored minimum essential coverage*—(i) *In general.* For purposes of section 36B, an employee who may enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) and an individual who may enroll in the plan because of a relationship to the employee (a related individual) are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value. Government-sponsored programs described in section 5000A(f)(1)(A) are not eligible employer-sponsored plans.

(ii) *Plan year.* For purposes of this paragraph (c)(3), a plan year is an eligible employer-sponsored plan's regular 12-month coverage period (or the remainder of a 12-month coverage period for a new employee or an individual who enrolls during a special enrollment period).

(iii) *Eligibility for coverage months during a plan year*—(A) *In general.* An employee or related individual may be eligible for minimum essential coverage under an eligible employer-sponsored plan for a coverage month during a plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period.

(B) *Example.* The following example illustrates the provisions of this paragraph (c)(3)(iii).

Example. (i) Taxpayer B is an employee of Employer X. X offers its employees a health insurance plan that has a plan year (within the meaning of paragraph (c)(3)(ii) of this section) from October 1 through September 30. Employees may enroll during an open season from August 1 to September 15. B does not enroll in X's plan for the plan year October 1, 2014, to September 30, 2015. In November 2014 B enrolls in a qualified health plan through an Exchange for calendar year 2015.

(ii) B could have enrolled in X's plan during the August 1 to September 15 enrollment period. Therefore, unless X's plan is not affordable for B or does not provide minimum value, B is eligible for minimum essential coverage for the months that B is enrolled in the qualified health plan during X's plan year (January through September 2015).

(iv) *Special rule for continuation coverage.* An individual who may enroll in continuation coverage required under federal law or a state law that provides comparable continuation coverage is eligible for minimum essential coverage only if the individual enrolls in the coverage.

(v) *Affordable coverage*—(A) *In general*—(*1*) *Affordability.* Except as provided in paragraph (c)(3)(v)(A)(*2*) of this section, an eligible employer-sponsored plan is affordable for an employee or a related individual if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise (required contribution), for self-only coverage for the taxable year does not exceed the required contribution percentage (as defined in paragraph (c)(3)(v)(B) of this section) of the applicable taxpayer's household income for the taxable year.

(*2*) *Employee safe harbor.* An employer-sponsored plan is treated as not affordable for an employee or a related individual for a plan year if, when the employee or a related individual enrolls in a qualified health plan for a period coinciding with the plan year (in whole or in part), an Exchange determines that the eligible

employer-sponsored plan is not affordable.

(B) *Required contribution percentage.* The required contribution percentage is 9.5 percent. The percentage may be adjusted in published guidance of general applicability, see § 601.601(d)(2) of this chapter, for taxable years beginning after December 31, 2014, to reflect rates of premium growth relative to growth in income and, for taxable years beginning after December 31, 2018, to reflect rates of premium growth relative to growth in the consumer price index.

(C) *Examples.* The following examples illustrate the provisions of this paragraph (c)(3)(v). Unless stated otherwise, in each example the taxpayer is single and has no dependents, the employer's plan is an eligible employer-sponsored plan and provides minimum value, the employee is not eligible for other minimum essential coverage, and the taxpayer, related individual, and employer-sponsored plan have a calendar taxable year.

Example 1. Basic determination of affordability. In 2014 Taxpayer C has household income of $47,000. C is an employee of Employer X, which offers its employees a health insurance plan that requires C to contribute $3,450 for self-only coverage for 2014 (7.3 percent of C's household income). Because C's required contribution for self-only coverage does not exceed 9.5 percent of household income, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2014.

Example 2. Basic determination of affordability for a related individual. The facts are the same as in *Example 1,* except that C is married to J and X's plan requires C to contribute $5,300 for coverage for C and J for 2014 (11.3 percent of C's household income). Because C's required contribution for self-only coverage ($3,450) does not exceed 9.5 percent of household income, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C and J, and C and J are eligible for minimum essential coverage for all months in 2014.

Example 3. Determination of unaffordability at enrollment. (i) Taxpayer D is an employee of Employer X. In November 2013 the Exchange in D's rating area projects that D's 2014 household income will be $37,000. It also verifies that D's required contribution for self-only coverage under X's health insurance plan will be $3,700 (10 percent of household income). Consequently, the Exchange determines that X's plan is unaffordable. D enrolls in a qualified health plan and not in X's plan. In December 2014, X pays D a $2,500 bonus. Thus, D's actual 2014 household income is $39,500 and D's required contribution for coverage under X's plan is 9.4 percent of household income.

(ii) Based on D's actual 2014 household income, D's required contribution does not exceed 9.5 percent of household income and X's health plan is affordable for D. However, when D enrolled in a qualified health plan for 2014, the Exchange determined that X's plan was not affordable for D for 2014. Consequently, under paragraph (c)(3)(v)(A)(*2*) of this section, X's plan is treated as not affordable for D and D is treated as not eligible for minimum essential coverage for 2014.

Example 4. Determination of unaffordability for plan year. The facts are the same as in *Example 3,* except that X's employee health insurance plan year is September 1 to August 31. The Exchange in D's rating area determines in August 2014 that X's plan is unaffordable for D based on D's projected household income for 2014. D enrolls in a qualified health plan as of September 1, 2014. Under paragraph (c)(3)(v)(A)(*2*) of this section, X's plan is treated as not affordable for D and D is treated as not eligible for minimum essential coverage under X's plan for the coverage months September to December 2014 and January through August 2015.

Example 5. Determination of unaffordability for part of plan year. (i) Taxpayer E is an employee of Employer X beginning in May 2015. X's employee health insurance plan year is September 1 to August 31. E's required contribution for self-only coverage for May through August is $150 per month ($1,800 for the full plan year). The Exchange in E's rating area determines E's household income for purposes of eligibility for advance credit payments as $18,000. E's actual household income for the 2015 taxable year is $20,000.

(ii) Whether coverage under X's plan is affordable for E is determined for the remainder of X's plan year (May through August). E's required contribution for a full plan year ($1,800) exceeds 9.5 percent of E's household income (1,800/18,000 = 10 percent). Therefore, the Exchange determines that X's coverage is unaffordable for May through August. Although E's actual household income for 2015 is $20,000 (and E's required contribution of $1,800 does not exceed 9.5 percent of E's household income), under paragraph (c)(3)(v)(A)(*2*) of this section, X's plan is treated as unaffordable for E for the part of the plan year May through August 2015. Consequently, E is not eligible for minimum essential coverage under X's plan for the period May through August 2015.

Example 6. Affordability determined for part of a taxable year (part-year period). (i) Taxpayer F is an employee of Employer X. X's employee health insurance plan year is September 1 to August 31. F's required contribution for self-only coverage for the period September 2014 through August 2015 is $150 per month or $1,800 for the plan year. F does not ask the Exchange in his rating area to determine whether X's coverage is affordable for F. F does not enroll in X's plan during X's open season but enrolls in a qualified health plan for September through December 2014. F's household income in 2014 is $18,000.

(ii) Because F is a calendar year taxpayer and Employer X's plan is not a calendar year plan, F must determine the affordability of X's coverage for the part-year period in 2014 (September–December). F determines the affordability of X's plan for the September through December 2014 period by comparing the annual premiums ($1,800) to F's 2014 household income. F's required contribution of $1,800 is 10 percent of F's 2014 household income. Because F's required contribution exceeds 9.5 percent of F's 2014 household income, X's plan is not affordable for F for the part-year period September through December 2014 and F is not eligible for minimum essential coverage under X's plan for that period.

(iii) F enrolls in Exchange coverage for 2015 and does not ask the Exchange to determine whether X's coverage is affordable. F's 2015 household income is $20,000.

(iv) F must determine if X's plan is affordable for the part-year period January 2015 through August 2015. F's annual required contribution ($1,800) is 9 percent of F's 2015 household income. Because F's required contribution does not exceed 9.5 percent of F's 2015 household income, X's plan is affordable for F for the part-year period January through August 2015 and F is eligible for minimum essential coverage for that period.

Example 7. Coverage unaffordable at year end. Taxpayer G is employed by Employer X. In November 2014 the Exchange in G's rating area determines that G is eligible for affordable employer-sponsored coverage for 2015. G nonetheless enrolls in a qualified health plan for 2015 but does not receive advance credit payments. G's 2015 household income is less than expected and G's required contribution for employer-sponsored coverage for 2015 exceeds 9.5 percent of G's actual 2015 household income. Under paragraph (c)(3)(v)(A)(*1*) of this section, G is not eligible for minimum essential coverage for 2015 and, if otherwise eligible, G may claim a premium tax credit.

(vi) *Minimum value.* An eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided under the plan (as determined under regulations issued by the Secretary of Health and Human Services under section 1302(d)(2) of the Affordable Care Act (42 U.S.C. 18022(d)(2))) is at least 60 percent.

(vii) *Enrollment in eligible employer-sponsored plan*—(A) *In general.* The requirements of affordability and minimum value do not apply if an individual enrolls in an eligible employer-sponsored plan.

(B) *Example.* The following example illustrates the provisions of this paragraph (c)(3)(vii).

Example. Taxpayer H is employed by Employer X in 2014. H's required contribution for employer coverage exceeds 9.5 percent of H's 2014 household income. H enrolls in X's plan for 2014. Under paragraph (c)(3)(vii) of this section, H is eligible for minimum essential coverage for 2014 because H is enrolled in an eligible employer-sponsored plan for 2014.

§ 1.36B–3 Computing the premium assistance credit amount.

(a) *In general.* A taxpayer's premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under paragraph (d) of this section for all coverage months for individuals in the taxpayer's family.

(b) *Definitions.* For purposes of this section—

(1) The cost of a qualified health plan is the premium the plan charges; and

(2) The term *coverage family* refers to members of the taxpayer's family who are not eligible for minimum essential coverage (other than coverage in the individual market), are lawfully present in the United States, and are not incarcerated (except pending disposition of charges).

(c) *Coverage month*—(1) *In general.* A month is a coverage month for an individual if, as of the first day of the month—

(i) The individual is covered by a qualified health plan enrolled in through an Exchange;

(ii) The individual's premiums for coverage under the plan are paid by the taxpayer or by an advance credit payment; and

(iii) The individual is not eligible for minimum essential coverage (within the meaning of § 1.36B–2(c)) other than coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

(2) *Premiums paid for the taxpayer.* Premiums another person pays for coverage of the taxpayer, taxpayer's spouse, or dependent are treated as paid by the taxpayer.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c). In each example, unless stated otherwise, the individuals are not eligible for minimum essential coverage other than coverage in the individual market and the taxpayer is an applicable taxpayer.

Example 1. (i) Taxpayer M is single with no dependents. In December 2013 M enrolls in a qualified health plan for 2014 and the Exchange approves advance credit payments. On May 15, 2014, M enlists in the U.S. Army and is eligible immediately for government-sponsored minimum essential coverage.

(ii) Under paragraph (c)(1) of this section, January through May 2014 are coverage months for M. June through December 2014 are not coverage months because M is eligible for minimum essential coverage for those months. Thus, under paragraph (a) of this section, M's premium assistance credit amount for 2014 is the sum of the premium assistance amounts for the months January through May.

Example 2. (i) Taxpayer N has one dependent, S. S is eligible for government-sponsored minimum essential coverage. N is not eligible for minimum essential coverage. N enrolls in a qualified health plan for 2014 and the Exchange approves advance credit payments. On August 1, 2014, S loses eligibility for minimum essential coverage. N cancels the qualified health plan that covers only N and enrolls in a qualified health plan that covers N and S for August through December 2014.

(ii) Under paragraph (c)(1) of this section, January through December of 2014 are coverage months for N and August through December are coverage months for N and S. N's premium assistance credit amount for 2014 is the sum of the premium assistance amounts for these coverage months.

Example 3. (i) O and P are the divorced parents of T. Under the divorce agreement between O and P, T resides with P and P claims T as a dependent. However, O must pay premiums for health insurance for T. P enrolls T in a qualified health plan for 2014. O pays the premiums to the insurance company.

(ii) Because P claims T as a dependent, P (and not O) may claim a premium tax credit for coverage for T. See § 1.36B–2(a). Under paragraph (c)(2) of this section, the premiums that O pays for coverage for T are treated as paid by P. Thus, the months when T is covered by a qualified health plan are coverage months under paragraph (c)(1) of this section in computing P's premium tax credit under paragraph (a) of this section.

(d) *Premium assistance amount.* The premium assistance amount for a coverage month is the lesser of—

(1) The premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls; or

(2) The excess of the adjusted monthly premium for the applicable benchmark plan over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year.

(e) *Adjusted monthly premium.* The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer's coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300gg).

(f) *Applicable benchmark plan*—(1) *In general.* Except as otherwise provided in this paragraph (f), the applicable benchmark plan for a coverage month is the second lowest cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B))) offered at the time a taxpayer or family member enrolls in a qualified health plan through the Exchange in the rating area where the taxpayer resides for—

(i) Self-only coverage for a taxpayer—

(A) Who computes tax under section 1(c) (unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year;

(B) Who purchases only self-only coverage for one individual; or

(C) Whose coverage family includes only one individual; and

(ii) Family coverage for all other taxpayers.

(2) *Family coverage.* If an Exchange offers categories of family coverage (for example, two adults, one adult with children, two or more adults with children, or children only), the applicable benchmark plan for family coverage is the coverage category that applies to the members of the taxpayer's coverage family who enroll in a qualified health plan (such as a plan covering two adults if the members of taxpayer's coverage family are two adults).

(3) *Second lowest cost silver plan not covering the taxpayer's family.* If the applicable benchmark plan determined under paragraphs (f)(1) and (f)(2) of this section does not cover all members of a taxpayer's coverage family (for example, because family members reside in different rating areas), the premium for the applicable benchmark plan is the sum of the premiums for the applicable benchmark plans determined under paragraphs (f)(1) and (f)(2) of this section that cover the components of the taxpayer's coverage family.

(4) *Benchmark plan terminates or closes to enrollment.* A qualified health plan that is the applicable benchmark plan under this paragraph (f) for a taxpayer does not cease to be the applicable benchmark plan solely because the plan or a lower cost plan terminates or closes to enrollment during the taxable year.

(5) *Examples.* The following examples illustrate the rules of this paragraph (f). In each example, unless otherwise stated, the taxpayer is eligible to receive a premium tax credit.

Example 1. Single taxpayer with no dependents. Taxpayer V is single and resides with his 24-year-old daughter but may not claim her as a dependent. Taxpayer V purchases family coverage for himself and his daughter. The exchange in V's rating area offers only self-only and family coverage categories. Under paragraph (f)(1)(i)(A) of this section, V's applicable benchmark plan is the second lowest cost silver self-only plan. But see paragraph (h) of this section for computing the credit when multiple taxpayers are covered by one qualified health plan.

Example 2. Single taxpayer with one dependent, two coverage categories. The facts are the same as in *Example 1,* except that V

also resides with his teenage son and claims him as a dependent. V purchases family coverage for himself, his son, and his daughter. Under paragraph (f)(1)(ii) of this section, V's applicable benchmark plan is the second lowest cost silver family plan.

Example 3. Single taxpayer with one dependent, multiple coverage categories. The facts are the same as in *Example 2,* except that the Exchange where V resides offers a category of coverage for one adult and children. Under paragraphs (f)(1)(ii) and (f)(2) of this section, V's applicable benchmark plan is the second lowest cost silver plan for one adult plus children.

Example 4. Single taxpayer with one dependent, multiple coverage categories. The facts are the same as in *Example 2,* except that the Exchange where V resides offers a category of coverage for one adult and one child in addition to coverage for one adult and children. Under paragraphs (f)(1)(ii) and (f)(2) of this section, V's applicable benchmark plan is the second lowest cost silver plan for one adult and one child.

Example 5. Applicable benchmark plan unrelated to coverage purchased. Taxpayers W and X, who are married, reside with X's two teenage daughters, whom they claim as dependents. The Exchange where W and X reside offers a category of coverage for one adult plus children. W and X purchase self-only coverage for W and one adult plus children coverage for X and X's daughters. Under paragraph (f)(1)(ii) of this section, W's and X's applicable benchmark plan is the second lowest cost silver family plan.

Example 6. Minimum essential coverage for some coverage months. Taxpayer Y claims his daughter as a dependent. Y and his daughter enroll in a qualified health plan for 2014. The exchange in Y's rating area offers only self-only and family coverage categories. Y, but not his daughter, is eligible for government-sponsored minimum essential coverage for September to December 2014. Thus, under paragraph (c)(1)(iii) of this section, January through December are coverage months for Y's daughter and January through August are coverage months for Y. Because, under paragraphs (d) and (f)(1) of this section, the premium assistance amount for a coverage month is computed based on the applicable benchmark plan for that coverage month, Y's applicable benchmark plan for January through August is the second lowest cost silver family plan under paragraph (f)(1)(ii) of this section. Under paragraph (f)(1)(i)(C) of this section, Y's applicable benchmark plan for September through December is the second lowest cost silver self-only plan.

Example 7. Family member eligible for minimum essential coverage for the taxable year. The facts are the same as in *Example 6,* except that Y is not eligible for government-sponsored minimum essential coverage for any months and Y's daughter is eligible for government-sponsored minimum essential coverage for the entire year. Under paragraph (f)(1)(i)(C) of this section, Y's applicable benchmark plan is the second lowest cost silver self-only plan.

Example 8. Family required to buy multiple plans to obtain coverage. (i) Taxpayers X and Z are married and live in different Exchange rating areas. X and Z have one child, M, whom they claim as a dependent and who resides with X. X and M enroll in a qualified health plan covering one adult plus children through the Exchange in X's rating area, and Z enrolls in a qualified health plan providing self-only coverage through the Exchange in Z's rating area.

(ii) Under paragraph (f)(3) of this section, the premium for the applicable benchmark plan for computing X's and Z's premium assistance credit amount is the sum of the premium for the second lowest cost silver one adult plus children plan offered through the Exchange in X's rating area and the premium for the second lowest cost silver self-only plan offered through the Exchange in Z's rating area.

Example 9. Benchmark plan closes to new enrollees during the year. Taxpayers X, Y, and Z each have coverage families consisting of two adults. In the rating area where X, Y, and Z reside, Plan 2 is the second lowest cost silver plan and Plan 3 is the third lowest cost silver plan covering two adults offered through the Exchange. The X and Y families each enroll in a qualified health plan that is not the applicable benchmark plan in November during the regular open enrollment period. Plan 2 closes to new enrollees the following June. Thus, on July 1, Plan 3 is the second lowest cost silver plan available to new enrollees through the Exchange. The Z family enrolls in a qualified health plan in July. Under paragraphs (f)(1), (f)(2), and (f)(4) of this section, the applicable benchmark plan is Plan 2 for X and Y for all coverage months during the year. The applicable benchmark plan for Z is Plan 3, because Plan 2 is not offered through the Exchange when the Z family enrolls.

Example 10. Benchmark plan terminates for all enrollees during the year. The facts are the same as in *Example 9,* except that Plan 2 terminates for all enrollees on June 30. Under paragraphs (f)(1), (f)(2), and (f)(4) of this section, Plan 2 is the applicable benchmark plan for X and Y for all coverage months during the year and Plan 3 is the applicable benchmark plan for Z.

(g) *Applicable percentage*—(1) *In general.* The applicable percentage multiplied by a taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan. This amount is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. The applicable percentage is computed by first determining the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size. The resulting federal poverty line percentage is then compared to the income categories described in the table in paragraph (g)(2) of this section (or successor tables). An applicable percentage within an income category increases on a sliding scale in a linear manner and is rounded to the nearest one-hundredth of one percent. The applicable percentages in the table may be adjusted in published guidance of general applicability, see § 601.601(d)(2) of this chapter, for taxable years beginning after December 31, 2014, to reflect rates of premium growth relative to growth in income and, for taxable years beginning after December 31, 2018, to reflect rates of premium growth relative to growth in the consumer price index.

(2) *Applicable percentage table.*

Household income percentage of federal poverty line	Initial percentage	Final percentage
Less than 133%	2.0	2.0
At least 133% but less than 150%	3.0	4.0
At least 150% but less than 200%	4.0	6.3
At least 200% but less than 250%	6.3	8.05
At least 250% but less than 300%	8.05	9.5
At least 300% but less than 400%	9.5	9.5

(3) *Examples.* The following examples illustrate the rules of this paragraph (g).

Example 1. A's household income is 275 percent of the federal poverty line for A's family size for that taxable year. In the table in paragraph (g)(2) of this section, the initial percentage for a taxpayer with household income of 250 to 300 percent of the federal poverty line is 8.05 and the final percentage is 9.5. A's federal poverty line percentage of 275 percent is halfway between 250 percent and 300 percent. Thus, rounded to the nearest one-hundredth of one percent, A's applicable percentage is 8.78, which is halfway between the initial percentage of 8.05 and the final percentage of 9.5.

Example 2. (i) B's household income is 210 percent of the federal poverty line for B's family size. In the table in paragraph (g)(2) of this section, the initial percentage for a taxpayer with household income of 200 to 250 percent of the federal poverty line is 6.3 and the final percentage is 8.05. B's applicable percentage is 6.65, computed as follows:

(ii) Determine the excess of B's FPL percentage (210) over the initial household income percentage in B's range (200), which is 10. Determine the difference between the initial household income percentage in the taxpayer's range (200) and the ending household income percentage in the taxpayer's range (250), which is 50. Divide the first amount by the second amount:

210 − 200 = 10
250 − 200 = 50
10/50 = .20.

(iii) Compute the difference between the initial premium percentage (6.3) and the second premium percentage (8.05) in the taxpayer's range; 8.05 − 6.3 = 1.75.

(iv) Multiply the amount in the first calculation (.20) by the amount in the second calculation (1.75) and add the product (.35) to the initial premium percentage in B's range (6.3), resulting in B's applicable percentage of 6.65:

.20 × 1.75 = .35
6.3 + .35 = 6.65.

(h) *Plan covering more than one family*—(1) *In general.* If a single qualified health plan covers more than one family, each applicable taxpayer covered by the plan may claim a premium tax credit, if otherwise allowable. Each taxpayer computes the credit using that taxpayer's applicable percentage, household income, and the benchmark plan that applies to the taxpayer under paragraph (f) of this section. In determining whether the amount computed under paragraph (d)(1) of this section (the premiums for the qualified health plan in which the taxpayer enrolls) is less than the amount computed under paragraph (d)(2) of this section (the benchmark plan premium minus the product of household income and the applicable percentage), the premiums paid are allocated to each taxpayer in proportion to the premiums for each taxpayer's benchmark plan.

(2) *Example.* The following example illustrates the rules of this paragraph (h).

Example. (i) Taxpayers A and B enroll in a single qualified health plan. B is A's 25-year-old child who is not A's dependent. B has no dependents. The plan covers A, B, and A's two children who are A's dependents. The premium for the plan in which A and B enroll is $15,000. The premium for the second lowest cost silver family plan is $12,000 and the premium for the second lowest cost silver self-only plan is $6,000. A and B are applicable taxpayers and otherwise eligible to claim the premium tax credit.

(ii) Under paragraph (h)(1) of this section, both A and B may claim premium tax credits. A computes her credit using her household income, a family size of three, and a benchmark plan premium of $12,000. B computes his credit using his household income, a family size of one, and a benchmark plan premium of $6,000.

(iii) In determining whether the amount in paragraph (d)(1) of this section (the premiums for the qualified health plan A and B purchase) is less than the amount in paragraph (d)(2) of this section (the benchmark plan premium minus the product of household income and the applicable percentage), the $15,000 premiums paid are allocated to A and B in proportion to the premiums for their applicable benchmark plans. Thus, the portion of the premium allocated to A is $10,000 ($15,000 × $12,000/$18,000) and the portion allocated to B is $5,000 ($15,000 × $6,000/$18,000).

(i) [Reserved]

(j) *Additional benefits*—(1) *In general.* If a qualified health plan offers benefits in addition to the essential health benefits a qualified health plan must provide under section 1302 of the Affordable Care Act (42 U.S.C. 18022), or a State requires a qualified health plan to cover benefits in addition to these essential health benefits, the portion of the premium for the plan properly allocable to the additional benefits is excluded from the monthly premiums under paragraph (d)(1) or (d)(2) of this section.

(2) *Method of allocation.* The portion of the premium properly allocable to additional benefits is determined under regulations issued by the Secretary of Health and Human Services. See section 36B(b)(3)(D).

(k) *Pediatric dental coverage*—(1) *In general.* For purposes of determining the amount of the monthly premium a taxpayer pays for coverage under paragraph (d)(1) of this section, if an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(ii) of the Affordable Care Act (42 U.S.C. 13031(d)(2)(B)(ii)) (Affordable Care Act dental plan), the portion of the premium for the Affordable Care Act dental plan that is properly allocable to pediatric dental benefits that are essential benefits required to be provided by a qualified health plan is treated as a premium payable for the individual's qualified health plan.

(2) *Method of allocation.* [Reserved]

(l) *Families including individuals not lawfully present*—(1) *In general.* If one or more individuals for whom a taxpayer is allowed a deduction under section 151 are not lawfully present (within the meaning of § 1.36B–1(g)), the percentage a taxpayer's household income bears to the federal poverty line for the taxpayer's family size for purposes of determining the applicable percentage under paragraph (g) of this section is determined by excluding individuals who are not lawfully present from family size and by determining household income in accordance with paragraph (l)(2) of this section.

(2) *Revised household income computation*—(i) *Statutory method.* For purposes of paragraph (l)(1) of this section, household income is equal to the product of the taxpayer's household income (determined without regard to this paragraph (l)(2)) and a fraction—

(A) The numerator of which is the federal poverty line for the taxpayer's family size determined by excluding individuals who are not lawfully present; and

(B) The denominator of which is the federal poverty line for the taxpayer's family size determined by including individuals who are not lawfully present.

(ii) *Comparable method.* [Reserved]

§ 1.36B–4 Reconciling the premium tax credit with advance credit payments.

(a) *Reconciliation*—(1) *In general.* The amount of credit allowed under section 36B and this section is reconciled with advance credit payments on a taxpayer's income tax return for a taxable year. A taxpayer whose premium tax credit for the taxable year exceeds the taxpayer's advance credit payments may receive the excess as an income tax refund. A taxpayer whose advance credit payments for the taxable year exceed the taxpayer's premium tax credit owes the excess as an additional income tax liability.

(2) *Credit computation.* The premium assistance credit amount is computed on the taxpayer's return using the taxpayer's household income and family size for the taxable year. Thus, the taxpayer's contribution amount (household income for the taxable year times the applicable percentage) is determined using the taxpayer's household income and family size at the end of the taxable year. If the applicable benchmark plan changes during the taxable year, the taxpayer may be required to use a different applicable benchmark plan to determine the premium assistance amounts for the coverage months.

(3) *Limitation on additional tax*—(i) *In general.* The additional tax imposed under paragraph (a)(1) of this section on a taxpayer whose household income is less than 400 percent of the federal poverty line is limited to the amounts provided in the table in paragraph (a)(3)(ii) of this section (or successor tables). For taxable years beginning after December 31, 2014, the limitation amounts may be adjusted in published guidance of general applicability, see

§ 601.601(d)(2) of this chapter, to reflect changes in the consumer price index.

(ii) *Additional tax limitation table.*

Household income percentage of federal poverty line	Limitation amount for taxpayers whose tax is determined under section 1(c)	Limitation amount for all other taxpayers
Less than 200%	$300	$600
At least 200% but less than 300%	750	1,500
At least 300% but less than 400%	1,250	2,500

(4) *Examples.* The rules of this paragraph (a) are illustrated by the following examples. Unless otherwise stated, in each example the taxpayer is allowed a premium tax credit, has a calendar taxable year, and files an income tax return for the taxable year.

Example 1. Household income increases. (i) Taxpayer A is single and has no dependents. The Exchange in A's rating area projects A's 2014 household income to be $27,225 (250 percent of the federal poverty line for a family of one, applicable percentage 8.05). A enrolls in a qualified health plan. The annual premium for the applicable benchmark plan is $5,200. A's advance credit payments are $3,008 (benchmark plan premium of $5,200 less contribution amount of $2,192 (projected household income of $27,225 × .0805) = $3,008).

(ii) A's household income for 2014 is $32,800, which is 301 percent of the federal poverty line for a family of one (applicable percentage 9.5). Consequently, A's premium tax credit for 2014 is $2,084 (benchmark plan premium of $5,200 less contribution amount of $3,116 (household income of $32,800 × .095). Because A's advance credit payments for 2014 are $3,008 and A's 2014 credit is $2,084, A has excess advance payments of $924. Under paragraph (a)(1) of this section, A's tax liability for 2014 is increased by $924.

Example 2. Household income decreases. The facts are the same as in *Example 1,* except that A's actual household income for 2014 is $21,780 (200 percent of the federal poverty line for a family of one, applicable percentage 6.3). Consequently, A's premium tax credit for 2014 is $3,828 ($5,200 benchmark plan premium less contribution amount of $1,372 (household income of $21,780 × .063)). Because A's advance credit payments for 2014 are $3,008, A is allowed an additional credit of $820 ($3,828 less $3,008).

Example 3. Family size decreases.

(i) Taxpayers B and C are married and have two children (ages 17 and 20) whom they claim as their dependents in 2013. The Exchange in their rating area projects their 2014 household income to be $61,460 (275 percent of the federal poverty line for a family of four, applicable percentage 8.78). B and C enroll in a qualified health plan for 2014 that covers the four family members. The annual premium for the applicable benchmark plan is $14,100. B and C's advance credit payments for 2014 are $8,704 (benchmark plan premium of $14,100 less contribution amount of $5,396 (projected household income of $61,460 × .0878)).

(ii) In 2014 B and C do not claim their 20-year old child as their dependent. Consequently, B and C's family size for 2014 is three and their household income is 332 percent of the federal poverty line for a family of three (applicable percentage 9.5). Their premium tax credit for 2014 is $8,261 ($14,100 benchmark plan premium less $5,839 contribution amount (household income of $61,460 × .095)). Because B and C's advance credit payments for 2014 are $8,704 and their 2014 credit is $8,261, B and C have excess advance payments of $443. Under paragraph (a)(1) of this section, B and C's tax liability for 2014 is increased by $443. Because B and C's household income is below 400 percent of the federal poverty line, if B and C's excess advance payments exceeded $2,500, under the limitation of paragraph (a)(3) of this section, B and C's additional tax liability would be limited to that amount.

Example 4. Repayment limitation does not apply. (i) Taxpayer D is single and has no dependents. The Exchange in D's rating area approves advance credit payments for D based on 2014 household income of $38,115 (350 percent of the federal poverty line for a family of one, applicable percentage 9.5). D enrolls in a qualified health plan. The annual premium for the applicable benchmark plan is $5,200. D's advance credit payments are $1,579 (benchmark plan premium of $5,200 less contribution amount of $3,621 (projected household income of $38,115 × .095) = $3,621).

(ii) D's actual household income for 2014 is $43,778, which is 402 percent of the federal poverty line for a family of one. D is not an applicable taxpayer and may not claim a premium tax credit. Additionally, the repayment limitation of paragraph (a)(3) of this section does not apply. Consequently, D has excess advance payments of $1,579 (the total amount of the advance credit payments in 2014). Under paragraph (a)(1) of this section, D's tax liability for 2014 is increased by $1,579.

Example 5. Coverage for less than a full taxable year. (i) Taxpayer F is single and has no dependents. In November 2013 the Exchange in F's rating area projects F's 2014 household income to be $27,225 (250 percent of the federal poverty line for a family of one, applicable percentage 8.05). F enrolls in a qualified health plan. The annual premium for the applicable benchmark plan is $5,200. F's monthly advance credit payment is $251 (benchmark plan premium of $5,200 less contribution amount of $2,192 (projected household income of $27,225 × .0805) = $3,008; $3,008/12 = $251).

(ii) F begins a new job in August 2014 and is eligible for employer-sponsored minimum essential coverage for the period September through December 2014. F discontinues her Exchange coverage effective November 1, 2014. F's household income for 2014 is $28,000 (257 percent of the federal poverty line for a family size of one, applicable percentage 8.25).

(iii) Under § 1.36B–3(a), F's premium assistance credit amount is the sum of the premium assistance amounts for the coverage months. Under § 1.36B–3(c)(1)(iii), a month in which an individual is eligible for minimum essential coverage other than coverage in the individual market is not a coverage month. Because F is eligible for employer-sponsored minimum essential coverage as of September 1, only the months January through August of 2014 are coverage months.

(iv) If F had 12 coverage months in 2014, F's premium tax credit would be $2,890 (benchmark plan premium of $5,200 less contribution amount of $2,310 (household income of $28,000 × .0825)). Because F has only eight coverage months in 2014, F's credit is $1,927 ($2,890/12 × 8). Because F does not discontinue her Exchange coverage until November 1, 2014, F's advance credit payments for 2014 are $2,510 ($251 × 10). Consequently, F has excess advance payments of $583 ($2,510 less $1,927) and F's tax liability for 2014 is increased by $583 under paragraph (a)(1) of this section.

Example 6. Changes in coverage months and applicable benchmark plan. (i) Taxpayer E claims one dependent, F. E is eligible for government-sponsored minimum essential coverage. E enrolls F in a qualified health plan for 2014. The Exchange in E's rating area projects E's 2014 household income to be $29,420 (200 percent of the federal poverty line for a family of two, applicable percentage 6.3). The annual premium for E's applicable benchmark plan is $5,200. E's monthly advance credit payment is $279 (benchmark plan premium of $5,200 less contribution amount of $1,853 (projected household income of $29,420 × .063) = $3,347; $3,347/12 = $279).

(ii) On August 1, 2014, E loses her eligibility for government-sponsored minimum essential coverage. E cancels the qualified health plan that covers F and enrolls in a qualified health plan that covers E and F for August through December 2014. The annual premium for the applicable benchmark plan is $10,000. The Exchange computes E's monthly advance credit payments for the period September through December as $679 (benchmark plan premium

of $10,000 less contribution amount of $1,853 (projected household income of $29,420 × .063) = $8,147; $8,147/12 = $679). E's household income for 2014 is $28,000 (190 percent of the federal poverty line, applicable percentage 5.84).

(iii) Under § 1.36B–3(c)(1), January through July of 2014 are coverage months for F and August through December are coverage months for E and F. Under paragraph (a)(2) of this section, E must compute her premium tax credit using the premium for the applicable benchmark plan for each coverage month. E's premium assistance credit amount for 2014 is the sum of the premium assistance amounts for all coverage months. E reconciles her premium tax credit with advance credit payments as follows:

Advance credit payments (Jan. to July)	$1,953
Advance credit payments (Aug. to Dec.)	3,395
Total advance credit payments	5,348
Benchmark plan premium (Jan. to July)	3,033
Benchmark plan premium (Aug. to Dec.)	4,167
Total benchmark plan premium	7,200
Contribution amount (taxable year household income × applicable percentage)	1,635
Credit (total benchmark plan premium less required contribution, assuming not more than premium paid)	5,565

(iv) E's advance credit payments for 2014 are $5,348. E's premium tax credit is $5,565. Thus, E is allowed an additional credit of $217.

Example 7. Part-year coverage and changes in coverage months and applicable benchmark plan. (i) The facts are the same as in *Example 7,* except that both E and F are eligible for government-sponsored minimum essential coverage for January and February 2014, and E enrolls F in a qualified health plan beginning in March 2014.

(ii) E reconciles her premium tax credit with advance credit payments as follows:

Advance credit payments (March to July)	$1,395
Advance credit payments (Aug. to Dec.)	3,395
Total advance credit payments	4,790
Benchmark plan premium (March to July)	2,167
Benchmark plan premium (Aug. to Dec.)	4,166
Total benchmark plan premium	6,333
Contribution amount for 10 coverage months (taxable year household income × applicable percentage × 10/12)	1,363
Credit (total benchmark plan premium less required contribution, assuming not more than premium paid)	4,970

(iii) E's advance credit payments for 2014 are $4,790. E's premium tax credit is $4,970. Thus, E is allowed an additional credit of $180.

(b) *Changes in filing status*—(1) *In general.* A taxpayer whose marital status changes during the taxable year computes the premium tax credit by using the applicable benchmark plan or plans for the taxpayer's marital status as of the first day of each coverage month. The taxpayer's contribution amount (household income for the taxable year times the applicable percentage) is determined using the taxpayer's household income and family size at the end of the taxable year.

(2) *Taxpayers not married to each other at the end of the taxable year.* Taxpayers who are married (within the meaning of section 7703) to each other during a taxable year but are not married to each other on the last day of the taxable year, and who are enrolled in the same qualified health plan at any time during the taxable year, must allocate the premium for the applicable benchmark plan, the premium for the plan in which the taxpayers enroll, and the advance credit payments for the period the taxpayers are married during the taxable year. The taxpayers may allocate these items to each former spouse in any proportion but must allocate all items in the same proportion. If the taxpayers cannot agree on an allocation, 50 percent of the premium for the applicable benchmark plan, the premiums for the plan in which the taxpayers enroll, and the advance credit payments for the period are allocated to each taxpayer. If a plan covers only one of these taxpayers for any period during a taxable year, the amounts for that period are allocated entirely to that taxpayer.

(3) *Married taxpayers filing separate tax returns.* The premium tax credit is allowed to married taxpayers only if they file joint returns. See § 1.36B–2(b)(2). Married taxpayers who receive advance credit payments and file their income tax returns as married filing separately have received excess advance payments. The taxpayers must allocate the advance credit payments to each taxpayer equally for purposes of determining their excess advance payment amounts under paragraph (a)(1) of this section. The repayment limitation described in paragraph (a)(3) of this section applies to each taxpayer based on the household income and family size reported on that taxpayer's return.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (b). In each example, unless otherwise indicated, each taxpayer uses a calendar taxable year and no individuals are eligible for minimum essential coverage other than coverage in the individual market.

Example 1. Taxpayers marry during the taxable year. (i) P is a single taxpayer with no dependents. In 2013 the Exchange in the rating area where P resides determines that P's 2014 household income will be $40,000 (367 percent of the federal poverty line, applicable percentage 9.5). P enrolls in a qualified health plan. The premium for the applicable benchmark plan is $5,200. The Exchange approves advance credit payments of $117 per month, computed as follows: $5,200 benchmark plan premium minus contribution amount of $3,800 ($40,000 × .095) equals $1,400 (total advance credit); $1,400/12 = $117.

(ii) Q is a single taxpayer with two dependents. In 2013 the Exchange in the rating area where Q resides determines that Q's 2014 household income will be $35,000 (189 percent of the federal poverty line, applicable percentage 5.79). Q enrolls in a qualified health plan. The premium for the applicable benchmark plan is $14,100. The Exchange approves advance credit payments of $1,006 per month, computed as follows: $14,100 benchmark plan premium minus contribution amount of $2,027 ($35,000 × .0579) equals $12,073 (total advance credit); $12,073/12 = $1,006.

(iii) P and Q marry on June 17, 2014, and enroll in one qualified health plan covering four family members, beginning July 1, 2014. The premium for the applicable benchmark plan is $14,100. Based on household income of $75,000 and a family size of four (336 percent of the federal poverty line, applicable percentage 9.5), the Exchange approves advance credit payments of $581 per month, computed as follows: $14,100 benchmark plan premium minus contribution amount of $7,125 ($75,000 × .095) equals $6,975 (total advance credit); $6,975/12 = $581.

(iv) P and Q file a joint return for 2014 and report $75,000 in household income and a family size of four. Under paragraph (b)(1) of this section, P and Q compute their credit at reconciliation using the premiums for the applicable benchmark plans that apply for the months married and the months not married, and their contribution amount based on their federal poverty line percentage at the end of the taxable year. P and Q reconcile their premium tax credit with advance credit payments as follows:

Advance payments for P (Jan. to June)	$700
Advance payments for Q (Jan. to June)	6,036
Advance payments for P and Q (July to Dec.)	3,486
Total advance payments	10,222
Benchmark plan premium for P (Jan. to June)	2,600
Benchmark plan premium for Q (Jan. to June)	7,050

Benchmark plan premium for P and Q (July to Dec.)	7,050
Total benchmark plan premium	16,700
Contribution amount (taxable year household income × applicable percentage)	7,125
Credit (total benchmark plan premium less required contribution, assuming not more than premium paid)	9,575
Additional tax	647

(v) P's and Q's tax liability for 2014 is increased by $647 under paragraph (a)(1) of this section.

Example 2. Taxpayers divorce during the taxable year, 50 percent allocation. (i) Taxpayers R and S are married and have two dependents. In 2013 the Exchange in the rating area where the family resides determines that their 2014 household income will be $76,000 (340 percent of the federal poverty line for a family of 4, applicable percentage 9.5). R and S enroll in a qualified health plan for 2014. The premium for the applicable benchmark plan is $14,100. The Exchange approves advance credit payments of $573 per month, computed as follows: $14,100 benchmark plan premium minus R and S's contribution amount of $7,220 ($76,000 × .095) equals $6,880 (total advance credit); $6,880/12 = $573.

(ii) R and S divorce on June 17, 2014, and obtain separate qualified health plans beginning July 1, 2014. R enrolls based on household income of $60,000 and a family size of three (324 percent of the federal poverty line, applicable percentage 9.5). The premium for the applicable benchmark plan is $14,100. The Exchange approves advance credit payments of $700 per month, computed as follows: $14,100 benchmark plan premium minus R's contribution amount of $5,700 ($60,000 × .095) equals $8,400 (total advance credit); $8,400/12 = $700.

(iii) S enrolls based on household income of $16,000 and a family size of one (147 percent of the federal poverty line, applicable percentage 3.82). The premium for the applicable benchmark plan is $5,200. The Exchange approves advance credit payments of $382 per month, computed as follows: $5,200 benchmark plan premium minus S's contribution amount of $611 ($16,000 × .0382) equals $4,589 (total advance credit); $4,589/12 = $382. R and S do not agree on an allocation of the premium for the applicable benchmark plan, the premiums for the plan in which they enroll, and the advance credit payments for the period they were married in the taxable year.

(iv) Under paragraph (b)(1) of this section, R and S each compute their credit at reconciliation using the premiums for the applicable benchmark plans that apply to them for the months married and the months not married, and contribution amount based on their federal poverty line percentages at the end of the taxable year. Under paragraph (b)(2) of this section, because R and S do not agree on an allocation, R and S must equally allocate the benchmark plan premium ($7,050) and the advance credit payments ($3,440) for the six-month period January through June 2014 when they are married and enrolled in the same qualified health plan. Thus, R and S each are allocated $3,525 of the benchmark plan premium ($7,050/2) and $1,720 of the advance credit payments ($3,440/2) for January through June.

(v) R reports on his 2014 tax return $60,000 in household income and family size of three. S reports on her 2014 tax return $16,000 in household income and family size of one. R and S reconcile their premium tax credit with advance credit payments as follows:

	R	S
Allocated advance payments (Jan. to June)	$1,720	$1,720
Actual advance payments (July to Dec.)	4,200	2,292
Total advance payments	5,920	4,012
Allocated benchmark plan premium (Jan. to June)	3,525	3,525
Actual benchmark plan premium (July to Dec.)	7,050	2,600
Total benchmark plan premium	10,575	6,125
Contribution amount (taxable year household income × applicable percentage)	5,700	611
Credit (total benchmark plan premium less required contribution, assuming not more than premium paid)	4,875	5,514
Additional credit		1,502
Additional tax	1,045	

(vi) Under paragraph (a)(1) of this section, on their tax returns R's tax liability is increased by $1,045 and S is allowed $1,502 as additional credit.

Example 3. Taxpayers divorce during the taxable year, allocation in proportion to household income. (i) The facts are the same as in *Example 2,* except that R and S decide to allocate the benchmark plan premium ($7,050) and the advance credit payments ($3,440) for January through June 2014 in proportion to their household incomes (79 percent and 21 percent). Thus, R is allocated $5,570 of the benchmark plan premiums ($7,050 × .79) and $2,718 of the advance credit payments ($3,440 × .79), and S is allocated $1,480 of the benchmark plan premiums ($7,050 × .21) and $722 of the advance credit payments ($3,440 × .21). R and S reconcile their premium tax credit with advance credit payments as follows:

	R	S
Allocated advance payments (Jan. to June)	$2,718	$722
Actual advance payments (July to Dec.)	4,200	2,292
Total advance payments	6,918	3,014
Allocated benchmark plan premium (Jan. to June)	5,570	1,480
Actual benchmark plan premium (July to Dec.)	7,050	2,600
Total benchmark plan premium	12,620	4,080
Contribution amount (taxable year household income × applicable percentage)	5,700	611
Credit (total benchmark plan premium less required contribution, assuming not more than premium paid)	6,920	3,469
Additional credit	2	455

(ii) Under paragraph (a)(1) of this section, on their tax returns R is allowed an additional credit of $2 and S is allowed an additional credit of $455.

Example 4. Married taxpayers filing separate tax returns. (i) Taxpayers T and U are married and have two dependents. In 2013, the Exchange in the rating area where the family resides determines that their 2014 household income will be $76,000 (340 percent of the federal poverty line for a family of 4, applicable percentage 9.5). T and U enroll in a qualified health plan for 2014. The premium for the applicable benchmark plan is $14,100. The Exchange approves advance credit payments of $573 per month, computed as follows: $14,100 benchmark plan premium minus T and U's contribution amount of $7,220 ($76,000 × .095) equals $6,880 (total advance credit); $6,880/12 = $573.

(ii) T and U file income tax returns for 2014 using a married filing separately filing status. T reports household income of $60,000 and a family size of three (324 percent of the federal poverty line). U reports household income of $16,000 and a family size of one (147 percent of the federal poverty line).

(iii) Because T and U are married but do not file a joint return for 2014, T and U are not applicable taxpayers and are not allowed a premium tax credit for 2014. See § 1.36B–2(b)(2). Under paragraph (b)(3) of this section, half of the advance credit payments ($6,880/2 = $3,440) is allocated to T and half is allocated to U for purposes of determining their excess advance payments. The repayment limitation described in paragraph (a)(3) of this section applies to T and U based on the household income and family size reported on each return. Consequently, T's tax liability for 2014 is increased by $2,500 and U's tax liability for 2014 is increased by $600.

§ 1.36B–5 Information reporting by Exchanges.

(a) *Information required to be reported.* An Exchange must report to the IRS and a taxpayer the following information for a qualified health plan the taxpayer enrolls in through the Exchange—

(1) The premium and category of coverage (such as self-only) for the applicable benchmark plans used to compute advance credit payments and the period coverage was in effect;

(2) The total premium for the coverage without reduction for advance credit payments or cost sharing;

(3) The aggregate amounts of any advance credit payments or cost sharing reductions;

(4) The name, address and taxpayer identification number (TIN) of the primary insured and the name and TIN of each other individual covered under the policy;

(5) All information provided to the Exchange at enrollment or during the taxable year, including any change in circumstances, necessary to determine eligibility for and the amount of the premium tax credit;

(6) All information necessary to determine whether a taxpayer has received excess advance payments; and

(7) Any other information required in published guidance of general applicability, see § 601.601(d)(2) of this chapter.

(b) *Time and manner of reporting.* The Commissioner may provide rules in published guidance of general applicability, see § 601.601(d)(2) of this chapter, for the time and manner of reporting under this section.

Par. 3. Section 1.6011–8 is added to read as follows:

§ 1.6011–8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) *Requirement of return.* A taxpayer who receives advance payments of the premium tax credit under section 36B must file an income tax return for that taxable year on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) *Effective/applicability date.* This section applies for taxable years ending after December 31, 2013.

Par. 4. In § 1.6012–1, paragraph (a)(2)(viii) is added to read as follows:

§ 1.6012–1 Individuals required to make returns of income.

(a) * * *

(2) * * *

(viii) For rules relating to returns required of taxpayers who receive advance payments of the premium tax credit under section 36B, see § 1.6011–8(a).

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–20728 Filed 8–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–151687–10]

RIN 1545–BJ98

Withholding on Payments by Government Entities to Persons Providing Property or Services; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to withholding by government entities on payments to persons providing property or services.

DATES: The public hearing is being held on Monday, September 12, 2011, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, September 2, 2011.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224. Send Submissions to CC:PA:LPD:PR (REG–151687–10), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–151687–10), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal erulemaking Portal at *http://www.regulations.gov* (REG–151687–10).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, A.G. Kelley, (202) 622–6040; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–151687–10), that was published in the **Federal Register** on Monday, May 9, 2011 (76 FR 26678).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by August 8, 2011, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic (Signed original and eight copies).

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30

minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

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

[FR Doc. 2011–20987 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0697]

RIN 1625–AA09

Drawbridge Operation Regulation; Isle of Wight (Sinepuxent) Bay, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the US 50 Bridge over Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD. The proposed change will alter the dates the bridge is allowed to remain in the closed position to accommodate heavy volumes of vehicular traffic due to the annual July 4th fireworks show.

DATES: Comments and related material must reach the Coast Guard on or before October 17, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0697 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0697), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2011–0697'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0697'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lindsey Middleton at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

Maryland Department of Transportation has requested a change in the operation regulation of the US 50 Bridge across Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD. The Ocean City July 4th fireworks show is an annual event and heavy volumes of vehicular traffic transit across the bridge to attend it. The Coast Guard proposes to allow the above mentioned bridge to remain in the closed position from 9:30 p.m. through 10:30 p.m. on July 4th or

on July 5th should inclement weather prevent the fireworks event from taking place as planned. The exact date of the closure will be published locally in the Local Notice to Mariners and Broadcast Notice to Mariners.

The vertical clearance of the bascule bridge is 13 feet above mean high tide in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.559 and was last amended in April 2011.

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.559 for the US 50 Bridge, mile 0.5 across Isle of Wight (Sinepuxent) Bay. The proposed amendment would allow the bridge to remain in the closed position from 9:30 p.m. through 10:30 p.m. on July 4 or July 5 should inclement weather prevent the fireworks show from taking place as planned.

Vessels that are able to transit under the bridge without an opening may do so at any time. The Atlantic Ocean is an alternate route for vessels unable to pass under the bridge in the closed position. The bridge will be able to open for emergencies.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under those Orders.

The proposed change is expected to have minimal impact on mariners due to the short duration that the drawbridge will be maintained in the closed position. The event has been observed in past years with little to no impact to marine traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of vehicular traffic after the event.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit any of the bridges between the hours of delayed openings or closure on either event day.

This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closure can minimize delay. Vessels that can safely transit under the bridge may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lindsey Middleton, Bridge Management Specialist, Fifth Coast Guard District, (757) 398–6629 or *Lindsey.R.Middleton@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

2. In § 117.559, add new paragraph (c) to read as follows:

§ 117.559 Isle of Wight (Sinepuxent) Bay.

* * * * *

(c) On July 4, the draw need not open from 9:30 p.m. until 10:30 p.m. to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:30 p.m. until 10:30 p.m. on July 5th to accommodate the annual July 4th fireworks show.

Dated: August 2, 2011.

William D. Lee,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2011–20769 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1210]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 15, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1210, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental

impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Grayson County, Kentucky, and Incorporated Areas				
Taylor Fork	At the upstream side of Bloomington Road	None	+554	Town of Leitchfield, Unincorporated Areas of Grayson County.
	Approximately 75 feet downstream of Wendell H. Ford-Western Kentucky Parkway.	None	+560	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
#Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Leitchfield

Maps are available for inspection at 314 West White Oak Street, Leitchfield, KY 42755.

Unincorporated Areas of Grayson County

Maps are available for inspection at 10 Public Square, Leitchfield, KY 42754.

Leelanau County, Michigan (All Jurisdictions)				
Lake Leelanau	Entire shoreline within community	None	+590	Township of Bingham, Township of Centerville, Township of Leland, Township of Solon, Township of Suttons Bay.
Lake Michigan	Entire shoreline within community	None	+584	Township of Bingham, Township of Centerville, Township of Cleveland, Township of Empire, Township of Glen Arbor, Township of Leelanau, Township of Leland, Township of Suttons Bay, Village of Empire.
Lake Michigan	Entire shoreline within community	+583	+584	Village of Suttons Bay.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Bingham
Maps are available for inspection at the Bingham Township Office, 7171 South Center Highway, Traverse City, MI 49684.

Township of Centerville
Maps are available for inspection at the Centerville Township Hall, 5419 South French Road, Cedar, MI 49621.

Township of Cleveland
Maps are available for inspection at the Cleveland Township Hall, 955 West Harbor Highway, Maple City, MI 49664.

Township of Empire
Maps are available for inspection at the Empire Township Hall, 10088 Front Street, Empire, MI 49630.

Township of Glen Arbor
Maps are available for inspection at the Township Hall, 6394 West Western Avenue, Glen Arbor, MI 49636.

Township of Leelanau
Maps are available for inspection at the Leelanau Township Hall, 119 East Nagonaba Street, Northport, MI 49670.

Township of Leland
Maps are available for inspection at the Leland Township Office, 112 West Philip Street, Lake Leelanau, MI 49653.

Township of Solon
Maps are available for inspection at the Solon Township Hall, 2305 19 Mile Road Northeast, Cedar Springs, MI 49319.

Township of Suttons Bay
Maps are available for inspection at the Suttons Bay Township Office, 321 Saint Joseph Street, Suttons Bay, MI 49682.

Village of Empire
Maps are available for inspection at the Empire Village Office, 11518 South LaCore Street, Empire, MI 49630.

Village of Suttons Bay
Maps are available for inspection at the Suttons Bay Village Office, 420 Front Street, Suttons Bay, MI 49682.

Callaway County, Missouri, and Incorporated Areas

Auxvasse Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.66 mile upstream of County Road 447.	+536	+539	Unincorporated Areas of Callaway County.
Blue Creek (backwater effects from Missouri River).	From the Auxvasse Creek confluence to approximately 1.46 miles upstream of the Auxvasse Creek confluence.	+536	+539	Unincorporated Areas of Callaway County.
Clabber Creek (backwater effects from Missouri River).	From the Clabber Creek confluence to approximately 175 feet downstream of County Road 470.	+538	+542	Unincorporated Areas of Callaway County.
Collier Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,800 feet upstream of the Ewing Creek confluence.	+538	+541	Unincorporated Areas of Callaway County, Village of Mokane.
Eagle Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 600 feet upstream of Eagle Creek Road.	+531	+534	Unincorporated Areas of Callaway County.
Ewing Creek (backwater effects from Missouri River).	From the Collier Creek confluence to approximately 0.40 mile upstream of the Collier Creek confluence.	+538	+541	Unincorporated Areas of Callaway County, Village of Mokane.
Hillers Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 400 feet upstream of County Road 485.	+542	+546	Unincorporated Areas of Callaway County.
Little Tavern Creek North (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,900 feet downstream of State Route 94.	+530	+532	Unincorporated Areas of Callaway County.
Logan Creek East (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.63 mile upstream of County Road 468.	+534	+536	Unincorporated Areas of Callaway County.
Middle River (backwater effects from Missouri River).	From the Missouri River confluence to approximately 600 feet upstream of State Highway PP.	+541	+544	Unincorporated Areas of Callaway County.
Missouri River	Approximately 0.68 mile upstream of the Montgomery County boundary.	+529	+530	Unincorporated Areas of Callaway County, Village of Mokane.
	At the Boone/Cole County boundary	+562	+563	
Missouri River Tributary 1 (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,000 feet upstream of Harrisons Hill Road.	+562	+563	Unincorporated Areas of Callaway County.
Missouri River Tributary 5.1 (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.63 mile downstream of County Road 4023.	+549	+552	Unincorporated Areas of Callaway County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Missouri River Tributary 5.2 (backwater effects from Missouri River).	From the Missouri River confluence to approximately 50 feet downstream of State Route 94.	+546	+550	Unincorporated Areas of Callaway County.
Mud Creek East (backwater effects from Missouri River).	From the Logan Creek East confluence to approximately 0.47 mile downstream of County Road 457.	+535	+537	Unincorporated Areas of Callaway County.
Muddy Creek (backwater effects from Missouri River).	From the Middle River confluence to approximately 1.19 miles upstream of County Road 480.	+541	+544	Unincorporated Areas of Callaway County.
Niemans Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.91 mile downstream of County Road 4039.	+553	+554	Unincorporated Areas of Callaway County.
Niemans Creek Tributary 3 (backwater effects from Missouri River).	From the Niemans Creek confluence to approximately 1,200 feet upstream of the Niemans Creek confluence.	+553	+554	Unincorporated Areas of Callaway County.
Rivaux Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.47 mile downstream of the Rivaux Creek Tributary 7 confluence.	+550	+552	Unincorporated Areas of Callaway County.
Tavern Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1.25 miles upstream of State Route 94.	+530	+532	Unincorporated Areas of Callaway County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
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∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Callaway County

Maps are available for inspection at the Callaway County Courthouse, 10 East 5th Street, Fulton, MO 65251.

Village of Mokane

Maps are available for inspection at the Village Hall, 201 West 3rd Street, Mokane, MO 65059.

Osage County Missouri, and Incorporated Areas

Baileys Creek (backwater effects from Missouri River).	From the Gasconade County boundary to approximately 2.07 miles upstream of the Gasconade County boundary.	+529	+530	Unincorporated Areas of Osage County.
Bear Creek (backwater effects from Missouri River).	From the Maries River confluence to approximately 700 feet upstream of County Road 610.	+548	+551	Unincorporated Areas of Osage County.
Cadet Creek (backwater effects from Missouri River).	From the Osage River confluence to approximately 350 feet upstream of County Road 412.	+548	+551	Unincorporated Areas of Osage County.
Darrow Branch (backwater effects from Missouri River).	From the Loose Creek confluence to approximately 1,950 feet upstream of the Loose Creek confluence.	+542	+544	Unincorporated Areas of Osage County.
Deer Creek (backwater effects from Missouri River).	From approximately 400 feet upstream of the Saint Aubert Creek confluence to approximately 1.99 miles upstream of State Route 100.	+537	+540	Unincorporated Areas of Osage County.
Dooling Creek (backwater effects from Missouri River).	From approximately 1,000 feet upstream of Missouri Avenue to approximately 750 feet downstream of State Highway K.	+534	+537	City of Chamois, Unincorporated Areas of Osage County.
Indian Creek (backwater effects from Missouri River).	From the Maries River confluence to approximately 1,550 feet upstream of County Road 610.	+548	+551	Unincorporated Areas of Osage County.
Jaeger Creek (backwater effects from Missouri River).	From the Osage River confluence to approximately 0.56 mile upstream of the Osage River confluence.	+548	+551	Unincorporated Areas of Osage County.
Loose Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,250 feet upstream of the Darrow Branch confluence.	+542	+544	Unincorporated Areas of Osage County.
Luzon Branch (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,800 feet upstream of County Road 416.	+547	+550	Unincorporated Areas of Osage County.
Maries River (backwater effects from Missouri River).	From the Osage River confluence to approximately 0.67 mile upstream of the Bear Creek confluence.	+548	+551	Unincorporated Areas of Osage County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Missouri River	At the Gasconade County boundary	+528	+530	City of Chamois, Unincorporated Areas of Osage County.
	At the Cole County boundary	+548	+551	
Osage River (backwater effects from Missouri River).	Approximately 9 miles upstream of U.S. Route 50	+539	+542	Unincorporated Areas of Osage County.
	At the Missouri River confluence	+543	+547	
Owl Creek (backwater effects from Missouri River).	From approximately 0.78 mile downstream of County Road 435 to approximately 775 feet downstream of County Road 435.	+539	+542	Unincorporated Areas of Osage County.
Saint Aubert Creek (backwater effects from Missouri River).	From approximately 1.18 miles upstream of the Deer Creek confluence to approximately 1,350 feet downstream of County Road 435.	+538	+541	Unincorporated Areas of Osage County.
South Fork Cadet Creek (backwater effects from Missouri River).	From the Cadet Creek confluence to approximately 0.88 mile upstream of the Cadet Creek confluence.	+548	+551	Unincorporated Areas of Osage County.

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+ North American Vertical Datum.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Chamois

Maps are available for inspection at City Hall, 200 South Main Street, Chamois, MO 65024.

Unincorporated Areas of Osage County

Maps are available for inspection at the Osage County Courthouse, 205 East Main Street, Linn, MO 65051.

Oswego County, New York (All Jurisdictions)

Bell Creek (backwater area)	From the Town of Schroeppel corporate limits to approximately 1,380 feet upstream of the Town of Schroeppel corporate limits.	None	+379	Town of Volney.
Black Creek (backwater area).	From the Town of Mexico corporate limits to approximately 200 feet upstream of the Town of Mexico corporate limits.	None	+442	Town of Palermo.
Lycoming Creek (backwater area).	From the Town of Scriba corporate limits to approximately 0.5 mile upstream of the Town of Scriba corporate limits.	None	+277	Town of New Haven.
Panther Lake	Entire shoreline within community	None	+600	Town of Amboy.
Salmon River	Approximately 0.63 mile upstream of County Route 2A (Lehigh Road).	None	+436	Town of Albion.
	Approximately 0.96 mile upstream of County Route 2A (Lehigh Road).	None	+440	
Scriba Creek	Approximately 0.90 mile upstream of County Route 23 (Potter Road).	None	+546	Town of Amboy.
	Approximately 1.30 miles upstream of County Route 23 (Potter Road).	None	+547	

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Albion

Maps are available for inspection at the Albion Town Municipal Building, 15 Bridge Street, Altmar, NY 13302.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Town of Amboy
Maps are available for inspection at the Amboy Town Hall, 822 State Route 69, Williamstown, NY 13493.

Town of New Haven
Maps are available for inspection at the Town Hall, 4279 State Route 104, New Haven, NY 13121.

Town of Palermo
Maps are available for inspection at the Palermo Town Municipal Offices, 1572 County Road 45, Fulton, NY 13069.

Town of Volney
Maps are available for inspection at the Volney Town Offices, 1445 County Road 6, Fulton, NY 13069.

Morgan County, Ohio, and Incorporated Areas

Bald Eagle Run (backwater effects from Muskingum River).	Approximately 0.5 mile east of Riverview Road (At the northern Village of Stockport corporate limit).	None	+653	Village of Stockport.
	Approximately 1,000 feet east of Riverview Road (At the northern Village of Stockport corporate limit).	None	+653	
Bell Creek	At the Muskingum River confluence	+664	+665	Unincorporated Areas of Morgan County, Village of McConnelsville.
	Approximately 0.8 mile upstream of North 7th Street	None	+740	
Muskingum River	Approximately 0.4 mile downstream of State Route 266.	None	+651	Village of Stockport.
	Approximately 1,600 feet upstream of State Route 266.	None	+653	
Turkey Run (backwater effects from Muskingum River).	Approximately 300 feet east of East River Road (At the southern Village of Stockport corporate limit).	None	+651	Village of Stockport.

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Morgan County
Maps are available for inspection at the Reicker Building, 155 East Main Street, Room 208, McConnelsville, OH 43756.

Village of McConnelsville
Maps are available for inspection at 9 West Main Street, McConnelsville, OH 43756.

Village of Stockport
Maps are available for inspection at 1685 Broadway Street, Stockport, OH 43787.

Caldwell County, Texas, and Incorporated Areas

Mebane Creek	Approximately 0.38 mile downstream of FM 20 (State Park Road).	None	+513	City of Lockhart, Unincorporated Areas of Caldwell County.
	Approximately 488 feet downstream of FM 20 (State Park Road).	None	+521	
Town Branch	Approximately 981 feet downstream of Union Pacific Railroad.	None	+441	City of Lockhart, Unincorporated Areas of Caldwell County.
	At the upstream side of Union Pacific Railroad	None	+448	

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Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lockhart

Maps are available for inspection at 308 West San Antonio Street, Lockhart, TX 78644.

Unincorporated Areas of Caldwell County

Maps are available for inspection at 110 South Main Street, Lockhart, TX 78644.

Harrison County, West Virginia, and Incorporated Areas				
Bingamon Creek (backwater effects from West Fork River).	At the West Fork River confluence	+901	+902	Unincorporated Areas of Harrison County.
	Approximately 1.53 miles upstream of the West Fork River confluence.	+901	+902	
Booths Creek	At the Marion County boundary	None	+959	Unincorporated Areas of Harrison County.
	At the Thomas Fork confluence	None	+1000	
Tenmile Creek (backwater effects from West Fork River).	At the West Fork River confluence	+919	+921	Town of Lumberport.
	Approximately 1.45 miles upstream of the West Fork River confluence.	+919	+921	
Thomas Fork	At the Booths Creek confluence	None	+1000	City of Bridgeport, Unincorporated Areas of Harrison County.
	Approximately 420 feet downstream of Benedum Road.	None	+1060	
West Fork River	At the upstream side of State Route 20	+918	+921	Town of Lumberport.
	At the Tenmile Creek confluence	+919	+921	
West Fork River	Approximately 0.45 mile downstream of Water Street	None	+972	Town of West Milford.
	Approximately 0.47 mile upstream of West Milford Dam.	None	+975	

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bridgeport

Maps are available for inspection at City Hall, 515 West Main Street, Bridgeport, WV 26330.

Town of Lumberport

Maps are available for inspection at the Town Hall, 200 Main Street, Lumberport, WV 26386.

Town of West Milford

Maps are available for inspection at the Town Hall, 925 Liberty Street, West Milford, WV 26451.

Unincorporated Areas of Harrison County

Maps are available for inspection at the Harrison County Courthouse, 301 West Main Street, Clarksburg, WV 26301.

Jackson County, Wisconsin, and Incorporated Areas				
Black River	Approximately 0.94 mile downstream of County Highway K.	None	+831	Ho-Chunk Nation.
	Approximately 0.48 mile downstream of County Highway K.	None	+833	
Trempealeau River	Approximately 0.41 mile upstream of the French Creek confluence.	None	+875	Village of Taylor.
	Approximately 0.39 mile upstream of Bridge Street	None	+882	

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Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Depth in feet above ground.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Ho-Chunk Nation
Maps are available for inspection at W9814 Airport Road, Black River Falls, WI 54615.

Village of Taylor
Maps are available for inspection at 420 2nd Street, Taylor, WI 54659.

Juneau County, Wisconsin, and Incorporated Areas

Baraboo River	At the upstream side of Gehri Road	+914	+913	Unincorporated Areas of Juneau County, Village of Union Center, Village of Wonewoc.
	At the West Branch Baraboo River confluence	+918	+919	
Baraboo River Split Flow	At the Baraboo River divergence	None	+916	Unincorporated Areas of Juneau County.
	At the Baraboo River convergence	None	+917	
Cranberry Creek (overflow from Yellow River).	Approximately 1,000 feet downstream of the intersection of 8th Street and 13th Avenue.	+933	+934	Unincorporated Areas of Juneau County.
	At the downstream side of County Highway F	+947	+951	
Gardner Creek (overflow effects from Baraboo River).	At the Sauk County boundary	None	+907	Unincorporated Areas of Juneau County.
Onemile Creek (backwater effects from Lemonweir River).	At the upstream side of U.S. Route 12	None	+866	Unincorporated Areas of Juneau County.
	Approximately 1,875 feet upstream of U.S. Route 12	None	+866	
South Branch Yellow River (backwater effects from Yellow River).	At the downstream side of State Route 80	None	+899	Unincorporated Areas of Juneau County, Village of Necedah.
Unnamed Ponding Area (backwater effects from Baraboo River).	At the Sauk County boundary	None	+908	Unincorporated Areas of Juneau County.
Unnamed Ponding Area (backwater effects from Lemonweir River).	Approximately 50 feet west of U.S. Route 12	None	+866	Ho-Chunk Nation.
West Branch Baraboo River	At the Baraboo River confluence	+919	+920	Unincorporated Areas of Juneau County, Village of Union Center.
	At the Vernon County boundary	None	+931	
West Branch Baraboo River Split Flow 1.	At the West Branch Baraboo River divergence	None	+927	Unincorporated Areas of Juneau County.
	At the West Branch Baraboo River convergence	None	+929	
West Branch Baraboo River Split Flow 2.	At the West Branch Baraboo River confluence	None	+929	Unincorporated Areas of Juneau County.
	At the Vernon County boundary	None	+931	

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Ho-Chunk Nation
Maps are available for inspection at W9814 Airport Road, Black River Falls, WI 54615.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Unincorporated Areas of Juneau County

Maps are available for inspection at 220 East State Street, Mauston, WI 53944.

Village of Necedah

Maps are available for inspection at 101 Center Street, Necedah, WI 54646.

Village of Union Center

Maps are available for inspection at 339 High Street, Union Center, WI 53962.

Village of Wonewoc

Maps are available for inspection at 200 West Street, Wonewoc, WI 53968.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 5, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20966 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1212]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 15, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1212, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
City of Denver, Colorado					
Colorado	City of Denver	First Creek	Approximately 1,340 feet downstream of Pena Boulevard West.	None	+5308
			Approximately 0.5 mile upstream of 42nd Avenue.	None	+5440
Colorado	City of Denver	First Creek	At the First Creek confluence	None	+5382
		Tributary T	At the upstream side of Picadilly Road	None	+5417

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Denver

Maps are available for inspection at the Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.

Unincorporated Areas of Craven County, North Carolina					
North Carolina	Unincorporated Areas of Craven County.	Mosley Creek (into Neuse River).	At the upstream side of William Pearce Road.	+26	+25
			Approximately 0.5 mile upstream of Dover Fort Barnwell Road.	None	+46
North Carolina	Unincorporated Areas of Craven County.	Mosley Creek Tributary	At the Mosley Creek (into Neuse River) confluence.	+29	+25
			Approximately 1.0 mile upstream of State Route 55.	+37	+36
North Carolina	Unincorporated Areas of Craven County.	Tracey Swamp	At the Mosley Creek (into Neuse River) confluence.	+42	+39
			Approximately 1.0 mile downstream of the Jones County boundary.	+42	+41

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ADDRESSES

Unincorporated Areas of Craven County

Maps are available for inspection at the Craven County Government Offices, 2822 Neuse Boulevard, New Bern, NC 28562.

Unincorporated Areas of Jones County, North Carolina					
North Carolina	Unincorporated Areas of Jones County.	Southwest Creek Tributary	Approximately 1,750 feet downstream of British Road.	+34	+35
			Approximately 1,000 feet upstream of British Road.	+40	+41

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified

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+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

Unincorporated Areas of Craven County

Maps are available for inspection at the Jones County Office Complex, 418 State Route 58 North, Trenton, NC 28585.

Unincorporated Areas of Wayne County, North Carolina

North Carolina	Unincorporated Areas of Wayne County.	Bear Creek	At the upstream side of Parkstown Road	+84	+83
			Approximately 150 feet downstream of Rodell Barrow Road.	+112	+113
North Carolina	Unincorporated Areas of Wayne County.	Button Branch	At the Nahunta Swamp confluence	+68	+67
			Approximately 400 feet upstream of the Greene County boundary.	+70	+72
North Carolina	Unincorporated Areas of Wayne County.	Nahunta Swamp	Approximately 1,800 feet downstream of the Greene County boundary.	+68	+65
			Approximately 0.4 mile upstream of The Slough confluence.	+74	+72
North Carolina	Unincorporated Areas of Wayne County.	The Slough	At the Nahunta Swamp confluence	+73	+71
			Approximately 1,800 feet upstream of the Nahunta Swamp confluence.	+73	+72

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ADDRESSES

Unincorporated Areas of Wayne County

Maps are available for inspection at the Wayne County Courthouse, 224 East Walnut Street, Goldsboro, NC 27533.

Unincorporated Areas of Wilson County, North Carolina

North Carolina	Unincorporated Areas of Wilson County.	Little Contentnea Creek ...	Approximately 450 feet downstream of Eagles Cross Road.	+87	+83
			Approximately 1.1 miles upstream of Eagles Cross Road.	+91	+90

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified

ADDRESSES

Unincorporated Areas of Wilson County

Maps are available for inspection at the Wilson County Manager's Office, 2201 Miller Road South, Wilson, NC 27893.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Beaufort County, North Carolina, and Incorporated Areas				
Aggie Run	At the Tranters Creek confluence	+13	+11	City of Washington, Unincorporated Areas of Beaufort County.
	Approximately 0.5 mile upstream of VOA Road	+13	+12	
Maple Branch	At the Tranters Creek confluence	+10	+9	City of Washington, Unincorporated Areas of Beaufort County.
	Approximately 1.3 miles upstream of U.S. Route 264	None	+21	
Mitchell Branch	At the Tranters Creek confluence	+10	+9	City of Washington, Unincorporated Areas of Beaufort County.
	Approximately 1,100 feet upstream of Cherry Run Road.	None	+23	
Tranter Creek	Approximately 250 feet downstream of the Mitchell Branch confluence.	+10	+9	Unincorporated Areas of Beaufort County.
	Approximately 1.5 miles downstream of the Horsepen Swamp confluence.	+15	+14	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Washington

Maps are available for inspection at the Building and Inspection Department, 102 East 2nd Street, Washington, NC 27889.

Unincorporated Areas of Beaufort County

Maps are available for inspection at the Beaufort County Building Inspection Department, 220 North Market Street, Washington, NC 27889.

Greene County, North Carolina, and Incorporated Areas				
Appletree Swamp	Approximately 200 feet downstream of Nahunta Road	+54	+55	Unincorporated Areas of Greene County.
	Approximately 0.4 mile upstream of Apple Tree Road	+76	+75	
Bear Creek	At the upstream side of Parkstown Road	+84	+83	Unincorporated Areas of Greene County.
	Approximately 0.9 mile upstream of Oakdale Road	+106	+107	
Button Branch	At Fort Run Road	+69	+70	Unincorporated Areas of Greene County.
	Approximately 1.3 miles upstream of Fort Run Road	+84	+82	
Contentnea Creek	Approximately 2.3 miles downstream of the Wheat Swamp confluence.	+35	+34	Town of Hookerton, Town of Snow Hill, Unincorporated Areas of Greene County.
	Approximately 1,300 feet upstream of State Route 58	+62	+63	
Contentnea Creek Tributary 8.	At the Contentnea Creek confluence	+47	+41	Town of Snow Hill, Unincorporated Areas of Greene County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 200 feet upstream of Kingold Boulevard.	None	+64	
Contentnea Creek Tributary 9.	At the Contentnea Creek confluence	+48	+43	Town of Snow Hill, Unincorporated Areas of Greene County.
	Approximately 1.5 miles upstream of Beaman Old Creek Road.	None	+65	
Cow Branch	At the Nahunta Swamp confluence	+61	+60	Unincorporated Areas of Greene County.
	Approximately 2.1 miles upstream of Cow Branch Road.	None	+114	
Fort Run	At the Contentnea Creek confluence	+50	+47	Unincorporated Areas of Greene County.
	Approximately 1,800 feet upstream of Gurganus Road	+82	+83	
Little Contentnea Creek	Approximately 1,500 feet downstream of State Route 903.	+32	+31	Unincorporated Areas of Greene County.
	At the Wilson County boundary	+87	+83	
Middle Swamp	At the Little Contentnea Creek confluence	+43	+42	Unincorporated Areas of Greene County.
	Approximately 300 feet upstream of U.S. Route 258	+63	+62	
Nahunta Swamp	At the Contentnea Creek confluence	+52	+51	Unincorporated Areas of Greene County.
	At the Button Branch confluence	+68	+66	
Poorhouse Run	At the Contentnea Creek confluence	+46	+41	Town of Snow Hill, Unincorporated Areas of Greene County.
	Approximately 0.7 mile upstream of Kingold Boulevard.	None	+71	
Rainbow Creek	At the Contentnea Creek confluence	+38	+35	Town of Hookerton, Unincorporated Areas of Greene County.
	At the downstream side of Lloyd Harrison Road	+64	+63	
Sandy Run	At the Middle Swamp confluence	+44	+45	Unincorporated Areas of Greene County.
	Approximately 0.7 mile upstream of the Middle Swamp confluence.	+44	+45	
Toisnot Swamp	At the Contentnea Creek confluence	+62	+59	Unincorporated Areas of Greene County.
	Approximately 200 feet upstream of the railroad	+62	+63	
Tyson Marsh	At the Contentnea Creek confluence	+49	+43	Unincorporated Areas of Greene County.
	Approximately 1,300 feet downstream of Gray Turnage Road.	+70	+69	
Wheat Swamp	At the Contentnea Creek confluence	+36	+34	Unincorporated Areas of Greene County.
	Approximately 1.1 miles upstream of Hugo Road	+36	+35	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Hookerton

Maps are available for inspection at the Town Hall, 227 East Main Street, Hookerton, NC 28538.

Town of Snow Hill

Maps are available for inspection at the Town Hall, 201 North Green Street, Snow Hill, NC 28580.

Unincorporated Areas of Greene County

Maps are available for inspection at the Greene County Water Department, 229 Kingold Boulevard, Suite B, Snow Hill, NC 28580.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Lenoir County, North Carolina, and Incorporated Areas				
Adkin Branch	At the upstream side of West Gordon Street	+37	+36	City of Kinston, Unincorporated Areas of Lenoir County.
	At the upstream side of Crawford Street	+75	+76	
Briery Run	Approximately 1,100 feet upstream of the Stonyton Creek confluence.	+36	+35	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 1,500 feet upstream of Rouse Road	+67	+66	
Deep Run	At the Southwest Creek confluence	+76	+74	Unincorporated Areas of Lenoir County.
	Approximately 450 feet upstream of State Route 11	+87	+88	
Eagle Swamp	Approximately 1,300 feet downstream of South Highland Avenue.	+26	+25	Unincorporated Areas of Lenoir County.
	At the downstream side of Sharon Church Road	+50	+52	
Falling Creek	Approximately 0.4 mile upstream of Pruitt Road	+43	+42	Unincorporated Areas of Lenoir County.
	Approximately 700 feet downstream of the Jumping Run confluence.	+68	+67	
Falling Creek Tributary	At the Falling Creek confluence	+55	+54	Unincorporated Areas of Lenoir County.
	Approximately 300 feet upstream of Springwood Bridge.	None	+79	
Groundnut Creek	At the Mosley Creek (into Falling Creek) confluence	+71	+68	Unincorporated Areas of Lenoir County.
	Approximately 150 feet upstream of Harrison Phelps Road.	+92	+91	
Gum Swamp	At the Falling Creek confluence	+58	+57	Unincorporated Areas of Lenoir County.
	Approximately 250 feet upstream of Wheat Swamp Road.	None	+91	
Jericho Run	Approximately 200 feet downstream of State Route 55.	+29	+30	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 250 feet upstream of Cunningham Road.	None	+53	
Jericho Run Tributary	At the Jericho Run confluence	+43	+44	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 250 feet upstream of the railroad	None	+66	
Jumping Run	Approximately 0.4 mile upstream of the Falling Creek confluence.	+70	+71	Unincorporated Areas of Lenoir County.
	Approximately 200 feet upstream of Jumping Run Church Road.	None	+107	
Mosley Creek (into Falling Creek).	At the Falling Creek confluence	+64	+62	Town of La Grange, Unincorporated Areas of Lenoir County.
	Approximately 360 feet upstream of State Route 903	None	+90	
Mosley Creek (into Neuse River).	Approximately 100 feet upstream of William Pearce Road.	+26	+25	Unincorporated Areas of Lenoir County.
	At the Tracey Swamp confluence	+42	+39	
Neuse River Tributary	Approximately 700 feet upstream of U.S. Route 70	+43	+42	City of Kinston, Unincorporated Areas of Lenoir County.
	At the upstream side of the railroad	+51	+52	
Rivermont Tributary	At the upstream side of West New Bern Road	+37	+38	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 1,300 feet upstream of Old Asphalt Road.	+39	+38	
Southwest Creek	Approximately 400 feet upstream of U.S. Route 70	+39	+36	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 1.0 mile upstream of Liddell Road	+129	+128	
Stonyton Creek	Approximately 1,900 feet upstream of State Route 11	+30	+29	City of Kinston, Unincorporated Areas of Lenoir County.

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		Effective	Modified	
	At the downstream side of John Mewborne Road	+66	+63	
Strawberry Branch	At the Southwest Creek confluence	+39	+37	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 170 feet downstream of Whaley Road	+47	+49	
Taylors Branch	At the Briery Run confluence	+64	+61	City of Kinston, Unincorporated Areas of Lenoir County.
	Approximately 1,500 feet upstream of Rouse Road	+75	+74	
Tracey Swamp	At the Mosley Creek (into Neuse River) confluence	+42	+39	Unincorporated Areas of Lenoir County.
	Approximately 1.0 mile downstream of the Jones County boundary.	+42	+41	
Tuckahoe Swamp	Approximately 1,500 feet downstream of West Pleasant Hill Road.	+88	+87	Unincorporated Areas of Lenoir County.
	Approximately 525 feet upstream of Ash Davis Road	None	+97	

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+ North American Vertical Datum.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Kinston
Maps are available for inspection at City Hall, 207 East King Street, Kinston, NC 28501.

Town of La Grange
Maps are available for inspection at the Town Hall, 203 South Center Street, La Grange, NC 28551.

Unincorporated Areas of Lenoir County
Maps are available for inspection at the Lenoir County Administration Office, 101 North Queen Street, Kinston, NC 28502.

Pitt County, North Carolina, and Incorporated Areas

Back Swamp	At the downstream side of Weyerhaeuser Road	+40	+41	Town of Ayden, Town of Grifton, Unincorporated Areas of Pitt County.
	Approximately 300 feet upstream of Gas Plant Lane ..	+63	+62	
Baldwin Swamp	At the Moyes Run/Cannon Swamp confluence	+18	+17	City of Greenville, Unincorporated Areas of Pitt County.
	Approximately 1.4 miles upstream of the Baldwin Swamp North Tributary confluence.	+21	+19	
Baldwin Swamp North Tributary.	At the Baldwin Swamp confluence	+20	+17	City of Greenville, Unincorporated Areas of Pitt County.
	At the downstream side of U.S. Route 264 Alternate ..	+21	+20	
Bates Branch	Approximately 60 feet upstream of the Juniper Branch confluence.	+29	+28	Unincorporated Areas of Pitt County, Village of Simpson.
	Approximately 1,000 feet upstream of Simpson Street	None	+46	
Bells Branch	Approximately 0.5 mile upstream of the Hardee Creek confluence.	+21	+20	City of Greenville.
	Approximately 625 feet upstream of York Road	None	+56	
Black Swamp	At the Little Contentnea Creek confluence	+63	+61	Town of Farmville, Unincorporated Areas of Pitt County.
	Approximately 0.6 mile upstream of the Little Contentnea Creek confluence.	+63	+62	
Chicod Creek	Approximately 550 feet upstream of the Juniper Branch confluence.	+16	+15	Town of Grimesland, Unincorporated Areas of Pitt County.
	At the downstream side of Mobleys Bridge Road	+16	+15	

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Contentnea Creek South Tributary.	Approximately 1.0 mile upstream of the Contentnea Creek confluence.	None	+25	Town of Grifton, Unincorporated Areas of Pitt County.
	Approximately 0.7 mile upstream of McCrae Street	+31	+33	
Eagle Swamp	Approximately 0.3 mile downstream of South Highland Avenue.	+26	+25	Town of Grifton.
	Approximately 500 feet upstream of Skeeter Pond Road.	+33	+31	
Fork Swamp	Approximately 0.3 mile upstream of Fire Tower Road (State Route 1708).	+58	+59	City of Greenville, Town of Winterville, Unincorporated Areas of Pitt County.
	Approximately 330 feet upstream of Baywood Lane ...	None	+71	
Fork Swamp Tributary 2	Approximately 1,500 feet upstream of the Fork Swamp confluence.	+54	+53	City of Greenville.
	Approximately 250 feet upstream of Fire Tower Road	None	+68	
Fornes Run	Approximately 0.4 mile downstream of 14th Street	+29	+28	City of Greenville.
	Approximately 500 feet upstream of Elm Street	None	+60	
Green Mill Run	Approximately 1,500 feet upstream of Dickinson Avenue.	+56	+55	City of Greenville.
	Approximately 0.4 mile upstream of Allen Road	None	+69	
Grindle Creek	Approximately 600 feet upstream of State Route 11 ...	None	+39	Town of Bethel, Unincorporated Areas of Pitt County.
	Approximately 440 feet upstream of State Route 11 Business.	None	+52	
Horse Swamp	At the upstream side of Jolly Road	+51	+52	Unincorporated Areas of Pitt County.
	Approximately 0.4 mile upstream of Jolly Road	None	+54	
Indian Well Swamp	Approximately 0.8 mile downstream of State Route 43	+39	+38	Unincorporated Areas of Pitt County.
	Approximately 0.7 mile upstream of Ivy Road	None	+56	
Jacob Branch	At the Black Swamp confluence	+63	+61	Town of Farmville, Unincorporated Areas of Pitt County.
	Approximately 0.3 mile upstream of the Black Swamp confluence.	+63	+62	
Lateral No. 2	Approximately 0.4 mile upstream of the Parkers Creek confluence.	+24	+25	City of Greenville.
	Approximately 1.1 miles upstream of the Parkers Creek confluence.	None	+29	
Little Contentnea Creek	Approximately 0.3 mile downstream of State Route 903.	+32	+31	Town of Farmville, Unincorporated Areas of Pitt County.
	Approximately 450 feet downstream of Spring Branch Church Road (State Route 1308).	+87	+83	
Little Contentnea Creek Tributary 1.	At the Little Contentnea Creek confluence	+33	+32	Unincorporated Areas of Pitt County.
	Approximately 1.2 miles upstream of the Little Contentnea Creek confluence.	+33	+32	
Meeting House Branch	At the Bells Branch confluence	+24	+23	City of Greenville.
	At King George Road	+36	+37	
Middle Swamp	At the Little Contentnea Creek confluence	+43	+42	Town of Farmville, Unincorporated Areas of Pitt County.
	Approximately 700 feet upstream of U.S. Route 258 ..	+63	+62	
Moyes Run—Cannon Swamp	Approximately 500 feet downstream of the Baldwin Swamp confluence.	+18	+17	City of Greenville, Unincorporated Areas of Pitt County.
	At the downstream side of Old Creek Road	None	+25	
Parkers Creek	Approximately 150 feet downstream of Old Creek Road.	+23	+22	City of Greenville.
	Approximately 300 feet downstream of the Lateral No. 2 confluence.	+24	+23	
Pinelog Branch	Approximately 900 feet downstream of Askew Road ..	+52	+53	Unincorporated Areas of Pitt County.
	Approximately 1,500 feet upstream of Fred Drive	None	+78	

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		Effective	Modified	
Pinelog Branch North Tributary.	At the Pinelog Branch confluence	+66	+65	Unincorporated Areas of Pitt County.
	At the downstream side of Mozingo Road	+70	+71	
Pinelog Branch South Tributary.	Approximately 100 feet upstream of the Pinelog Branch confluence.	+70	+69	Unincorporated Areas of Pitt County.
	Approximately 0.5 mile upstream of Stantonsburg Road.	None	+81	
Swift Creek	Approximately 0.4 mile upstream of Davenport Farm Road.	None	+59	City of Greenville, Town of Ayden, Town of Winterville, Unincorporated Areas of Pitt County.
	Approximately 360 feet upstream of Thomas Langston Road.	None	+68	
Swift Creek Tributary 2	Approximately 0.6 mile upstream of Red Forbes Road	None	+60	Town of Winterville, Unincorporated Areas of Pitt County.
	Approximately 0.7 mile upstream of Red Forbes Road	None	+62	
Tranters Creek	Approximately 250 feet downstream of the Mitchell Branch confluence.	+10	+9	Unincorporated Areas of Pitt County.
	Approximately 0.6 mile downstream of the Poley Branch confluence.	+15	+14	
Ward Run	At the Little Contentnea Creek confluence	+81	+79	Unincorporated Areas of Pitt County.
	Approximately 0.3 mile upstream of the Little Contentnea Creek confluence.	+81	+80	

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Greenville
Maps are available for inspection at the Department of Public Works, 1500 Beatty Street, Greenville, NC 27834.

Town of Ayden
Maps are available for inspection at the Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

Town of Bethel
Maps are available for inspection at the Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

Town of Farmville
Maps are available for inspection at the Town Hall, 3672 North Main Street, Farmville, NC 27828.

Town of Grifton
Maps are available for inspection at the Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

Town of Grimesland
Maps are available for inspection at the Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

Town of Winterville
Maps are available for inspection at the Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

Unincorporated Areas of Pitt County
Maps are available for inspection at the Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

Village of Simpson
Maps are available for inspection at Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 5, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20866 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 03–109 and 11–42; CC Docket No. 96–45; DA 11–1346]

Further Inquiry Into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: The Federal Communications Commission (Commission) sought public comment on proposed reforms that would assist the Commission in assessing strategies to increase broadband adoption, without increasing overall program size. Based on the current record in this proceeding, four issues in particular merit further inquiry. In this document, the Commission seeks further inquiry on four issues: designing and implementing a Lifeline/Link Up broadband pilot program to evaluate whether and how Lifeline/Link Up can effectively support broadband adoption by low-income households; limiting the availability of Lifeline support to one discount per residential address; revising the definition of Link Up service, as well as the possible reduction of the $30 reimbursement amount for Link Up support; and improving methods for verifying continued eligibility for the program. The Commission believes that this analysis would benefit from further development of these issues in the record, and therefore seek further comment focused on these areas.

DATES: Comments are due on or before August 26, 2011. Reply comments are due on or before September 2, 2011.

ADDRESSES: Interested parties may file comments and reply comments on or before the dates indicated above. All comments are to reference WC Docket Nos. 11–42, 03–109, and CC Docket No. 96–45 and may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). For detailed instructions for where and how to file comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jamie Susskind, Attorney Advisor, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: To comprehensively reform and modernize the universal service Lifeline and Link Up programs in light of recent technological, market, and regulatory changes, on March 4, 2011 the Commission released the *2011 Lifeline and Link Up Notice of Proposed Rulemaking (NPRM or 2011 Lifeline and Link Up NPRM),* 76 FR 16482, March 23, 2011. The NPRM sought public comment on proposed reforms that would significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot programs that would assist the Commission in assessing strategies to increase broadband adoption, without increasing overall program size. Based on the current record in this proceeding, four issues in particular merit further inquiry: designing and implementing a Lifeline/Link Up broadband pilot program to evaluate whether and how Lifeline/Link Up can effectively support broadband adoption by low-income households; limiting the availability of Lifeline support to one discount per residential address; revising the definition of Link Up service, as well as the possible reduction of the $30 reimbursement amount for Link Up support; and improving methods for verifying continued eligibility for the program. We believe that the Commission's analysis would benefit from further development of these issues in the record, and therefore seek further comment focused on these areas.

1. Broadband Pilot Program

a. *Scope of Permissible Funding.* We seek comment on the Commission's statutory authority to permit universal service funds to be used for such purposes, directly or indirectly, and what other legal considerations must be addressed before the Commission proceeds with a broadband pilot program.

b. *Consumer Eligibility for Pilot Program.* We seek additional focused comment specifically on whether to maintain the current eligibility requirements for consumers participating in the pilot program that are currently used in the low-income program, or whether to adopt stricter or more permissive eligibility requirements for those consumers. How might adjusting the eligibility criteria affect our ability to maximize broadband adoption while providing support that is sufficient, but not excessive? How would it affect the reliability and statistical significance of the results of the pilot program? How would it help the pilot programs yield better data on how to accomplish our goals of maximizing adoption in low-income communities?

c. *Barriers to Consumer Participation in Pilots.* The National Association of Regulatory Utility Commissioners supports a Lifeline/Link Up broadband

pilot program and urges the Commission not to require Lifeline/Link Up broadband service pilot program participants to change local telephone service providers, purchase bundled broadband and voice services, or otherwise be penalized when they purchase Lifeline and Link Up broadband services and enabling access devices. Commenters should address whether and how the Commission could implement those recommendations. Commenters are encouraged to provide a legal analysis to support their positions.

d. *Pilot Evaluation.* We invite further comment on the structure of the pilot projects, how to evaluate the results of pilot projects, and what reporting requirements should be adopted for pilot participants.

i. Should the Commission structure the pilot program so that each individual participant tests multiple design elements (*e.g.,* price of the service, length of the offer, service type, kind of device connected to the broadband, *etc.*), or should each participant test a single variable for comparison against pilots operated by other participants?

ii. The NPRM recognized that the cost of equipment is a major barrier to broadband adoption, and proposed to require at least some participants to provide the necessary hardware. It also proposed to test the impact of variations in equipment discounts. Should we also test the impact on adoption and broadband retention when equipment is leased, as opposed to purchased?

iii. What quantitative metrics could the Commission use to evaluate whether approaches tested during the pilot program further the proposed goals of supporting broadband adoption for low-income households and making broadband affordable while providing support that is sufficient, but not excessive? For instance, should we assess the total number of new adopters; new adopters as a percentage of eligible program participants; cost of support for each new adopter; average percentage of participants' discretionary income spent on discounted broadband service through the pilot relative to the national average percentage of household discretionary income spent on broadband; and/or some other metric(s)?

iv. How could we evaluate the relative impact of the service discount compared to other potential factors that could be part of a comprehensive strategy to increase broadband adoption, such as the provision of training or equipment? The Commission proposed to develop information about the cost per participant and cost per new adopter through the pilot program. This information could assist the Commission in assessing the costs and benefits of particular approaches to whether broadband should be supported, and if so, how. We seek further comment on this proposal and whether there are other types of data that the Commission should review to evaluate whether a given approach would provide support that is sufficient but not excessive.

2. One-Per-Residence Limitation

In the *2011 Lifeline and Link Up NPRM,* the Commission proposed to codify a rule that would allow eligible low-income consumers to receive only one Lifeline and Link Up discount per residential address, and sought comment on related issues.

a. *Defining ''Household'' or ''Residence''.* We seek focused comment on whether a one-per-household or one-per-family rule would provide an administratively feasible approach to providing Lifeline/Link Up support, and how the Commission could implement such a rule.

i. Commenters recommend that the Commission adopt a definition of ''household'' that mirrors the definitions used to establish eligibility for other Federal benefit programs or used by other Federal agencies. We seek comment on whether any of these definitions, such as the definition of ''household'' used to establish eligibility for the Low Income Home Energy Assistance Program (LIHEAP) or the definition used by the U.S. Census Bureau for surveying purposes, would provide an administratively feasible option for the Commission to employ to define who is eligible for Lifeline/Link Up support.

ii. We seek comment on whether, if the Commission ultimately adopts a one-per-household rule (or a one-per-residential-address rule), requiring all ETCs to utilize similar procedures when signing up applicants in unique living situations would be an effective means of ensuring compliance with such a rule.

iii. MFY Legal Services recommends that the Commission use room numbers and, if applicable, bed numbers to serve as potentially unique address identifiers for residents of group living facilities. We seek comment on this recommendation. If implemented, what types of information could constitute unique address identifiers? Who should be responsible for providing such information to the ETC—the consumer or the group living facility? Are there group living situations where a unique identifier would not be available, for example a shelter that houses all of its residents in a single room?

b. *Exceptions or Waivers from the ''One-Per-Household'' or ''One-Per-Residential-Address'' Rule.* On May 25, 2011, MFY Legal Services filed an ex parte presentation that included a copy of the National Telecommunications and Information Administration's (NTIA) rule providing a limited waiver of the household-based eligibility process for the Digital-to-Analog Converter Box Coupon Program to allow applications from individuals residing in nursing homes, intermediate care facilities, and assisted living facilities. The NTIA rule waived the one-per-residence requirement for individuals residing in nursing homes, intermediate care facilities, and assisted living facilities licensed by a state, as well as individuals using post office boxes for mail receipt. Third party designees, such as facility administrators and family members, were also allowed to apply on behalf of residents. We seek comment on whether that rule could serve as a model for how to address such situations in the context of the low-income program. If the Commission were to adopt a similar rule, what information should applicants be required to provide to demonstrate they reside in such a facility?

c. *One-per-person for Tribal Residents.* Smith Bagley provides further calculations in its comments as to the costs associated with providing enhanced Lifeline service to one additional adult per household on Tribal lands. Smith Bagley projected that, assuming a 100% take rate, the cost of providing this additional funding would be $77.7 million per year, or just under one percent of the current size of the overall universal service fund. We seek comment on the analysis provided by Smith Bagley.

3. Link Up

The NPRM addressed a number of issues regarding Link Up reimbursement for voice services.

a. Sprint states that the costs associated with initiating phone service have fallen, noting that ''the ever-increasing level of automation has reduced the cost of initiating service,'' and proposes that Link Up support be limited or eliminated. We seek comment on this proposal.

b. We seek further focused comment on whether the Commission should provide reimbursement for Link Up only for service initiations that involve the physical installation of facilities by the provider at the consumer's residence.

4. Verification of Consumer Eligibility for Lifeline—Sampling Methodology

In the *2011 Lifeline and Link Up NPRM,* the Commission proposed to amend § 54.410 of its rules to establish a uniform methodology for conducting verification sampling that would apply to all ETCs in all states. The NPRM also asked commenters to consider two proposals for modifying the existing sampling methodology to more effectively balance the need for an administratively feasible sampling methodology with the Commission's obligation to ensure that ineligible consumers do not receive Lifeline/Link Up benefits. We invite additional comment on this issue.

a. With respect to the Commission's sample-and-census proposal, could the Commission implement it in a way that would be more easily administrable for ETCs, particularly ETCs with a small number of Lifeline subscribers?

b. TCA proposes that, if the Commission adopts a sample-and-census rule, carriers with a small number of Lifeline subscribers should be required to sample fewer consumers than ETCs with a larger number of Lifeline subscribers. We seek comment on this proposal. Should the Commission consider a smaller sample size for ETCs with a small number of Lifeline customers in a given state? What number of respondents could ETCs with a smaller number of Lifeline customers feasibly sample in a given year, keeping in mind that reducing the required number of respondents could result in larger margins of error?

c. Alternatively, should carriers with a small number of Lifeline subscribers be required to sample only a specified percentage of their customer base? What would be a reasonable percentage in such cases?

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Trent Harkrader,

Division Chief, Wireline Competition Bureau.

[FR Doc. 2011–20847 Filed 8–16–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0055; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Leona's Little Blue Butterfly as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Leona's little blue butterfly, *Philotiella leona,* as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Leona's little blue butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Leona's little blue butterfly is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before October 17, 2011. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After October 17, 2011, you must submit information directly to the Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. [FWS–R8–ES–2011–0055], which is the docket number for this action. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-deliver to: Public Comments Processing, Attn: FWS–R8–ES–2011–0055; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Field Supervisor, Klamath Falls Fish and Wildlife Office, by telephone (541–885–8481), or by facsimile (541–885–7837). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Leona's little blue butterfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing the Leona's little blue butterfly is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species''; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On May 12, 2010, we received a petition dated May 12, 2010, from the Xerces Society, Dr. David McCorkle of Western Oregon University, and Oregon Wild, requesting that the Leona's little blue butterfly be listed as endangered and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a September 10, 2010, letter to the petitioners, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we were required to complete a significant number of listing and critical habitat actions in Fiscal Year 2010 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, but that we had secured funding for Fiscal Year 2011 and anticipated publishing a finding in the **Federal Register** in July 2011. This finding addresses the petition.

Species Information

The Leona's little blue butterfly is a member of the Polyommatini Tribe (a taxonomic group under family) (Pyle 2002, p. 222) of the Lycaenidae family (Mattoni 1977, p. 223; Hammond and McCorkle 1999, p.1), and is the largest species in the *Philotiella* genus (Hammond and McCorkle 1999, p. 82). The Leona's little blue butterfly was discovered in 1995; the historical range of the species is unknown. The current known distribution of the Leona's little blue butterfly occurs within a 6-square-mile (15.5-square-kilometer) area of the Antelope Desert, east of Crater Lake National Park in southern Oregon (Hammond and McCorkle 1999, p. 77; Ross 2008, p. 1). The majority of this habitat occurs on the Mazama Tree Farm property, which is privately owned by Cascade Timberlands, LLC. A small percentage of land on which the Leona's little blue butterfly occurs is in the Fremont-Winema National Forests, United States Forest Service (USFS). There have been no rigorous presence/absence surveys conducted, and it is unknown if additional populations of the Leona's little blue butterfly exist in similar habitat elsewhere in northeastern California and eastern Oregon (Hammond and McCorkle 1999, p. 80; Ross 2008, p.1). In addition, there is no information on population trends of the Leona's little blue butterfly; however, the current population, based on a 2008 flight season count extrapolation, is estimated at 1,000 to 2,000 individuals (Ross 2010, p. 7).

The Leona's little blue butterfly is found in volcanic ash and pumice fields and meadows (Hammond and McCorkle 1999, p. 77; Pyle 2002, p. 236; Ross 2008, p. 1) consisting of a nonforested bitterbrush/needlegrass-sedge community (Volland 1985, p. 29; Johnson 2010, p. 2). Johnson (2010, p. 4) states that the plant community in the known, occupied habitat overlays a ''quaternary alluvial fan with very deep alluvium derived from pumice and other volcanic rock.'' The Leona's little blue butterfly utilizes several species of plants as nectar sources, including

Eriogonum spergulinum (spurry buckwheat), *Eriogonum umbellatum* var. *polyanthum* (sulphur buckwheat), and an *Epilobium* species (Hammond and McCorkle 1999, p. 82; Ross 2008, pp. 1, 5, and 20; Johnson 2010, p. 5), but the butterfly is known to have only one larval hostplant, *Eriogonum spergulinum* (Hammond and McCorkle 1999, p. 80; Ross 2008, p. 1; Johnson 2010, p. 1). The Leona's little blue butterfly undergoes complete metamorphosis, developing through the egg, larva, and pupa stages in one summer, and then emerges from its chrysalis as an adult the following year (Ross 2010, p. 4). Adults of this species emerge for approximately 2 to 3 weeks in mid-June through mid-July (Ross 2008, p. 1; Ross 2010, p. 4).

We accept the characterization of the Leona's little blue butterfly at the species level based on the differences in size and wing coloration between it and the closely related *Philotiella speciosa* species (small-dotted blue butterfly), as well as the divergence of male and female genitalia between these two species (Hammond and McCorkle 1999, pp. 79–80). Additionally, the species is recognized as valid by the Integrated Taxonomic Information System (ITIS) and is described in NatureServe.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether the information regarding threats to the Leona's little blue butterfly, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petition asserts that the Leona's little blue butterfly is threatened by loss of habitat due to intensified management for timber production, lodgepole pine tree encroachment, and fire (Xerces Society for Invertebrate Conservation 2010, pp. 10–11). The petition recognizes the need for active management of the Leona's little blue butterfly habitat; however, it states that the impacts of intensified timber production management on the Mazama Tree Farm may be destructive to the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 11). In particular, the petition states concerns about the impacts of additional roads, traffic, and heavy equipment operations to the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 11). The petition states that fire suppression over the last 50 years has led to a loss of meadow and other open canopy habitat (Xerces Society for Invertebrate Conservation 2010, p. 10). Specifically, the petition states that young lodgepole pine trees have encroached into open patches of habitat resulting in a loss of breeding and foraging habitat for the Leona's little blue butterfly on the Mazama Tree Farm property (Xerces Society for Invertebrate Conservation 2010, p. 10). This encroachment increases the fuel loads of the forest which could also result in a catastrophic fire across the landscape (Xerces Society for Invertebrate Conservation 2010, p. 10). The petition claims that such a fire could have deleterious impacts to the survival of the only population of the Leona's little blue butterfly (Xerces Society for Invertebrate Conservation 2010, p. 10).

The petition also states that grazing, cinder mining, and the potential development of a biomass energy facility may have deleterious impacts on the only population of the Leona's little blue butterfly. The first land management practice discussed in the petition is livestock grazing (Xerces Society for Invertebrate Conservation 2010, p. 15). The petition cites the Winema National Forest Land and Resource Management Plan, hereafter the USFS Plan, and the Klamath Tribes' Management of the Klamath Reservation Forest Plan, stating that both plans allow for livestock grazing on the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 16). While the petition notes the lack of knowledge of the impact of livestock grazing on the Leona's little blue butterfly habitat, it concludes that livestock grazing is incompatible with the management of the Leona's little blue butterfly population because adult food sources may be eaten by the cattle and the cattle may disturb the soil, allowing weeds to invade (Xerces Society for Invertebrate Conservation 2010, pp. 15–16). The petition also asserts that cattle have the ability to destroy native vegetation (Xerces Society for Invertebrate Conservation 2010, p. 15).

The second land management practice that the petition cites is cinder mining (Xerces Society for Invertebrate Conservation 2010, p. 15). The petition asserts that numerous cinder mining pits, managed by the Oregon Department of Transportation, exist within the vicinity of the Leona's little blue butterfly habitat, some of which occur within the Fremont-Winema National Forests (Xerces Society for Invertebrate Conservation 2010, p. 15). The petition claims that cinder mining pits are periodically expanded, resulting in the potential for exploration to occur within a 40 acre (ac) (16.2 hectare (ha)) area adjacent to any existing pits (Xerces Society for Invertebrate Conservation 2010, p. 15). The petition declares that the exploration, drilling, and expansion processes have the ability to destroy the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 15).

Finally, the petition states that a biomass energy facility may be developed by The Klamath Tribes within the Leona's little blue butterfly habitat if the Mazama Tree Farm property is transferred to The Klamath Tribes. The petition claims that such a facility could negatively impact the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 15).

The petition discusses the use of three herbicides—chlorosulfuron, glysophate, and triclopyr—and their direct and indirect impacts to the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 14). The petition claims that these herbicides have the ability to impact the Leona's little blue butterfly habitat by reducing nectar resources and host plants (Xerces Society for Invertebrate Conservation 2010, p. 14).

Evaluation of Information Provided in the Petition and Available in Service Files

Smallidge and Leopold (1997, p. 268) discuss the use of timber production as a means to maintain habitat for butterflies that require open clearings within woodlands. The occupied habitat of the Leona's little blue butterfly was once logged, and the evidence of logging still persists. Timber extraction and production creates roads and additional disturbances that foster the development of early successional plants (Smallidge and Leopold 1997, p. 268). To evaluate this claim for the Leona's little blue butterfly, aerial photos were reviewed that showed a large number of roads, cleared Right-of-Ways (ROWs), and large openings within the occupied habitat. In addition, the densest stands of *Eriogonum spergulinum,* the sole host plant for the Leona's little blue butterfly, occur in disturbed areas around old burned slash piles, edges of unimproved roads, and periodically disturbed areas associated with the gas and electric powerline ROWs (Ross 2010, p. 5). In a study on Fender's blue butterflies (*Icaricia icarioides fenderi*), Severns (2008, pp. 56–57) observed that roads were not a barrier to butterflies, as long as they were narrow and without vegetation barriers, and contained infrequent or slow-moving traffic. However, it is unknown how intensive timber production would impact the habitat of the Leona's little blue butterfly. At this point, we have no information to indicate that the current landowner, Cascade Timberlands, LLC, intends to resume timber extraction in the future. In addition, while there is information that indicates The Klamath Tribes' proposed management for the Leona's little blue butterfly habitat is timber extraction (Johnson *et al.* 2008, pp. 23–24), the Klamath Forest Plan will not be implemented until the U.S. Congress authorizes funding for The Klamath Tribes' purchase of the Mazama Tree Farm property from Cascade Timberlands, LLC. Therefore, we do not have substantial information within our files to indicate the petitioned action may be warranted due to loss of habitat from timber production and management. However, we will further evaluate information about these activities' potential impact to the species in our status review.

The Klamath Forest Plan states that historically, the lodgepole pine/bitterbrush habitat type that existed was comprised of lodgepole forests in different age mosaics and low densities, with a definite bitterbrush component (Johnson *et al.* 2008, p. 21). However, an on-the-ground assessment of the butterfly habitat in 2009 by Sarina Jepsen of the Xerces Society for Invertebrate Conservation indicates that encroachment of lodgepole pine trees is occurring (Xerces Society for Invertebrate Conservation 2010, p. 10). Neither the petition nor the information in our files indicates the rate at which lodgepole pine trees are encroaching into the openings and meadows that encompass the Leona's little blue butterfly habitat. However, we have determined that the information provided in the petition and in our files concerning loss of open habitat associated with the encroachment of lodgepole pine trees does present substantial information indicating that the petitioned action may be warranted.

A review of the information provided by the petition and within our files indicates that The Klamath Tribe intends to use controlled burns to manage habitat similar to the Leona's little blue butterfly's habitat (Johnson *et al.* 2008, pp. 23–24). The Klamath Forest Plan's management of the Leona's little blue butterfly habitat is contingent on the future authorization of funding by the U.S. Congress to support The Klamath Tribes' purchase of the Mazama Tree Farm property from Cascade Timberlands, LLC. Until this purchase occurs, there is no information to indicate that Cascade Timberlands, LLC, the current landowner, plans to use fire to manage the Leona's little blue butterfly habitat. In addition, controlled burns appear to have both negative and positive effects on invertebrates (Smallidge and Leopold 1997, p. 271; Huntzinger 2003, p. 9; Black *et al.* 2009, p. 2; Vogel *et al.* 2010, p. 672). Huntzinger (2003, p. 8) observed that butterfly species richness and diversity was greater in burned rather than unburned sites. However, Black *et al.* (2009, pp. 2, 11) observed a decline in Mardon skipper butterfly (*Polites mardon*) abundance at some sites in 2009 following a controlled burn in 2008. In addition, areas that burned within these study sites experienced population reductions within the 2009 flight period, compared to unburned areas, which increased in population numbers (Black *et al.* 2009, pp. 5–10). Vogel *et al.* (2010, p. 663) observed that habitat specialist butterflies required a long recovery period, approximately 50 to 70 months post-burn, to return to their pre-fire abundance and richness. Vogel *et al.* (2010, p. 673) suggests that the only potential for fire-sensitive species recovery is for recolonization from nearby unburned areas. On the other hand, Smallidge and Leopold (1997, p. 271) suggest controlled burns as a means of vegetation management in butterfly habitat, though they caution that controlled burning is most beneficial when the historical natural regime included fire and a comprehensive monitoring plan exists that is associated with the controlled burn (Huntzinger 2003, p. 9). The Oregon Department of Forestry (ODF) has kept extensive records on lightning strikes and their associated fires in this area since 1960. Approximately 10 fires, all under 0.2 ac (0.08 ha) in size, have occurred in occupied Leona's little blue butterfly habitat since 1960 (Johnson 2010, p. 7). Each fire was suppressed by ODF (Johnson 2010, p. 7).

Even though fires are often suppressed, controlled burns or lightning strike fires can escape their perimeters and burn across the landscape. The petition cites an article that recognizes the high potential for fire danger on the Mazama Tree Farm due to a high density of lodgepole pine (Milstein 2008). It is uncertain whether the portion of the 90,000-ac (36,422-ha) Mazama Tree Farm (Milstein 2008) that contains the Leona's little blue butterfly habitat is at high risk of a catastrophic fire. However, a catastrophic fire could be devastating to the habitat. Therefore, we have determined that the information provided in the petition and in our files presents substantial information indicating that the petitioned action may be warranted due to the potential effects of fire on the Leona's little blue butterfly habitat.

A review of the literature provided by the petition and within our files indicates that managed grazing can be considered a useful tool for maintaining butterfly habitat. Sites in southern Britain that were previously managed by

grazing, but were no longer grazed, had several species of butterflies that declined in abundance (Warren 1993, p. 45). However, caution must be used in the decision to implement grazing as a management tool, because overgrazing can have negative consequences on species diversity and abundance. For example, a grazing study in Britain showed that as the intensity of grazing increased, the invertebrate species richness decreased (Gibson *et al.* 1992, p. 171). Different herbivores have various effects upon the vegetation and the habitat that they graze (Warren 1993, p. 46; Smallidge and Leopold 1997, p. 270); therefore, the appropriate herbivores must be used for specific vegetation objectives, and the intensity of herbivore grazing must be monitored to avoid overgrazing (Warren 1993, p. 46; Smallidge and Leopold 1997, p. 270).

The USFS Plan allows for grazing within designated allotments on USFS land (USFS 1990, p. 2–6). However, there is no information within the USFS Plan or within our files, that indicates whether these allotments include the Leona's little blue butterfly or its habitat. The USFS Plan does state that allotments will be managed to improve the condition of the range, and that the demand will be met only when it does not conflict with other uses such as wildlife and recreational needs (USFS 1990, p. 4–12). While the Klamath Forest Plan will allow for grazing on mule deer (*Odocoileus hemionus*) winter range, the Klamath Forest Plan's application to the Leona's little blue butterfly is contingent on the future authorization of funding by the U.S. Congress to support The Klamath Tribes' purchase of the Mazama Tree Farm property from Cascade Timberlands, LLC. There is no information within the petition or within our files that indicates that the current owner, Cascade Timberlands, LLC, or the USFS plan will allow grazing in the Leona's little blue butterfly habitat. Therefore, there is not substantial information to indicate that the petitioned action may be warranted due to habitat loss from grazing. However, we will further evaluate information about this activity's potential impact to the species in our status review.

A review of the information in our files and provided by the petition regarding cinder mines indicates that proposed activities associated with the exploration for cinder mines could be detrimental to the habitat of the Leona's little blue butterfly (Cruz 2006, Web site). However, the two proposed cinder mine expansion projects discussed by the petition, Lookout Butte and Jackson Creek, have both been canceled (USFS 2010, p. 1). File maps describe these projects as a minimum of 7 straight-line miles (mi) (11.3 kilometers (km)) from the known, occupied habitat for the Leona's little blue butterfly (ESRI 2010). The USFS Plan states that ''salable mineral material sources located within state or interstate transportation and utility corridors normally should not be developed'' (USFS Plan 1990, p. 4–57). However, the Leona's little blue butterfly habitat currently includes both transportation corridors and utility corridors in the form of ROWs for the Oregon Department of Transportation (ODOT) and the Bonneville Power Administration (BPA) (Johnson 2010, p. 10). It is unknown whether the Leona's little blue butterfly habitat on the USFS parcels will be developed into cinder mines. While the petition provided us with information regarding proposed projects and their potential impacts to the Leona's little blue butterfly and its habitat, the petition did not provide information, nor do we have information in our files, regarding the status, proximity, or future considerations of other potential cinder mines in or near Leona's little blue butterfly habitat. Therefore, we do not have substantial information to indicate that the petitioned action may be warranted due to loss of habitat from cinder mining activities in the Leona's little blue butterfly habitat. However, we will further evaluate information about this activity's potential impact to the species in our status review.

Milstein (2008) states that The Klamath Tribes intend to develop a ''green energy park centered around a biomass energy facility.'' The Klamath Forest Plan indicates that a 10-megawatt (MW) biomass facility would require a minimum of 7 ac (2.8 ha) for proper siting and 40 truckloads per day of material for fuel (Johnson *et al.* 2008, pp. 92–93). The petition did not provide any information, nor do we have any information in our files, about the proposed location of this facility on the 90,000 ac (36,422-ha) Mazama Tree Farm property, and whether or not it might occur in the Leona's little blue butterfly habitat. It is important to note that this proposed project cannot proceed until The Klamath Tribes receive funding from the U.S. Congress to purchase the property from Cascade Timberlands, LLC. Therefore, there is not substantial information to indicate that the petitioned action may be warranted due to loss of habitat from the biomass facility construction. However, we will further evaluate information about this activity's potential impact to the species in our status review.

While the petition provides references that support the negative effects of herbicides on invertebrates, a review of their references and the information within our files did not provide any evidence that these chemicals are being applied to the Leona's little blue butterfly habitat. Therefore, we have determined that the information provided in the petition and in our files concerning the effects of herbicides on the Leona's little blue butterfly does not present substantial information indicating that the petitioned action may be warranted due to loss of habitat associated with herbicides. However, we will further evaluate information about this activity's potential impact to the species in our status review.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific and commercial information that the petitioned action may be warranted due to the present or threatened destruction, modification or curtailment of habitat or range relating to the encroachment of lodgepole pine trees into the Leona's little blue butterfly habitat and catastrophic fire events. We will further evaluate all information relating to activities addressed under this factor in our status review of the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Information Provided in the Petition

The petition states that insect collection is an essential component to scientific study (Xerces Society for Invertebrate Conservation 2010, p. 16). The petition claims that, in a study to validate the Leona's little blue butterfly as a species, it was necessary to collect 100 individuals (Xerces Society for Invertebrate Conservation 2010, p. 16). The petition also states that the only known population of the Leona's little blue butterfly has a population estimate of 1,000 to 2,000 individuals (Xerces Society for Invertebrate Conservation 2010, p. 16). Therefore, the petition considers the Leona's little blue butterfly to be ''vulnerable to over-collection'' (Xerces Society for Invertebrate Conservation 2010, p. 16).

Evaluation of Information Provided in the Petition and Available in Service Files

Hammond and McCorkle (1999, p. 77) list the number of individual Leona's little blue butterflies collected and distributed to various institutions and

individuals as totaling 130 butterflies. We recognize that butterfly specialists in the past have been avid collectors of butterflies (Sullivan 1993; Yamaguchi 1993, pp. 1–86). However, neither the petition, nor the information within our files, indicates that there is continued or ongoing collection of the Leona's little blue butterfly for commercial, recreational, scientific, or educational purposes. We also do not have information indicating that documented collections have had an adverse effect on the Leona's little blue butterfly. Therefore, we find that the petition and the information within our files does not present substantial information to indicate that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes. However, we will further investigate the potential threat of overutilization for commercial, recreational, scientific, or educational purposes in our status review for this species.

C. Disease or Predation

Information Provided in the Petition

The petition states that the Leona's little blue butterfly is vulnerable to extinction by the threats of disease and predation due to the fact that it is ''only a single population * * * in a highly restricted area'' (Xerces Society for Invertebrate Conservation 2010, p. 16). The petition states that, with normal population fluctuations, even small amounts of habitat loss or degradation can result in a small population's extirpation (Xerces Society for Invertebrate Conservation 2010, p. 16). The petition lists the Asian lady beetle (*Harmonia axyridis*) as a possible predator of the Leona's little blue butterfly (Xerces Society for Invertebrate Conservation 2010, p. 16).

Evaluation of Information Provided in the Petition and Available in Service Files

While the petition cites several sources pertaining to minimum population sizes and the practice of population conservation of invertebrate species in order to avoid extinction, it does not provide any specific information regarding the impacts of predators or disease on the Leona's little blue butterfly. In addition, while the petition lists the Asian lady beetle as a potential predator, it does not provide any references regarding this species or other potential predators or diseases of Lepidopteron species. We also do not have any information regarding the effects of disease or predation on the Leona's little blue butterfly within our files. We have reviewed the petition and the information in our files and find that there is not substantial information to indicate that the petitioned action may be warranted due to disease or predation. However, we will further investigate the potential threat of disease or predation in our status review for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition states that there are no specific existing regulatory mechanisms that currently protect the ''unique requirements of the Leona's little blue butterfly'' (Xerces Society for Invertebrate Conservation 2010, p. 17). The petition states that the Service and USFS do not offer protective status to the Leona's little blue butterfly or address the species within a conservation plan or a National Forest Plan (Xerces Society for Invertebrate Conservation 2010, p. 17). The petition also asserts that both agencies are and have been aware of the species and have funded surveys in the past to better understand the distribution of the species (Xerces Society for Invertebrate Conservation 2010, p. 17). Regarding State mechanisms, the petition notes that invertebrate species do not qualify for listing under the Oregon Endangered Species statute, and that the Oregon Department of Fish and Wildlife did not consider this species in its latest evaluation. Therefore, no State law offers any targeted protection to the Leona's little blue butterfly (Xerces Society for Invertebrate Conservation 2010, p. 17). In addition, the petition states that the Oregon Board of Forestry does not provide any regulations that protect the Leona's little blue butterfly on private lands (Xerces Society for Invertebrate Conservation 2010, p. 17). The petition notes that although The Klamath Tribes will own and manage the bulk of the known occupied habitat once a land acquisition under the Klamath Basin Restoration Agreement is complete, no protection is extended to the Leona's little blue butterfly in the Klamath Forest Plan (Xerces Society for Invertebrate Conservation 2010, p. 17).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition states that there are no specific existing regulatory mechanisms that currently protect the Leona's little blue butterfly or its habitat. As noted in the petition, the Oregon State Endangered Species statute does not recognize invertebrates as eligible for listing and, therefore, protection. We cannot find that the Oregon State Endangered Species statute is inadequate in offering protection that is beyond the scope of that regulation as written. Currently, there are no existing regulatory mechanisms for the Leona's little blue butterfly or its habitat. Therefore, we find that the petition and information available within our files does not present substantial information that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms. However, we will further investigate the potential threat of the inadequacy of existing regulatory mechanisms in our status review for this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition states that due to its ''exceptionally limited range and small population size, the Leona's little blue butterfly is uniquely susceptible to extinction from stochastic events'' (Xerces Society for Invertebrate Conservation 2010, p. 17). In particular, the petition discusses the impacts of genetic inbreeding, droughts, and catastrophic fires on a small, geographically limited population (Xerces Society for Invertebrate Conservation 2010, p. 17). Such events, with no outside populations for re-colonization, could occur and lead to a loss of genetic variability or extermination of the species (Xerces Society for Invertebrate Conservation 2010, p. 17).

In addition, the petition states that six of the threats which could result in habitat loss or curtailment, including fire, timber production management, herbicides, cinder mining, the construction of a biomass facility, and livestock grazing, also have the ability to cause direct mortality of individuals. It also states that the application of insecticides could result in the death of individuals at all stages of their development. The petition claims that fire suppression and the subsequent conifer encroachment that is occurring in the Leona's little blue butterfly habitat is increasing the fuel loads of the forest and could result in a catastrophic fire across the landscape (Xerces Society for Invertebrate Conservation 2010, p. 10). It states that such a fire could result in the extinction of the Leona's little blue butterfly (Xerces Society for Invertebrate Conservation 2010, p. 10). Furthermore, while the petition recognizes the need for active management of the Leona's little blue butterfly habitat, it states that the

impacts of intensified timber production on the Mazama Tree Farm may have a negative impact on the Leona's little blue butterfly, especially if activities, such as trampling by personnel, piling of log slash, and burning of log piles, are completed without consideration of the Leona's little blue butterfly distribution and biology (Xerces Society for Invertebrate Conservation 2010, p. 11).

Additionally, the petition discusses the use of three herbicides—chlorosulfuron, glysophate, and triclopyr—and their direct and indirect impacts to the Leona's little blue butterfly (Xerces Society for Invertebrate Conservation 2010, p. 14). The petition claims that chlorosulfuron, glysophate, and triclopyr are the most commonly used herbicides in timber management and restoration projects and that these chemicals are known to delay the development of butterflies that feed on herbicide-treated plants (Xerces Society for Invertebrate Conservation 2010, p. 14). Also, the petition declares that the activities and heavy equipment associated with the exploration, drilling, and expansion processes associated with cinder mining have the ability to result in direct mortality of the Leona's little blue butterfly (Xerces Society for Invertebrate Conservation 2010, p. 15).

The petition also states that a biomass energy facility may be developed by The Klamath Tribes within the Leona's little blue butterfly habitat if the Mazama Tree Farm property is transferred to The Klamath Tribes. The petition claims that the construction of such a facility could result in direct mortality of individuals, ultimately driving the species to extinction (Xerces Society for Invertebrate Conservation 2010, p. 15). In addition, the petition cites the USFS Plan and The Klamath Tribes' management plan, stating that both plans allow for livestock grazing on the Leona's little blue butterfly habitat (Xerces Society for Invertebrate Conservation 2010, p. 16). While the petition notes the lack of knowledge of the impact of livestock grazing on the Leona's little blue butterfly, it concludes that livestock grazing is incompatible with the management of the Leona's little blue butterfly population because grazing can result in trampling of eggs, larvae, pupae, and adults (Xerces Society for Invertebrate Conservation 2010, pp. 15–16).

Finally, the petition lists three pesticides—diflubenzuron, carbaryl, and malathion—as being commonly used in Klamath County, Oregon, and states that they are toxic to the Leona's little blue butterfly at various life stages (Xerces Society for Invertebrate Conservation 2010, pp. 11–12). The petition states that diflubenzuron (also known as dimlin) is commonly used on the Klamath Marsh National Wildlife Refuge (KMNWR) to control native grasshopper outbreaks and is highly toxic in small doses to Lepidoptera caterpillars (Xerces Society for Invertebrate Conservation 2010, p. 12). The petition cites diflubenzuron's ability to affect butterflies at their larval stage by arresting the chitin synthesis process (Xerces Society for Invertebrate Conservation 2010, p. 12). The petition also asserts that carbaryl and malathion both attack the nervous systems of individuals and are highly toxic to terrestrial invertebrates at all life stages (Xerces Society for Invertebrate Conservation 2010, pp. 12–13). The petition asserts that these chemicals have the ability to affect the Leona's little blue butterfly by direct application as well as by pesticide drift (Xerces Society for Invertebrate Conservation 2010, p. 13). The petition claims that small doses of pesticide are capable of reaching a distance of 6.2 mi (10 km) via pesticide drift during ground or aerial applications completed by the Service and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) (Xerces Society for Invertebrate Conservation 2010, pp. 11, 14).

Evaluation of Information Provided in the Petition and Available in Service Files

Having a small population size in and of itself will not ordinarily lead to population extinction (Ehrlich and Murphy 1987, p. 127). Observations of small populations of checkerspot butterflies (*Euphydras editha*) suggest that the populations can persist for numerous generations (Ehrlich and Murphy 1987, p. 127). In addition, after a population of checkerspot butterflies went through a genetic bottleneck, it continued to persist, suggesting that such effects may not be limiting factors for butterflies (Ehrlich and Murphy 1987, p. 127). Checkerspot butterflies have demonstrated the ability to increase their dispersal distance in dry years as well as in years with population explosions (Erhlich and Murphy 1987, p. 127). However, Ehrlich and Murphy (1987, p. 127) state that small populations are particularly susceptible to extinction due to stochastic events. While the information in our files suggests that butterflies are adaptable and capable of persisting in small populations, we agree that a small, geographically limited population is more vulnerable to extinction due to stochastic events, such as the potential threat of catastrophic fire in the case of Leona's little blue butterfly. Therefore, we have determined that the information provided in the petition and in our files presents substantial information that the petitioned action may be warranted due to stochastic events such as the potential threat of catastrophic fire.

A review of the information provided by the petition and within our files indicates that The Klamath Tribe intends to use controlled burns to manage habitat similar to the Leona's little blue butterfly habitat (Johnson *et al.* 2008, pp. 23–24). The Klamath Forest Plan's management of Leona's little blue butterfly habitat is contingent on the future authorization of funding by the U.S. Congress to support The Klamath Tribes' purchase of the Mazama Tree Farm property from Cascade Timberlands, LLC. There is no information to indicate that Cascade Timberlands, LLC, the current landowner, plans to use fire to manage Leona's little blue butterfly habitat.

Even though fires are often suppressed, controlled burns or lightning strike fires can escape their perimeters and burn across the landscape. The petition cites an article that recognizes the high potential for fire danger on the Mazama Tree Farm due to a high density of lodgepole pine (Milstein 2008). It is uncertain whether the portion of the 90,000-ac (36,422-ha) Mazama Tree Farm (Milstein 2008) that contains the Leona's little blue butterfly habitat is at high risk of a catastrophic fire. However, a catastrophic fire could cause the direct loss of individuals and have a devastating effect on the butterfly population. Therefore, we have determined that the information provided in the petition and in our files concerning the effects of fire on the Leona's little blue butterfly presents substantial information indicating that the petitioned action may be warranted due to the direct loss of individuals to fire.

It is unknown how intensive timber production impacts the Leona's little blue butterfly. We recognize that the potential impacts of intensive timber production (piling of slash piles, burning piles, and trampling) could be detrimental to individuals if the Leona's little blue butterfly is not taken into consideration prior to project initiation. However, we have no information to indicate that the current landowner, Cascade Timberlands, LLC, intends to resume timber extraction into the future. In addition, while there is information that indicates The Klamath Tribes' proposed management for the Leona's little blue butterfly habitat is timber extraction (Johnson *et al.* 2008, pp. 23–

24), the Klamath Forest Plan will not be implemented until the U.S. Congress authorizes funding for The Klamath Tribes' purchase of the Mazama Tree Farm property from Cascade Timberlands, LLC. Therefore, we do not have substantial information within our files to indicate the petitioned action may be warranted due to direct mortality from timber production. However, we will further evaluate information about this activity's potential impact to the species in our status review.

While the petition provides references that support the negative effects of herbicides on invertebrates, a review of the references provided by the petition and the information within our files does not provide evidence that these chemicals are being applied to the habitat of the Leona's little blue butterfly. Therefore, we have determined that the information provided in the petition and in our files concerning the effects of herbicides on the Leona's little blue butterfly does not present substantial information indicating that the petitioned action may be warranted due to direct mortality of individuals. However, we will further evaluate information about this activity's potential impact to the species in our status review.

A review of the information in our files and provided by the petition regarding cinder mines indicates that proposed activities associated with the exploration for cinder mines could be detrimental to the Leona's little blue butterfly (Cruz 2006, Web site). However, while the petition provided information regarding proposed projects and their potential impacts to the Leona's little blue butterflies and their habitats, it did not provide information, nor do we have information in our files, regarding the status, proximity, or future considerations of other potential cinder mines in or near the Leona's little blue butterfly habitat. Therefore, there is not substantial information to indicate that the petitioned action may be warranted due to the direct loss of individuals from cinder mining activities. However, we will further evaluate information about this activity's potential impact to the species in our status review.

The Klamath Forest Plan indicates that a 10-megawatt (MW) biomass facility would require a minimum of 7 ac (2.8 ha) for proper siting and 40 truckloads per day of material for fuel (Johnson *et al.* 2008, pp. 92–93). The petition did not provide any information, nor do we have any information in our files, about the proposed location of this facility on the 90,000-ac (36,422-ha) Mazama Tree Farm property, and whether or not it might occur in the Leona's little blue butterfly habitat, and thus have the potential to directly impact individuals. It is important to note that this proposed project cannot proceed until The Klamath Tribes' receive funding from the U.S. Congress to purchase the property from Cascade Timberlands, LLC. Therefore, there is not substantial information to indicate the petitioned action may be warranted due to direct mortality of individuals from the biomass facility construction and subsequent operations. However, we will further evaluate information about this activity's potential impact to the species in our status review.

The USFS Plan allows for grazing within designated allotments on USFS land (USFS 1990, pp. 2–6). However, there is no information within the USFS Plan, or within our files, that indicates whether these allotments include the Leona's little blue butterfly or its habitat. The USFS Plan does state that allotments will be managed to improve the condition of the range, and that the demand for grazing will be met only when it does not conflict with other uses, such as wildlife and recreational needs (USFS 1990, pp. 4–12). While the Klamath Forest Plan will allow for grazing on mule deer winter range, the Klamath Forest Plan's application to the Leona's little blue butterfly habitat is contingent on the future authorization of funding by the U.S. Congress to support The Klamath Tribes' purchase of the Mazama Tree Farm property from Cascade Timberlands, LLC. There is no information within the petition or within our files that indicates that the current owner, Cascade Timberlands, LLC, or the USFS plan to allow grazing in the Leona's little blue butterfly habitat. Therefore, there is not substantial information to indicate that the petitioned action may be warranted due to direct mortality associated with grazing. However, we will further evaluate information about this activity's potential impact to the species in our status review.

A review of the information provided by the petition and within our files indicates that, when used to control pest species, insecticides such as diflubenzuron, carbaryl, and malathion can have a detrimental effect on nontarget vertebrate and invertebrate species (Alston and Teppedino 2000, p. III.4–1; Sample *et al.* 1993, p. 622; Cox 1993, pp. 31–34). A review of the Klamath Marsh National Wildlife Refuge Comprehensive Conservation Plan (KMNWR–CCP) revealed that, since 2004, the KMNWR no longer uses pesticides to remove clear-winged grasshoppers (*Camnula pellucida* (Scudder)) unless the population exceeds the economic thresholds of 14 to 24 individuals per square yard (USFWS 2010, p. 68). Since 2004, the KMNWR has used pesticides to remove grasshoppers in the years 2005 and 2007 (USFWS 2010, p. 68). In addition, the KMNWR no longer uses malathion or carbaryl for the removal of pest species like clear-winged grasshoppers, but instead uses diflubenzuron (USFWS 2010, p. 68). To minimize exposure impacts, the KMNWR applies the chemical to the ground from an all-terrain vehicle utilizing a method known as Reduced Area Agent Treatment Strategy (RAATS) (USFWS 2010, p. 68). This method not only reduces the amount of chemicals used, but it also reduces the area that is impacted both by direct application and pesticide drift. A review of a map of the KMNWR–CCP (2010, p. 69) depicting the general locations of clear-winged grasshopper outbreaks in 2007, shows a straight-line distance to the nearest known Leona's little blue butterfly location to be over 7 mi (11.3 km). Disregarding the RAATS application method and its associated minimization methods, the distance of 7 mi (11.3 km) is still beyond the petition's assumed worst case scenario pesticide drift distance of 6.2 mi (10 km) (Xerces Society for Invertebrate Conservation 2010, p. 14). Based on the information provided in the petition and our files, there is not substantial information to indicate that the petitioned action may be warranted due to direct mortality of individuals from direct application of pesticides on KMNWR or pesticide drift from KMNWR. However, we will further evaluate information about this activity's potential impact to the species in our status review.

Private landowners near the KMNWR, and in cooperation with APHIS, use malathion, diflubenzuron, and carbaryl for grasshopper control (APHIS 2009, pp. 1, 12). This action occurs primarily on rangelands in Klamath County, Oregon, and is focused on grassland and shrublands while excluding forest (APHIS 2009, pp. 15–16). A review of our files regarding APHIS' grasshopper and Mormon cricket (*Anabrus simplex*) suppression program shows several conservation measures designed to minimize the impact of pesticides on listed species and sensitive areas. Regardless of the mode of application, the Environmental Monitoring Plan states that APHIS is required to use buffers around areas with listed species and sensitive areas such as residential communities, organic crops, and surface

water bodies (APHIS 2010, p. 1). A review of aerial photos within our files shows that the nearest known Leona's little blue butterfly locations are separated from rangeland by both forests and residential communities. Aerial application is of greatest concern for pesticide drift (Ghassemi *et al.* 1982, p. 510). APHIS has strict requirements when conducting aerial applications, including a requirement that they must not spray when winds exceed 10 miles per hour (mph) and that application will not occur when it is raining, or foggy, when foliage is wet, when there is air turbulence, when a temperature inversion exists in the project area, or when the temperature exceeds 80 Fahrenheit degrees (26.7 °C) (Mauer 2010, p. 3). In addition, all boundaries and buffers will be clearly marked, all airplanes will be equipped with global positioning systems to guide the pilots, and free flying is not allowed (Mauer 2010, p. 3). APHIS will also conduct monitoring to ensure that they are in compliance with the protective measures, including dye cards to monitor the extent and concentration of pesticide drift (Mauer 2010, p. 3 and APHIS 2010 Environmental Monitoring Plan, p. 3). In order to minimize the risk to nontarget terrestrial invertebrate species, APHIS uses only diflubenzuron spray or carbaryl bait whenever possible (APHIS 2009, p. 33). These chemicals are only toxic to invertebrates when they are in their immature stages (APHIS 2009, p. 12). In addition, diflubenzuron is normally only applied prior to the third week of June, as its efficacy decreases by the first week of July as a result of grasshopper development (APHIS 2009, p. 12). The Leona's little blue butterfly emerges from its chrysalis as an adult in mid-June through mid-July, and its immature stages occur 2 to 6 weeks after the adults emerge (mid-July to August) (Ross 2008, pp. 1, 4, 8). In addition, a monitoring study of carbaryl bait application indicated that the maximum particle drift was 150 feet (46 meters) in crosswinds of 13 mph (APHIS 2010, p. 7). Therefore, the immature stage of Leona's little blue butterfly is not at risk from APHIS' current diflubenzuron application program, because of the timing of its development and APHIS' pesticide application methods.

While information suggests that APHIS' pesticide application methods may not harm the Leona's little blue butterfly, we recognize that APHIS' low-impact method is a voluntary program (APHIS 2009, p. 1). A review of the petition and our files does not indicate to what extent private landowners near the known Leona's little blue butterfly locations and habitat are utilizing APHIS' methods. As a result, the impacts of private-rangeland pesticide application to the Leona's little blue butterfly are unknown. Therefore, there is not substantial information to indicate that the petitioned action may be warranted due to direct mortality by the application of pesticides by the KMNWR, APHIS, and private landowners in Klamath County, Oregon. However, we will further evaluate information about this activity's potential impact to the species in our status review.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific and commercial information indicating that the petitioned action may be warranted due to other natural and manmade factors relating to limited range and small population size and vulnerability to stochastic events. We will further evaluate information relating to events and activities addressed under this factor in our status review of the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that listing the Leona's little blue butterfly throughout its entire range may be warranted. This finding is based on information provided under Factors A (present or threatened destruction, modification, or curtailment of the species' habitat or range) and E (other natural or manmade factors affecting the species' continued existence). Specifically, we find that the following may pose threats to the Leona's little blue butterfly throughout all or a significant portion of its range, such that the petitioned action may be warranted: The encroachment of lodgepole pine trees into the Leona's little blue butterfly habitat and the loss of habitat and individuals from catastrophic fire and stochastic events. We determine that the information provided under Factors B (overutilization for commercial, recreational, scientific or educational purposes), C (disease or predation), and D (the inadequacy of existing regulatory mechanisms) is not substantial. However, we will further evaluate all information related to these factors in our status review of the species.

Because we have found that the petition presents substantial information indicating that listing the Leona's little blue butterfly may be warranted, we are initiating a status review to determine whether listing the Leona's little blue butterfly under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Klamath Falls Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2011.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–20864 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110606316–1463–01]

RIN 0648–BB15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26 and Amendment 29 Supplement

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to supplement the regulations implementing Amendments 26 and 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). Amendment 26 established an individual fishing quota (IFQ) program for the red snapper commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). Amendment 29 established a multi-species IFQ program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf EEZ. If implemented, this rule would implement transferability measures for the red snapper IFQ program contained in Amendment 26 that are required to be effective as of January 1, 2012. This rule would also require all Gulf IFQ applicants and participants to certify their status as U.S. citizens or permanent resident aliens to meet current Gulf IFQ program and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements. Additionally, this rule would make revisions to the codified text to remove outdated language specific to the Gulf IFQ programs. The intent of this rule is to specify the process for the general public to participate in the Gulf red snapper IFQ program and ensure efficient functioning of both IFQ programs in the Gulf of Mexico.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on September 16, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0178'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Catherine Bruger, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-rulemaking portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0178'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0178'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendments 26 and 29, which include a final environmental impact statement (FEIS), a regulatory impact review (RIR), and a regulatory flexibility act analysis may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GulfReefFishIFQ.htm.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at *OIRASubmission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, e-mail *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

On November 22, 2006, NMFS published a final rule (71 FR 67447) to implement Amendment 26 to the Reef Fish FMP (Amendment 26), which established the Gulf of Mexico Red Snapper Individual Fishing Quota (IFQ) program. The program became effective on January 1, 2007. In addition to the initial implementation of the Gulf red snapper IFQ program, Amendment 26 implemented a provision to allow general public participation within the red snapper IFQ program 5 years after program implementation. The general public participation provision becomes effective on January 1, 2012. The intent of this provision was to give commercial reef fish fishermen the opportunity to better understand their individual fishing quota's economic value prior to January 1, 2012, and after January 1, 2012, to allow the general public the opportunity to enter the red snapper IFQ program and receive transferred shares and allocation from current IFQ participants, thus expanding the transferability of red snapper shares and allocation.

As described in Amendment 26, on January 1, 2012, all U.S. citizens and permanent resident aliens will be eligible to acquire red snapper IFQ shares and allocation in the Gulf red snapper IFQ program through transfer. Prior to January 1, 2012, only participants with a valid commercial Gulf reef fish permit can establish IFQ online accounts and hold red snapper quota shares and allocation. Therefore, beginning on January 1, 2012, any U.S. citizen or permanent resident alien, after completing and submitting an information collection regarding citizenship status, will be eligible to acquire red snapper IFQ shares and allocation through transfer. However, the possession of a valid commercial Gulf reef fish permit and applicable red snapper IFQ allocation remains a requirement to possess, land, or sell Gulf IFQ red snapper. This rule would specify the process for the general public to participate in the Gulf red snapper IFQ program beginning on January 1, 2012.

In 2009, NMFS published a final rule implementing Amendment 29 to the Reef Fish FMP (74 FR 44732, August 31, 2009), which established the Gulf of Mexico IFQ program for groupers and tilefishes. The reauthorized Magnuson-Stevens Act of 2006, requires any participant in an IFQ program to be a U.S. citizen or permanent resident alien. Currently, information regarding an IFQ participant's status as a U.S. citizen or permanent resident alien is not collected on Federal Gulf reef fish permit applications or through the Gulf IFQ system. If enacted, this rule would require that all Gulf IFQ program participants certify their citizenship status to participate in a Gulf IFQ program.

Management Measures Contained in This Proposed Rule

This rule would establish an information collection to meet the January 1, 2012 requirements of the Gulf red snapper IFQ program outlined in Amendment 26, and meet the requirements of the reauthorized Magnuson-Stevens Act for the grouper-tilefish IFQ program. This rule also describes the procedures that are

necessary for all qualified entities to apply for and maintain an IFQ online account. Additionally, this rule would make revisions to the codified text to remove outdated language for the red snapper and grouper-tilefish IFQ programs. Specifically, this rule would remove regulatory language that was applicable to the initial implementation of the red snapper and grouper-tilefish IFQ programs and is no longer needed to be included in the regulations.

Collection of Information for Gulf IFQ Applicants and Participants

If implemented, this rule would require Gulf IFQ program applicants to establish an IFQ online account to participate in the program. In order to establish an IFQ online account and in accordance with the regulations implemented for Amendments 26 and 29 to the Reef Fish FMP, information about the participants must be collected prior to establishing an IFQ online account for the applicant. This collection-of-information is necessary to identify participants for the effective monitoring, enforcement, and management of the Gulf IFQ programs established through Amendments 26 and 29 to the Reef Fish FMP. Specifically, this rule would establish the requirement that any new applicant and all current participants in a Gulf IFQ program must submit an application for an IFQ online account, certifying their status as either a U.S. citizen or permanent resident alien, to obtain and maintain an IFQ online account. The information requested will include contact information (name, address, and phone number), date of birth, certification of citizenship status, tax identification number, and corporate shareholder information where appropriate. Account holders would be required to update and confirm their account information every 2 years to keep their online IFQ account valid.

Revision and Reorganization of Gulf IFQ Language

This rule would remove language in both the red snapper and the grouper-tilefish IFQ programs that was applicable to the initial implementation of these programs and is no longer relevant. In addition to the removal of obsolete language, §§ 622.16 (red snapper IFQ program) and 622.20 (grouper-tilefish IFQ program) have been renumbered and reorganized to provide for a more clear and concise arrangement of the codified text.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 26 and 29, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this rule is to establish an administrative requirement for the collection of information necessary to effectively monitor and manage the Gulf of Mexico IFQ programs, pertinent to the January 1, 2012 requirements. The objective of this rule is to maximize the net benefits to society of the red snapper and grouper-tilefish commercial components of the reef fish fishery in the Gulf of Mexico. The Magnuson-Stevens Act provides the statutory basis for this action.

With the exception of one group of entities, it is not feasible to identify, quantify, or describe all of the small entities to which this rule would apply. This rule, if implemented, would apply to all entities that currently have an IFQ online account for participation in a Gulf of Mexico IFQ program and any entity that is a U.S. citizen or permanent resident alien that wishes to acquire red snapper IFQ shares or allocation through transfer beginning January 1, 2012. The group of entities that wish to acquire red snapper IFQ shares or allocation through transfer beginning January 1, 2012 consists of an unidentifiable and unquantifiable number of entities, both small and large. Small and large entities, as well as individual citizens, may be motivated to acquire IFQ shares or allocation for short- or long-term economic gain, speculation, or environmental protection. As a result, prospective entities may be businesses, nonprofit organizations, or even government jurisdictions, particularly if it is assumed that the restriction limiting IFQ harvest to vessels with valid Federal commercial reef fish permits will be eliminated at some point in the future. As such, prospective entities could include marinas, chambers of commerce, recreational angler clubs and organizations, bait and tackle shops, and hotels and motels, in addition to environmental groups, student clubs, and other groups. Narrowing this list to one or a few groups of entities reasonably expected to apply for an IFQ online account is not possible with available information. Most of these entities are assumed to be, for the purpose of this analysis, small entities.

The group of entities consisting of those who currently have an IFQ online account can be identified, quantified, and described. Because all commercial reef fish permit holders can currently establish an IFQ online account, all entities that possess a valid or renewable commercial reef fish permit are assumed to comprise the universe of entities with an IFQ online account. On May 12, 2011, 927 entities possessed a valid or renewable commercial reef fish permit. Average annual total revenues for vessels with a commercial reef fish permit are estimated to be less than $100,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Based on the average annual gross revenue estimate provided above, all commercial reef fish vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This rule would require all entities that currently possess an online IFQ account, and all entities who wish to establish an online IFQ account to acquire red snapper IFQ shares or allocation beginning January 1, 2012, to submit an application containing contact information (name, address, and phone number), date of birth, certification of citizenship status, tax identification number, and corporate shareholder information, where appropriate. Account holders would be required to update and confirm their account information every 2 years to keep their online IFQ account valid. No special professional skills would be required to prepare and submit the application or periodic update. Other than the request for information, this rule would impose no new requirements, obligations, restrictions or limits on any of the affected entities.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This rule would not be expected to significantly reduce the profits of any small entities. This rule would establish an insignificant administrative requirement for current and future participants in the red snapper and grouper-tilefish IFQ programs. The economic burden of this administrative requirement would consist of the minor time and postage costs of completing and submitting a short application, estimated to take approximately 10 minutes to complete. Participants would be required to update and confirm their IFQ online account information every 2 years. No application or processing fee would be required for the initial application or periodic update and confirmation. Because the individual economic burden would be expected to be minor, no substantive costs or reduction in profits for any small entities is expected to be incurred.

Because this rule, if implemented, is not expected to have a direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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

This proposed rule contains a collection-of-information requirement subject to the PRA applicable to participants in the Gulf IFQ programs, namely, a requirement to complete and submit an IFQ Online Application to certify a participant's U.S. citizenship status and to update and confirm their application every 2 years.

This requirement has been submitted to OMB for approval. The public reporting burden for this collection-of-information is estimated to average 10 minutes per applicant/participant every 2 years. This estimate of the public reporting burden includes the time for reviewing instructions, 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 will 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 regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 12, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. Revise § 622.16 to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) *General.* This section establishes an IFQ program for the commercial red snapper component of the Gulf reef fish fishery. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. As of January 1, 2012, IFQ shares and allocation can only be transferred to U.S. citizens and permanent resident aliens. See § 622.16(b)(9) regarding eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel account. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section regarding the harvest and possession of Gulf IFQ red snapper apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel account as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.,* registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.*, Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA mailed initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to set up the required IFQ online account. As of January 1, 2012, all U.S. citizens and permanent resident aliens are eligible to establish an IFQ online account. As of January 1, 2012, all current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.,* mailing address, corporate shareholdings, etc.) is up to date. See § 622.16(b)(9) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the

catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased.

(5) *Initial shareholder IFQ account setup information.* As soon as possible after an IFQ Online Account is established, the RA will provide IFQ account holders information pertinent to the IFQ program. This information will include:

(i) General instructions regarding procedures related to the IFQ online system; and

(ii) A user identification number—the personal identification number (PIN) was provided in a subsequent letter.

(6) *Dealer notification and IFQ account setup information.* As soon as possible after November 22, 2006, the RA mailed each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (b)(1)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.,* a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with the reporting form(s) and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov.* The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf red snapper landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payments methods

are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov.* As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper.* At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov,* or by calling IFQ Customer Service at 1–866–425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.,* they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.,* has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov.* Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years

this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (b)(6) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request cannot be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov,* entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. Eastern Time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. Eastern Time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–866–425–7627.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation's total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov,* of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable shares. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (b)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012.* The provisions of paragraph (b)(9) of this section apply to all eligible participants for the Gulf red snapper IFQ program beginning January 1, 2012. In addition to eligible participants who already participate in the Gulf red snapper IFQ program, as of January 1, 2012, all U.S. citizens and permanent resident aliens who are in compliance with the provisions of this section are eligible and may participate in the Gulf red snapper IFQ program as shareholders and allocation holders. The requirements to meet the definition of a U.S. citizen are described in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens are those individuals who have been lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws. In order to harvest and possess Gulf IFQ red snapper, the requirements for a Gulf red snapper IFQ vessel account, as specified in § 622.4(a)(2)(ix), or a Gulf IFQ dealer endorsement, as specified in § 622.4(a)(4)(ii) apply.

(i) *Gulf red snapper IFQ program participation for current red snapper IFQ account holders.* A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov,* to certify status as a U.S. citizen or permanent resident alien. The IFQ account holder must also complete and submit any other information on this form that may

be necessary for the administration of the IFQ online account. A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account, with an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–866–425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the participant's IFQ online account until a completed application is submitted. After January 1, 2012, participants who certify that they are either not U.S. citizens or permanent resident aliens will be ineligible to receive shares or allocation through transfer.

(ii) *Gulf red snapper IFQ program participation for entities that do not currently possess an IFQ online account.* The following procedures apply to U.S. citizens or permanent resident aliens who are not otherwise described in either paragraphs (a) or (b)(9)(i) of this section.

(A) To establish an IFQ online account, a person must first complete the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov.* An applicant for an IFQ online account under this paragraph must provide the following;

(*1*) Name; address; telephone number; date of birth; tax identification number; certification of status as either a U.S. citizen or permanent resident alien; and if a corporation, a list of all officers, directors, shareholders, and registered agents of the business; and other identifying information as specified on the application.

(*2*) Any other information that may be necessary for the establishment or administration of the IFQ online account.

(B) Completed applications and all required supporting documentation must be submitted to the RA. There is no fee to access the Web site or establish an IFQ online account. An applicant that submits an incomplete application will be contacted by the RA to correct any deficiencies. If an applicant fails to correct the deficiency within 30 days of being notified of the deficient application, the application will be considered abandoned.

(C) After an applicant submits a completed application for an IFQ online account, the RA will mail the applicant general instructions regarding procedures related to the IFQ online system, including how to set up an online account and a user identification number—the personal identification number (PIN) will be provided in a subsequent letter.

(D) A participant who has established an IFQ online account must notify the RA within 30 days after there is any change in the information submitted through the application for an IFQ Online Account. The IFQ online account is void if any change in the application information is not reported within 30 days.

(E) A person who has established an IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will mail each participant who has established an online account an application approximately 2 months prior to the Account Validity Date. A participant who does not receive an application at least 45 days prior to the Account Validity Date must contact IFQ Customer Service at 1–866–425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the IFQ online account until a completed application is submitted.

(F) For information regarding transfer of IFQ shares and allocation, the IFQ share cap, and the annual recalculation and notification of IFQ shares and allocation, see paragraphs (b)(4), (b)(6), and (b)(8) of this section, respectively.

(G) Participation in the Gulf red snapper IFQ program beyond transferring IFQ shares and allocation is explained in paragraphs (a) through (b)(8) of this section.

3. Revise § 622.20 to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial components of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and other SWG) and tilefishes (including goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind, and scamp, but only as specified in paragraph (b)(2)(vi) of this section. For the purposes of this IFQ program, other SWG includes black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper, and warsaw grouper and speckled hind, but only as specified in paragraph (b)(2)(v) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, and tilefishes, and the annual commercial catch allowance (meaning the SWG quota minus gag and red grouper) for other SWG species, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf groupers and tilefishes in or from the Gulf EEZ and, for a person aboard a vessel with an IFQ vessel account for Gulf groupers and tilefishes as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf groupers and tilefishes regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.,* registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must

set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.* Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf IFQ dealer endorsement must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to set up the required IFQ online account. All current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.,* mailing address, corporate shareholdings, etc.) is up to date. See § 622.20(b)(9) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, and tilefishes; and times the annual commercial catch allowance for other SWG. If a quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota is increased.

(5) *Red grouper and gag multi-use allocation*—(i) *Red grouper multi-use allocation.* At the beginning of each fishing year, 4 percent of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(ii) *Gag multi-use allocation.* At the beginning of each fishing year, 8 percent of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's gag allocation has been landed and sold, or transferred; and possess, land or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section.

(6) *Warsaw grouper and speckled hind classification.* Warsaw grouper and speckled hind are considered DWG species and under certain circumstances SWG species. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) *Scamp classification.* Scamp is considered a SWG species and under certain circumstances a DWG. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

(8) *Initial shareholder and IFQ account setup information.* On or about October 1, 2009, the RA mailed each Gulf reef fish commercial vessel permittee with grouper and tilefish landings history during the qualifying years, information pertinent to the IFQ program. This information included:

(i) Gulf grouper and tilefish landings associated with the Gulf reef fish commercial vessel permit during each year of the applicable landings history;

(ii) The highest average annual grouper and tilefish landings, in each of the five share categories, based on the permittee's best 5 out of 6 years of applicable landings history;

(iii) The permittee's initial IFQ share, in each of the five share categories, based on the highest average annual landings associated with the permittee's best 5 out of 6 years of applicable landings history;

(iv) The initial IFQ allocation, in each of the five share categories, as well as their total IFQ allocation;

(v) Instructions for appeals;

(vi) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(vii) A user identification number; and a personal identification number (PIN) that was provided in a subsequent letter.

(9) *Dealer notification and IFQ account setup information.* On or about October 1, 2009, the RA mailed each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements.* (i) Gulf

groupers and tilefishes subject to this IFQ program can only be possessed or landed by a vessel with a IFQ vessel account for Gulf groupers and tilefishes. Such groupers and tilefishes can only be received by a dealer with a Gulf IFQ dealer endorsement. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, from the time of advance notice of landing through landing, except as provided in paragraph (b)(1)(ii) of this section.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation from among any of the grouper or tilefish share categories, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.*, a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf groupers and tilefishes via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of groupers and tilefishes landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN number for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov.* The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the IFQ program for Gulf groupers and tilefishes. The fee cannot exceed 3 percent of the ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf groupers and tilefishes landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ account holder specified in the documented IFQ landing transaction report for Gulf groupers and tilefishes is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf groupers or tilefishes subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ account holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, in individual IFQ dealer accounts, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the Web-based form available on the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov.* As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude

authorization to complete the landing transaction report required in paragraph (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. IFQ groupers or tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ groupers and tilefishes.* At-sea or dockside transfer of IFQ groupers or tilefishes from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ groupers or tilefishes are offloaded to a vehicle for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers or tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov,* or by calling IFQ Customer Service at 1–866–425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have your landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable water;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard; animal; a posted sign restricting access to the site; or any other physical deterrent.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2015, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, an IFQ vessel account for Gulf groupers and tilefishes, and IFQ allocation for Gulf groupers or tilefishes are required to possess (at and after the time of the advance notice of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.,* they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.,* has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov.* An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share or allocation caps as specified in paragraph (b)(6) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures and restrictions*—(A) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov,* entering the required information, including but not limited to, the name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation

transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the Web site will provide a transfer approval code to the transferor and transferee confirming the transaction.

(B) *Multi-use allocation transfer restrictions*—(*1*) *Red grouper multi-use allocation.* Red grouper multi-use allocation may only be transferred after all an IFQ account holder's red grouper allocation has been landed and sold, or transferred.

(*2*) *Gag multi-use allocation.* Gag multi-use allocation may only be transferred after all an IFQ account holder's gag allocation has been landed and sold, or transferred.

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. Eastern Time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. Eastern Time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–866–425–7627.

(6) *IFQ share and allocation caps.* A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds in a corporation.

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. A corporation must provide to the RA the identity of the shareholders of the corporation and their percent of shares in the corporation for initial issuance of IFQ shares and allocation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account.

(ii) *Total allocation cap.* No person, including a corporation or other entity, may individually or collectively hold, cumulatively during any fishing year, IFQ allocation in excess of the total allocation cap. The total allocation cap is the sum of the maximum allocations associated with the share caps for each individual share category and is calculated annually based on the applicable quotas or catch allowance associated with each share category.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *https://ifq.sero.nmfs.noaa.gov,* of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of IFQ shares. Allocation, for each share category, is calculated by multiplying IFQ share for that category times the annual commercial quota or commercial catch allowance for that share category. Updated allocation values will reflect any change in IFQ share for each share category, any change in the annual commercial quota or commercial catch allowance for the applicable categories; and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Gulf grouper and tilefish IFQ program participation for current grouper and tilefish IFQ account holders.* A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov,* to certify status as a U.S. citizen or permanent resident alien. The account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account. A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–866–425–7627 and request an application. Failure to submit a completed application prior to the participant's account validity date will lead to the suspension of the participant's access to his IFQ online account until a completed application is submitted. Participants who certify that they are either not a U.S. citizens or permanent resident alien will be ineligible to receive shares or allocation through transfer.

[FR Doc. 2011–21000 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 159
Wednesday, August 17, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0083]

Notice of Request for Extension of Approval of an Information Collection; User Fee Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the collection of user fees.

DATES: We will consider all comments that we receive on or before October 17, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0083-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0083* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on user fees, contact Ms. Kris Caraher, User Fees Section Head, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 734–5743. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: User Fee Regulations.

OMB Number: 0579–0094.

Type of Request: Extension of approval of an information collection.

Abstract: Section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for agricultural quarantine and inspection (AQI) services, for providing for the inspection and certification of plants and plant products offered for export or transiting the United States, and for providing veterinary diagnostic services and services related to the importation and exportation of animals and animal products.

Although certain AQI functions, but not the laws or regulations upon which they are premised, were transferred from APHIS to the Customs and Border Protection (CBP) bureau of the Department of Homeland Security in 2002, APHIS remains responsible for the regulations related to AQI activities, including the user fee regulations. APHIS also remains responsible for administration of the user fee programs.

Neither APHIS nor CBP receives an appropriation to fund these activities; instead, user fees are calculated and assessed to ensure full cost recovery of each user fee program. If the information was not collected, the agencies would not be able to perform the services since the fees collected are necessary to fund the work.

Requesters of services usually are repeat customers, and, in many cases, request that we bill them for our services. Also, the 1996 Debt Collection Improvement Act requires that agencies collect tax identification numbers (TINs) from all persons doing business with the Government for purposes of collecting delinquent debts. Without a TIN, service cannot be provided on a credit basis.

The requests for services are in writing, by telephone, or in person. The information contained in each request identifies the specific service requested and the time in which the requester wishes the service to be performed. This information is necessary in order for the animal import centers and port offices to schedule the work and to calculate the fees due.

APHIS is responsible for ensuring that the fees collected are correct and that they are remitted in full and in a timely manner. To ensure this, the party (ticketing agents for transportation companies) responsible for collecting and remitting fees must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We also require that whoever is responsible for making fee payments advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances.

This information collection is necessary for APHIS to effectively collect fees, ensure remittances in a timely manner, and determine proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees.

We have reviewed the paperwork requirements of the user fee programs and have made every possible effort to streamline our processes and minimize the impact on the public. Whenever possible, we use existing billing/collection methods to minimize the cost to the Agency.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0541 hours per response.

Respondents: Arriving international passengers, owners and operators of arriving international means of conveyance, importers/exporters who wish to import or export plants and plant products, and importers/exporters who wish to import or export animals and animal products.

Estimated annual number of respondents: 51,957.

Estimated annual number of responses per respondent: 5.69.

Estimated annual number of responses: 295,881.

Estimated total annual burden on respondents: 15,997 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of August 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–20883 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0078]

Notice of Availability of a Pest Risk Analysis for the Importation of Shredded Lettuce From Egypt

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh shredded lettuce from Egypt. Based on this analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh shredded lettuce from Egypt. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before October 17, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0078–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0078, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0078* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Import Specialist, RCC, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–4394.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the Government of Egypt to allow the importation of fresh shredded lettuce (*Lactuca sativa* L.) from Egypt into the continental United States. Currently, fresh shredded lettuce is not authorized for entry from Egypt. We have completed a pest risk analysis for the purpose of evaluating the pest risks associated with the importation of fresh shredded lettuce into the continental United States. The analysis consists of a pest list identifying pests of quarantine significance that are present in Egypt and could follow the pathway of importation into the United States and a risk management document identifying phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We have concluded that fresh shredded lettuce can be safely imported into the continental United States from Egypt using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The measures we selected are:

- Fresh shredded lettuce may be imported into the continental United States in commercial consignments only.
- Each consignment of shredded lettuce leaves must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Egypt with an additional declaration stating the following: ''Shredded lettuce leaves in this consignment were inspected and found free from quarantine pests.''

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh shredded lettuce from Egypt in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for the importation of fresh shredded lettuce from Egypt into the continental United States subject to the requirements specified in the risk management documents.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–20882 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance to Conduct Methodological Testing, Surveys, Focus Groups, and Related Tools To Improve the Management of Federal Nutrition Assistance Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This information collection will conduct research by methodological testing, surveys, focus groups, and related tools to assess program performance, respond to the needs of policymakers, and develop innovative approaches that bear on the practical operations, management, and impact of Federal nutrition assistance programs.

DATES: Written comments must be received on or before October 17, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Kevin Kwon, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1020, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Kevin Kwon at 703–605–0800 or via e-mail to *Kevin.Kwon@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 500, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kevin Kwon at 703–605–0800.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Methodological Testing, Surveys, Focus Groups, and Related Tools to Improve the Management of Federal Nutrition Assistance Programs.

OMB Number: 0584–New.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: This generic clearance for information collection is necessary to obtain input from recipients and those persons eligible for FNS nutrition assistance programs, State and local staff administering FNS programs, FNS stakeholders and consumers, and other interested parties in order to assess program performance in the administration of FNS nutrition assistance programs, respond to the needs of policymakers making decisions on policy issues, and develop innovative approaches that bear on the practical operations, management, and impact of Federal nutrition assistance programs.

The methodological testing will include data collections for pretesting activities and methods (*e.g.,* cognitive interviews, exploratory interviews, respondent debriefing, pilot surveys) to quickly test and implement new questions for research studies that often arise to address FNS policy issues or emerging programmatic needs. The generic clearance will also be used for collections for formative research for FNS programs using tools and methods such as: focus groups, interviews, surveys, and web-based collection tools.

Respondents: Recipients and those persons eligible for FNS nutrition assistance programs, State and local staff administering FNS programs, FNS stakeholders and consumers, and other interested parties.

Estimated Number of Respondents: 80,000.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Responses: 80,000.

Estimated Time per Response: 45 minutes (0.75 hours).

Estimated Total Annual Burden on Respondents: 60,000 hours.

Respondent	Estimated Number of respondents	Responses annually per respondent	Estimated total annual responses	Estimated avg. Number of hours per response	Estimated total hours
Total reporting burden	80,000	1	80,000	0.75	60,000

Dated: July 29, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–20945 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee will meet in Warren, Pennsylvania. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to

improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to finalize project recommendations for decisionmaking before September 30, 2011.

DATES: The meeting will be held September 14, 2011, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Allegheny National Forest Supervisor's Office located on Farm Colony Drive, in Warren, Pennsylvania. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

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 4 Farm Colony Drive, Warren, Pennsylvania 16365. Please call ahead to Kathy Mohney at (814) 728–6298 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kathy Mohney, RAC Coordinator, Allegheny National Forest Supervisor's Office, 4 Farm Colony Drive, Warren, Pennsylvania 16365, phone (814) 728–6298 or e-mail *kmohney@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Finalize project recommendations for decisionmaking before September 30, 2011.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 12, 2011, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 4 Farm Colony Drive, Warren, Pennsylvania 16365, or by e-mail to *kmohney@fs.fed.us,* or via facsimile to (814) 726–1462.

August 10, 2011.

Tracy Parker,

Acting Forest Supervisor.

[FR Doc. 2011–20930 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting as amended is to discuss the future of the committee, vote on a project and to closeout business for 2011.

DATES: The meeting will be held on August 25, 2011 from 9 a.m. and end at approximately 12 noon.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

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 825 N. Humboldt Ave., Willows, CA 95988. Please call ahead to (530) 934–1269 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; e-mail *rjero@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION.**

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) RAC Administrative Updates, (5) Project Voting, (6) General Discussion, (7) Next Agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 22, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988 or by e-mail to *rjero@fs.fed.us* or via facsimile to 530–934–1212.

Dated: August 10, 2011.

Eduardo Olmedo,

District Ranger.

[FR Doc. 2011–20933 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee will meet in Clarendon, Pennsylvania. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review final project proposals submitted in order to finalize the list of projects put forth for final funding consideration.

DATES: The meeting will be held August 31, 2011, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Mead Township Building located on Mead Blvd., in Clarendon, Pennsylvania. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

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 4 Farm Colony Drive, Warren, Pennsylvania 16365. Please call ahead to Kathy Mohney at (814) 728–6298 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kathy Mohney, RAC Coordinator, Allegheny National Forest Supervisor's Office, 4 Farm Colony Drive, Warren, Pennsylvania 16365, phone (814) 728–6298 or e-mail *kmohney@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review final project proposals submitted in order to finalize the list of projects put forth for final funding consideration.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 29, 2011, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 4 Farm Colony Drive, Warren, Pennsylvania 16365, or by e-mail to *kmohney@fs.fed.us,* or via facsimile to (814) 726–1462.

Dated: August 10, 2011.

Tracy Parker,

Acting Forest Supervisor.

[FR Doc. 2011–20927 Filed 8–16–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Joplin, MO Tornado Public Warnings and Response Interviews.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Emergency submission (new information collection).

Burden Hours: 200.

Number of Respondents: 400.

Average Hours per Response: 30 minutes.

Needs and Uses: Under the National Construction Safety Team Act, the NIST Director established a team to perform a technical investigative study of the Joplin, MO tornado event of May 22, 2011. One of the study's five objectives focuses on determining the pattern, location, and cause of fatalities and injuries, and associated emergency communications and public response. To achieve this objective, the team will interview individuals who have knowledge and/or experiences related to the tornado. The team is interested in understanding the ways in which people received information about the tornado (if at all), the personal protective actions they took in response to the tornado (if any), any information that they have about injuries and fatalities resulting from the tornado, and any pre-5/22/11 experiences with and/or planning for tornados inside and outside of the Joplin, MO area.

Potential interviewees are those who experienced some aspect of the tornado. Most of these individuals will include survivors of the tornado, located within the damage path of the tornado and survived. Other interviewees can include those who were originally located within the damage path prior to tornado touch-down; have knowledge about injuries and fatalities from the disaster; or willing to discuss pre-5/22/11 experiences with tornados in the Joplin, MO area. The team will interview people as they volunteer to participate in interviews and will cease when key areas of interest are saturated. The team will attempt, as much as possible, to collect information from interviewees varying by age group, geographical location within the damage path and Joplin, MO, and overall experience with the disaster, among other factors.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer:. Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek @doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to, OMB Desk Officer, Jasmeet Seehra, FAX Number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: August 12, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20979 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–973]

Certain Steel Wheels From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

DATES: *Effective Date:* August 17, 2011.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Raquel Silva, AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone*: (202) 482–5848 and (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 19, 2011, the Department of Commerce (''the Department'') initiated an antidumping duty investigation on certain steel wheels from the People's Republic of China.[1] The notice of initiation stated that, unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). The preliminary determination is currently due no later than September 6, 2011.

On August 5, 2011, Accuride Corporation and Hayes Lemmerz

[1] *See Certain Steel Wheels From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 76 FR 23294 (April 26, 2011).

International, Inc. (collectively, ''Petitioners''), made a timely request, pursuant to section 733(c)(1) of the Act, for a postponement of the preliminary determination in order to provide additional time for the Department to collect and analyze information for the preliminary determination.[2] Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days.

A postponement of 50 days from the current deadline of September 6, 2011, would result in a new deadline of October 26, 2011. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 11, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21004 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

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

SUMMARY: On April 23, 2010, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping circumvention inquiry to determine if certain products were circumventing the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China (PRC).[1] That initiation indicated the merchandise subject to the inquiry was produced by Wuyang Iron and Steel Co., Ltd. (Wuyang), but also noted the Department intended ''to address whether its circumvention ruling will apply to particular producers, exporters, and/or importers * * * or to all U.S. imports'' of certain cut-to-length carbon steel plate from the PRC. *Id.* at 21242. On February 22, 2011, the Department published its notice of affirmative preliminary determination of circumvention in which it found that imports from the PRC of certain cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, regardless of the producer or exporter or importer of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC.[2] We gave interested parties an opportunity to comment on the *Preliminary Determination,* and received briefs and rebuttal briefs from various parties. After evaluating the comments submitted by parties, we find no basis for altering the preliminary determination referenced above. Therefore, we continue to determine that imports of the aforementioned merchandise are circumventing the order on cut-to-length carbon steel plate from the PRC.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 2011, the Department published its notice of affirmative preliminary determination of circumvention. *See Preliminary Determination.* The Department preliminarily determined that imports of certain cut-to-length plate (defined below) were circumventing the antidumping duty order on certain cut-to-length carbon steel plate from the PRC. The Department also directed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of such merchandise and require case deposits on said entries. *Id.* at 9752.

In accordance with 19 CFR 351.225(f)(3), interested parties were invited to comment on the preliminary determination within 20 days of publication of the *Preliminary Determination. Id.* On March 14, 2011, Wuyang and one of the U.S. importers of its merchandise, Stemcor USA Inc. (Stemcor), submitted a joint case brief. On March 14, 2011, ArcelorMittal USA LLC (ArcelorMittal USA) and Nucor Corporation (Nucor), both U.S. producers, each submitted a case brief. On March 24, 2011, Wuyang and Stemcor submitted a joint rebuttal brief. On March 24, 2011, ArcelorMittal USA and Nucor each submitted a rebuttal brief.

On March 14, 2011, Wuyang and Stemcor submitted a joint request for a hearing. On March 28, 2011, Wuyang and Stemcor withdrew their request for a hearing, and no hearing was held.

Scope of the Order

The product covered by the order is certain cut-to-length carbon steel plate from the People's Republic of China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Specifically excluded from subject merchandise

[2] *See* Petitioners' letter regarding, ''Request for Extension of Preliminary Determination: Certain Steel Wheels from China,'' dated August 5, 2011.

[1] *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry,* 75 FR 21241 (April 23, 2010).

[2] *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 76 FR 9749 (February 22, 2011) (*Preliminary Determination*).

within the scope of the order is grade X–70 steel plate.

Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding

The merchandise subject to this antidumping circumvention inquiry (inquiry merchandise) consists of all merchandise produced by Wuyang containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the antidumping duty order as listed under the ''Scope of the Order'' section above, with the exception of merchandise meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7225.40.3050, 7225.99.0090, 7226.91.5000, and 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of inquiry merchandise is dispositive.

Affirmative Final Determination of Circumvention

The Department conducted this circumvention inquiry in accordance with section 781(c) of the Tariff Act of 1930, as amended (the Act), which deals with minor alterations of merchandise. The Department noted in the *Preliminary Determination* the criteria typically used by the Department to make determinations in such inquiries (*i.e.,* the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products). *See Preliminary Determination* at 9750–51. The Department preliminarily determined that imports from the PRC of inquiry merchandise produced by Wuyang, regardless of exporter or importer, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. The Department also preliminarily determined that its ruling should apply regardless of producer. In other words, all merchandise containing 0.0008 percent or more boron and otherwise meeting the description of the scope of the order, and not meeting the three distinguishing characteristics listed in the ''Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding'' section above (*i.e.,* aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater) are covered by the order.

Wuyang and Stemcor, ArcelorMittal USA, and Nucor each submitted case briefs and rebuttal briefs. The Department has analyzed the comments in its accompanying issues and decision memorandum and in a separate final analysis memorandum. *See* ''Issues and Decision Memorandum for the Final Results of the Circumvention Inquiry of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China; Wuyang Iron and Steel Co., Ltd.'' and ''Final Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China; Wuyang Iron and Steel Co., Ltd.,'' respectively. The Department continues to find that it is appropriate to consider all plate with at least 0.0008 percent boron content and otherwise meeting the description of the scope to be covered by the order, unless the merchandise also possesses the three distinguishing characteristics referenced above. As noted in the *Preliminary Determination,* this ruling, like those in some other circumvention rulings, may be applied regardless of the manufacturers, exporters, or importers involved, and the Department considers it to be appropriate here to apply it on a countrywide basis, given that multiple parties have been found to be circumventing the order using the same general approach (*i.e.,* inclusion of small, inconsequential amounts of an alloying element in order to change the tariff classification from non-alloy to alloy steel).

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), we are directing CBP to continue to suspend liquidation of inquiry merchandise entered, or withdrawn from warehouse, for consumption on or after April 23, 2010, the date of publication of our initiation of this inquiry. *See Preliminary Determination* at 9752; *see also* 19 CFR 351.225(l)(2). We will also instruct CBP to continue to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after April 23, 2010, in accordance with 19 CFR 351.225(l)(3).

Notice to Parties

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

This affirmative final circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: August 9, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21006 Filed 8–16–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 6, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–047. *Applicant:* Ohio State University, School of Earth Sciences, 275 Mendenhall Laboratory, 125 South Oval Mall, Columbus, OH 43210. *Instrument:* Electron Microscope. Manufacturer: FEI Company, Czech Republic. *Intended Use:* Several characteristics of the instrument which are required for the research include an

automated mineralogy analyzer for analysis and interpretation of major and trace chemistry, mineral phase matching with rapidly-acquired energy dispersive x-ray data, the ability to have comprehensive offline image analysis and x-ray spectral analysis as well as variable vacuum modes to allow observation of uncoated nonconductive specimens. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 27, 2011.

Docket Number: 11–050. *Applicant:* Southwest Research Institute, 6220 Culebra Rd., San Antonio, TX 78239–5166. *Instrument:* Electron Microscope. Manufacturer: FEI Company, Czech Republic. *Intended Use:* The instrument will be used to study bones and other biological materials to characterize structural features responsible for reduced fracture strength in osteoporosis and studying the performance of bone scaffolds for enhancing re-growth of bone into damaged areas. This instrument has the ability to characterize biological samples at water vapor pressures up to 2,600 Pa, assuring that artifacts will not obscure the actual examination of the actual structure and composition, which is required for the research. The technical specifications for the SEMs manufactured in the United States by TESCAN listed at tescan.com indicated that their SEMs had a maximum vapor pressure of 150 Pa, which is well below the level at which moisture will evaporate from biological samples. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 27, 2011.

Docket Number: 11–052. *Applicant:* Southern University and A&M College, 4th Floor, J.S. Clark Building, Baton Rouge, LA 70813. *Instrument:* Electron Microscope. Manufacturer: JEOL, Japan. *Intended Use:* Among others, the research topics include the investigation of the self-healing of structural damage using shape memory polymer based composites, and the study of electronic based chemical sensors. The instrument will provide high-resolution capabilities. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 1, 2011.

Docket Number: 11–053. *Applicant:* University of Texas Health Science Center—Houston, 6431 Fannin, Houston, TX 77030. *Instrument:* Electron Microscope. Manufacturer: JEOL, Japan. *Intended Use:* The instrument will be used to examine immune-gold labeled biological specimens and capture high resolution digital images to determine whether proteins are spatial segregated on the plasma membrane of mammalian cells. The instrument must be capable of providing high-resolution and high-contrast images, a stage that is easy to move, a focus that does not change with changing magnification, and brightness that changes automatically with magnification. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 29, 2011.

Docket Number: 11–054. *Applicant:* Battelle Energy Alliance, Idaho National Laboratory, 2525 North Freemont Ave., Idaho Falls, ID 83415. *Instrument:* Electron Microscope. Manufacturer: FEI Company, Czech Republic. *Intended Use:* The instrument will be used to analyze nuclear fuels and materials to make determinations of and produce materials that have improved performance in advanced reactor systems. Current U.S. manufactured instruments do not reach the sensitivity level of this instrument. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 3, 2011.

Docket Number: 11–055. *Applicant:* University of Washington, 1959 NE Pacific St., Seattle, WA 98195. *Instrument:* Electron Microscope. Manufacturer: FEI Company, the Netherlands. *Intended Use:* The instrument will be used to study proteins, macromolecular complexes, viruses, and nanostructured materials to obtain structural information of biological specimens at the highest achievable resolution. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 3, 2011.

Dated: August 11, 2011.

Gregory W. Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2011–21005 Filed 8–16–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

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

DATES: *Effective Date:* August 17, 2011.

SUMMARY: On June 30, 2011, the Department of Commerce (''Department'') received a request from the Association of American School Paper Suppliers (''AASPS'') [1] for a changed circumstances review for the purpose of revoking, in part, the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC''). AASPS claims that producers accounting for substantially all of the production of the domestic like product to which the order was issued no longer wish to maintain the order with respect to FiveStar® Advance™ notebooks and notebook organizers without polyvinyl chloride (''PVC'') coatings. Therefore, we are notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of FiveStar® Advance™ notebooks and notebook organizers as described below. The Department invites interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3797.

Background

On September 8, 2006, the Department published its final determination in the antidumping duty investigation of CLPP from the PRC.[2] On September 28, 2006, the Department issued an antidumping duty order.[3]

[1] AASPS is the domestic industry coalition that filed the underlying antidumping (''AD'') petition, and consists of three members—MeadWestvaco Corporation (''MWV''), Norcom, Inc., and Top Flight Inc.

[2] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079 (September 8, 2006) (''*Final Determination*'').

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China;*

On June 30, 2011, the Department received a request from AASPS for a changed circumstances review to revoke, in part, the antidumping duty order on CLPP from the PRC with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. We have not received comments from any other party.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- *Fly™* lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *Zwipes™*: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *FiveStar®Advance™:* A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2–3/8″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *FiveStar Flex™:* A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers

Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia, 71 FR 56949 (September 28, 2006) (''*CLPP Order*'').

joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Since the issuance of the order, the Department has issued numerous scope rulings.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

At the request of AASPS, and in accordance with sections 751(b)(1) and (d)(1) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.216, the Department is initiating a changed circumstances review of the AD order on CLPP from the PRC to determine whether partial revocation of the order is warranted with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. To establish whether the producers represent ''substantially all'' of domestic producers, as set forth in section 782(h) of the Act, and 19 CFR 351.222(g)(1)(i), the Department has previously interpreted this term to mean those domestic producers accounting for at least 85 percent of the total production of domestic like product covered by the order. *See* 19 CFR 351.208(c). In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g)(l)(i) and 351.221(c)(3), we are initiating this changed circumstances review and have determined that expedited action is warranted. AASPS asserts that MWV is the sole domestic producer of FiveStar® Advance™ notebooks and notebook organizers without PVC coatings and further, based on information reasonably available to the AASPS with respect to the U.S. lined paper market, the producers accounting for substantially all of the production of the domestic like product to which the order pertains support the request for changed circumstances review as filed.[4] Consistent with established precedent,[5] because AASPS, the petitioner in the underlying investigation, has made an affirmative statement of no interest and claimed that parties accounting for more than 85 percent of production of the domestic like product support the partial revocation, we are accepting their claim. In accordance with section 751(b) of the Act and 19 CFR 351.222(g)(1)(i), and absent any evidence to the contrary, we find that substantially all of the producers of the domestic like product have expressed a lack of interest in maintaining the order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. Based on the expression of no interest by companies accounting for substantially all of the production of the domestic like product to which the CLPP Order pertains, we preliminarily determine that the domestic producers of the like product have no interest in the continued application of the AD order on CLPP from the PRC to the merchandise that is subject to this request. Accordingly, we are notifying the public of our intent to revoke, in part, the AD order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. Therefore, we intend to change the scope of the order on CLPP from the PRC to include the following exclusion: Excluded from the scope is FiveStar® Advance™ notebooks and notebook organizers without PVC coatings.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of these preliminary results. The Department will issue the final results of this changed circumstances review, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: August 11, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21010 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* AASPS's June 29, 2011, letter to the Department at pgs. 5–6.

[5] *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products From Germany: Preliminary Results of Countervailing Duty Changed Circumstances Reviews,* 69 FR 4114 (January 28, 2004), unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products from Germany: Final Results of Countervailing Duty Changed Circumstances Reviews and Revocation of the Orders, in Whole,* 69 FR 17132 (April 1, 2004). *See also Certain Pasta From Italy: Preliminary Results of Countervailing Duty Changed Circumstances Review and Intent To Revoke, In Part,* 75 FR 78223 (December 15, 2010), unchanged in *Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Thursday, October 6, 2011, at 9 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue, NW., Washington, DC 20230. (*Phone:* 202–482–4877; *Fax:* 202–482–5665; *e-mail: todd.delelle@trade.gov.*) This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at 202–482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9 a.m. to 3:30 p.m. This meeting is open to the public and time will be permitted for public comment from 3–3:30 p.m. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting. This will be the second meeting of this committee under the current charter.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until October 2012.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–20935 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA602

Marine Mammals; File Nos. 16109 and 15575

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that GeoMarine, Inc. [File No. 16109] (Responsible Party: Jason Holt See; Principal Investigator: Amy Whitt), 2201 K Avenue, Suite A2, Plano, TX 75074 and Robert DiGiovanni Jr. [File No. 15575], Riverhead Foundation for Marine Research and Preservation, 467 East Main St., Riverhead, NY 11901 have applied in due form for permits to conduct research on marine mammals and sea turtles.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 16, 2011.

ADDRESSES: The applications and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 16109 or 15575 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on these applications should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Laura Morse (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Each application is summarized below. For specific take numbers of each species, please refer to the associated application.

GeoMarine, Inc. [File No. 16109], requests a permit to conduct scientific research on 35 species of cetaceans, four species of pinnipeds, five species of sea turtles from New Jersey to North Carolina. The purpose of the research is to assess the distribution, abundance, behavior, and migration of these species in nearshore waters of southern New Jersey to North Carolina, which is a region of significant potential offshore wind farm development. Eleven of the 44 species to be targeted for research are listed as threatened or endangered: blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*), North Atlantic right whale (*Eubalaena glacialis*), sei whale (*B. borealis*), sperm whale (*Physeter macrocephalus*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), loggerhead sea turtle (*Caretta caretta*), Kemp's ridley sea turtle (*Lepidochelys kempii*), and leatherback sea turtle (*Dermochelys coriacea*). Types of take would include harassment by survey approach during shipboard transect surveys. The permit would be valid for a period of five years.

Robert Di Giovanni, Jr. [File No. 15575], requests a permit to conduct photo-identification surveys from both aerial and vessel platforms to assess seasonal abundance and distribution of

the North Atlantic right whale and 43 other protected marine mammal and sea turtle species in U.S. coastal waters from North Carolina to Massachusetts. This research would enhance the survey work performed by the Northeast Fisheries Science Center (NEFSC) Sighting Advisory System and the Atlantic Marine Assessment Program for Protected Species surveys. Eleven of the 44 species to be targeted for research are listed as threatened or endangered. Additional pinniped research would include the placement of remote camera systems at pinniped haul out sites for long term monitoring of behavior and abundance, and pinniped scat would be collected for health assessment studies. Opportunistic sighting data would be collected during vessel transits to and from pinniped haul out sites. The permit would be valid for a period of five years.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit applications.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 11, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–21003 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA641

Marine Mammals; File No. 16553

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Brent Stewart, Ph.D., J.D., Hubbs SeaWorld Research Institute, 2595 Ingraham Street, San Diego, CA, 92109, has applied in due form for a permit to conduct research on California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and harbor seals (*Phoca vitulina*).

DATES: Written, telefaxed, or e-mail comments must be received on or before August 17, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16553 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a five-year permit to study three species of pinnipeds in California. The objectives of the research are to continue a long term study on the comparative ecology, demography, community ecology, foraging patterns, pathology and phenology of the target species and to further characterize the resources and habitats used by each species. The proposed research would: (1) Collect basic information on the biology of these key apex marine carnivores, (2) provide insight into the dynamic biotic and abiotic variables (including anthropogenic factors) that might affect their abundance and distribution, and (3) investigate the specific mechanisms that might account for variation in vital rates and population size and trends. California sea lions, northern elephant seals, and harbor seals would be captured and samples at several sites: San Nicolas Island, San Miguel Island, Santa Rosa Island, Santa Cruz Island, Piedras Blancas, Cape San Martin, and Gorda. Some animals would only receive a flipper tag or a dye mark. Other animals would be physically or chemically restrained; measured and weighed; have a variety of samples taken, including: Blood, skin, blubber, and mucus membrane swabs; and have tracking or data recording instruments attached. For proposed take numbers by species and location and details on sampling methodologies, see the application. The applicant has requested authorization for the unintentional research related mortality of up to four animals of each species annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 11, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–21001 Filed 8–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0091]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice To Add a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on September 16, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 11, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 12, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 24

SYSTEM NAME:

Defense and Veterans Eye Injury and Vision Registry (DVEIVR).

SYSTEM LOCATION:

Primary location: Deputy Assistant Secretary of Defense, Force Health Protection and Readiness, Four Skyline Place, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3204.

Secondary locations: Department of Defense (DoD)/Department of Veterans Affairs (VA) Vision Center of Excellence, 2900 Crystal Drive, 2nd Floor, Arlington, VA 22208–3567, or the contractors under contract to TRICARE. For a complete listing of all system locations, write to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Armed Forces who, while serving on active duty on or after September 11, 2001, incurred a significant eye injury, including such an individual with visual dysfunction related to traumatic brain injury, with an eye injury and a visual acuity in the injured eye of 20/200 or less, or with a loss of peripheral vision resulting in 20 degrees or less of visual field in the injured eye.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's full name, Social Security Number (SSN), DoD Identification (ID) Number (DoD ID number), date of birth, gender, other names used, mailing address, email address, telephone numbers (home and/or cell), marital status, and race or ethnicity; alternate contact or personal representative name and phone number; an individual's service and employment information, including rank, service branch, job category, and disability information; and an individual's medical information, including information on diagnosis, treatment, surgical interventions or other operative procedures, follow up services and treatment, visual outcomes, and records with respect to on-going eye care and visual rehabilitation benefits and services received, whether treatments, benefits and services were provided on an inpatient or outpatient basis, inpatient service dates, outpatient visit dates, and information on where eye or traumatic brain injury occurred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1071 note, Centers of Excellence in the Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Military Eye Injuries; 10 U.S.C. chapter 55, Medical and Dental Care; 45 CFR Part 160, Health and Human Services; 45 CFR Part 164, General Administrative Requirements and Security and Privacy; and E.O. 9397 (SSN), as amended.

PURPOSES:

To establish a registry of information for tracking the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for cases of significant eye injury incurred by a member of the Armed Forces while serving on active duty.

To ensure the electronic exchange of information in the registry with the VA, and enable the VA to access the registry and add information pertaining to additional treatments or surgical procedures and outcomes for veterans entered in the registry and who received treatment through the Veterans Health Administration (VHA).

To encourage and facilitate the conduct of studies, and the development of best practices and clinical education, on eye injuries incurred by members of the Armed Forces.

To support a cooperative DoD and VA program for members of the Armed Forces and veterans with eye injuries and post traumatic eye syndrome associated with traumatic brain injury at military medical treatment facilities and VA medical centers for vision screening, diagnosis, rehabilitative management, and vision research, including visual dysfunction related to traumatic brain injury.

Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To institutions of higher education, and other appropriate public and private entities (including international entities) to encourage and facilitate the conduct of research and the development of best practices and clinical education on eye injuries incurred by members of the Armed Forces.

To the VA for the purpose of ensuring the electronic exchange of information

in the registry and enabling the VA to access the registry and add information pertaining to additional treatments or surgical procedures and outcomes for veterans entered in the registry and who received treatment through the VHA.

To VA and individual providers of care, including non-governmental care providers for the purpose of analysis of continued case management related to significant eye injury or loss of visual acuity.

To the VA Blind Rehabilitation Service and to the eye care services of the VHA for the purposes of analysis of the coordination of the provision of ongoing eye care and visual rehabilitation benefits and services by the VA after separation or release from the Armed Forces.

To the VA for the purpose of encouraging and facilitating the conduct of studies, and the development of best practices and clinical education, on eye injuries incurred by members of the Armed Forces.

To the VA to ensure coordination of ongoing eye care and visual rehabilitation benefits and services by the VA both before and after separation of individuals from the Armed Forces.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

Note 1: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records may be retrieved by the individual's name, SSN, and/or DoD ID number.

SAFEGUARDS:

Physical access to system locations is restricted by cipher locks, visitor escort, access rosters, and photo identification. Adequate locks are on doors and server components will be secured in locked computer room(s) with limited access. Each system end user device will be protected within a locked storage container, room, or building outside of normal business hours.

All visitors and other persons who require access to facilities that house servers and other network devices supporting the system but who do not have authorization for access will be escorted by appropriately screened/cleared personnel at all times.

Approved system users will have role-based access to the system and, as appropriate, will be provided role-based access to query the system for single patient look-up and reporting purposes. On a system level, all access will be tracked to ensure that only appropriate and approved personnel have access to personally identifiable information and protected health information. The system provides two-factor authentication, using either a Common Access Card (CAC) and personal identification number or a unique logon identification and password. Passwords must currently be renewed every sixty (60) days. Authorized personnel must have appropriate Information Assurance training, Health Insurance Portability and Accountability Act training, and Privacy Act of 1974 training.

RETENTION AND DISPOSAL:

Disposition pending (treat records as permanent until the National Archives and Records Administration approves the proposed retention and disposition).

SYSTEM MANAGER(S) AND ADDRESS:

Director of Deployment of Systems, Force Health Protection and Readiness, Four Skyline Place, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3204.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the TRICARE Management Activity, Department of Defense, *Attn:* TMA Privacy Officer, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Requests should contain the individual's full name, SSN, and/or DoD ID number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the TRICARE Management Activity, *Attention:* Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Written requests must contain the individual's full name, SSN and/or DoD ID number, current address, telephone number, the name and number of this system of records notice and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, contesting contents, and appealing initial agency determinations, are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The Defense Enrollment Eligibility Reporting System, medical treatment records maintained at DoD medical treatment facilities, VA medical care facilities, and facilities contracted by DoD and/or VA to perform medical care, VA Eye Injury Data Store, the Clinical Data Repository, AHLTA, Theater Medical Data Store, Joint Theater Trauma Registry Combat Trauma Registry, and VA Eye Data Store.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–20914 Filed 8–16–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 17, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education,

400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 12, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Binational Migrant Education Program (BMEP) State MEP Director Survey.

OMB Control Number: 1810–0670.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 48.

Total Estimated Number of Annual Burden Hours: 60.

Abstract: This survey collects information from State Migrant Education Programs on their participation in the Binational Migrant Education Initiative to serve children who migrate between Mexico and the U.S.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4697. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–20991 Filed 8–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 17, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: State Agency Use of Alternative Method to Distribute Title I Funds to Local Educational Agencies with Fewer Than 20,000 Total Residents.

OMB Control Number: 1810–0620.

Agency Form Number(s): N/A.

Frequency of Responses: Once during current authorization.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 200.

Abstract: Title I, Part A of the Elementary and Secondary Education Act gives State educational agencies the flexibility to use an alternative method to distribute Title I, Part A funds to small Local educational agencies.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4689. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–20995 Filed 8–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 17, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 11, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: State Educational Agency Local Educational Agency, and School Data Collection and Reporting under Elementary and Secondary Education Act of 1964, as amended, Title I, Part A.

OMB Control Number: 1810–0622.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 2,080.

Abstract: Although the U.S. Department of Education (ED) determines Title I, Part A allocations for Local Educational Agencies (LEAs), State educational agencies must adjust ED-determined Title I, Part A LEA allocations to account for newly created LEAs and LEA boundary changes, to redistribute Title I, Part A funds to small LEAs (under 20,000 total population) using alternative poverty data, and to reserve funds for school improvement, State administration, and the State academic achievement awards program.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4688. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–20994 Filed 8–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technology and Media Services for Individuals With Disabilities; Educational Materials in Accessible Formats for Students With Visual Impairments and Other Print Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

Technology and Media Services for Individuals with Disabilities—Educational Materials in Accessible Formats for Students with Visual Impairments and Other Print Disabilities.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327D.

Dates:

Applications Available: August 17, 2011.

Deadline for Transmittal of Applications: September 16, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technology and Media Services for Individuals with Disabilities program is to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom for students with disabilities; and (3) provide support for captioning and video description that is appropriate for use in the classroom.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*)).

Absolute Priority: For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Educational Materials in Accessible

Formats for Students With Visual Impairments and Other Print Disabilities.

Priority:

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a project that will provide free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary, secondary, postsecondary, and graduate schools. (For the purposes of this priority, *students with print disabilities* means visually impaired and print disabled students unless otherwise noted.) The educational materials and textbooks must be provided in accessible formats that are of high quality and meet industry standards for accessibility and digital rights management. Processes, strategies, and models used in the production, dissemination, and in digital rights management must be user-friendly, efficient, and cost-effective.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A budget for attendance at a one day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award. The primary purposes of this meeting will be to review the Department's grantee requirements, discuss the project's planned activities and budget, and confirm the expectations for the project's performance measures and evaluation.

(b) A budget for attendance at the three-day Project Director's meeting in Washington, DC, during the project, and one additional two-day trip to Washington, DC, to meet with the Project Officer for the Office of Special Education Program (OSEP) and other funded projects for purposes of cross-project collaboration and information exchange.

Project Activities. To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Provide educational materials, including textbooks, in accessible formats to State educational agencies (SEAs) and local educational agencies (LEAs) for use by elementary and secondary education students with print disabilities. The educational materials, including any specialized software needed to use the materials, must be provided at no cost to students, families, schools, SEAs, and LEAs. Thus, the project may not assess membership fees to individual students or to institutions, including schools, SEAs, and LEAs.

(b) Provide educational materials in accessible formats for students with print disabilities attending postsecondary and graduate schools. Materials may be provided directly to eligible students [1] or to postsecondary and graduate schools and vocational rehabilitation agencies requesting materials in accessible formats on behalf of eligible students. The accessible educational materials, including any specialized software needed to use the materials must be provided at no cost to students, postsecondary and graduate schools, and vocational rehabilitation agencies. Thus, the project may not assess fees to individual students or to institutions, including vocational rehabilitation agencies, postsecondary and graduate schools.

(c) Produce high-quality, user-friendly educational materials in accessible formats including, digital text, braille-ready files, and audio formats of which at least 50 percent must be in text-to-speech audio format. Materials must include image descriptions, digital images, and graphics.

(d) Include cost and efficiency measures for production and design of accessible materials.

(e) Provide high-quality, up-to-date software needed to use the accessible educational materials, at no cost to students, families, schools, LEAs, SEAs, postsecondary and graduate schools, and vocational rehabilitation agencies. The project must also keep abreast of emerging technologies and implement changes and updates to technology, software, and other materials that meet industry standards.

(f) Develop and implement an evaluation plan that includes measures for continuous improvement of project activities and annual outcome measures.

(g) Provide and implement a detailed digital rights management plan that protects the interests of rights holders while maintaining ease of access to the accessible educational materials for students with print disabilities.

(h) Develop and implement a plan for consulting with publishers, software developers, other manufacturers of accessible materials for individuals with print disabilities, and the National Instructional Materials Access Center (NIMAC) to ensure that the project uses the most efficient, cost-effective technology available to provide timely access to educational materials.

(i) Produce accessible materials using files that are compliant with the National Instructional Materials Accessibility Standard (NIMAS).

(j) Develop and implement a plan for increasing SEA and LEA use of the project's resources and accessible educational materials as part of their systems for providing educational materials in accessible formats to students with print disabilities.

(k) Ensure that project activities are conducted in compliance with section 121 of the Copyright Act, as amended: *http://www.copyright.gov/title17/92chap1.html#121.*

(l) Establish an advisory group consisting of SEA and LEA representatives, representatives from community colleges and four-year institutions of higher education, representatives from vocational rehabilitation agencies, parents of individuals with visual impairments and other print disabilities ages birth through 26, consumers with visual impairments and consumers with other print disabilities who use educational materials in accessible formats, and representatives of schools or other institutions where educational materials in accessible formats are used. The purpose of this advisory group is to provide the project with input and ongoing advice on the project's goals, objectives, program activities, and services.

(m) Include on its Web site, if the project maintains a Web site, relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

[1] For purposes of this priority, eligible students are students with a print disability as defined in section 771 of the Higher Education Act. Section 771 defines *student with a print disability* as ''a student with a disability who experiences barriers to accessing instructional material in nonspecialized formats, including an individual described in section 121(d)(2) of title 17, United States Code.''

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $3,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $3,000,000 for the 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.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* National, nonprofit entities with a proven track record of meeting the needs of students with visual impairments and other print disabilities through services described in section 674(c)(1)(D) of IDEA that have the capacity to produce, maintain, and distribute, in a timely fashion, up-to-date textbooks in digital audio formats to qualified students and that have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers (see section 674(d)(2) of IDEA; 17 U.S.C. 121(d)(1)).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements:*

(a) The project funded under this competition must make positive efforts to employ, and advance in employment, qualified individuals with disabilities (see section 606 of IDEA).

(b) The applicant and grant recipient funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (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 84.327D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 25 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, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the 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, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 17, 2011.

Deadline for Transmittal of Applications: September 16, 2011.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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 subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

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 at the following *Grants.gov* Web page: *http://www.Grants.gov/applicants/get_registered.jsp.*

7. Other Submission Requirements: Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide *Grants.gov* Apply site. The Educational Materials in Accessible Formats for Students with Visual Impairments and Other Print Disabilities competition, CFDA number 84.327D, is included in this project. We request your participation in *Grants.gov*.

If you choose to submit your application electronically, you must use the Governmentwide *Grants.gov* Apply site at *http://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.

You may access the electronic grant application for the Educational Materials in Accessible Formats for Students with Visual Impairments and Other Print Disabilities competition, CFDA number 84.327D at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.327, not 84.327D).

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- 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 submit your application in paper format.
- If you submit your application electronically, you must upload 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.
- If you submit your application electronically, you must upload any narrative sections and all other attachments to 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 4:30:00 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 4:30:00 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.327D), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.327D), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 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, achievement of project objectives, 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. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has

established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures are included in the application package and focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the project funded under this competition. The grantee will be required to report information on its project's performance in its final performance report to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4063, Potomac Center Plaza (PCP), Washington, DC 20202–2600. *Telephone:* (202) 245–6253.

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 compact disc) 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: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 11, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20884 Filed 8–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Predominantly Black Institutions Formula Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Predominantly Black Institutions (PBI) Formula Grant Program.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031P.

DATES: *Purpose of Program:* Through the Predominantly Black Institutions (PBI) Formula Grant Program, the Department makes grant awards to eligible institutions to plan, develop, undertake, and implement programs to enhance their capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institutions to serve the academic needs of these students.

Program Authority: Title III, part A, section 318 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1059e).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Formula Grant.

Estimated Available Funds $9,601,758.

Estimated Average Size of Awards: Grants awarded under the PBI Formula Grant Program will be allotted to eligible institutions based on the formula included in section 318(e) of the HEA (20 U.S.C. 1059e(e)), with no grantee allotted less than $250,000.

If the amount appropriated for this program for a fiscal year is not sufficient to pay the minimum allotment to eligible institutions, then the amount of the minimum allotment must be ratably reduced, in accordance with section 318(e) of the HEA (20 U.S.C. 1059e(e)(4)).

Funding Formula:

Grant amounts to PBIs will be awarded according to the following formula:

(1) Federal Pell Grant basis—From the amount appropriated for this program for any fiscal year, the Secretary allots to each PBI with an approved application a sum that bears the same ratio to one-half of that amount as the number of Federal Pell Grant recipients in attendance at such institution at the end of the academic year preceding the beginning of that fiscal year, bears to the total number of Federal Pell Grant recipients at all such institutions at the end of such academic year.

(2) Graduates basis—From the amount appropriated for this program for any fiscal year, the Secretary allots to each PBI with an approved application a sum that bears the same ratio to one-fourth of that amount as the number of graduates for such academic year at such institution, bears to the total number of graduates for such academic year at all such institutions.

(3) Graduates Seeking a higher degree basis—From the amount appropriated for this program for any fiscal year, the Secretary allots to each PBI with an approved application a sum that bears the same ratio to one-fourth of that amount as the percentage of graduates from such institution who are admitted to and in attendance at, not later than two years after graduation with an associate's degree or a baccalaureate degree, a baccalaureate degree-granting institution or a graduate or professional school in a degree program in disciplines in which Black American students are underrepresented, bears to the percentage of such graduates for all such institutions.

Estimated Number of Awards: All applicant institutions that meet the eligibility requirements will receive a portion of the total appropriations for the PBI Formula Grant Program.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants*: To be eligible, an applicant must have previously submitted the ''Application for Designation as an Eligible Institution'' and received FY 2011 designation as an eligible institution for programs under title III and title V of the HEA. The regulations explaining the standards for designation can be found in 34 CFR 607.2 through 607.5. In addition, an applicant must—

(1) Have an enrollment of needy undergraduate students as defined in section 318(b)(2) of the HEA;

(2) Have an average educational and general expenditure that is low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 392(b) of the HEA to this subparagraph in the same manner as the Secretary applies the waiver requirements to section 312(b)(1)(B) of the HEA;

(3) Have an enrollment of undergraduate students that is not less than 40 percent Black American students;

(4) Be legally authorized to provide, and provide, within the State an educational program for which the institution of higher education awards a baccalaureate degree or, in the case of a junior or community college, an associate's degree;

(5) Be accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation; and

(6) Not be receiving funds under any other provision of part A or part B of title III of the HEA or part A of title V of the HEA or be authorized to receive an annual appropriation under the Act of March 2, 1867 (20 U.S.C. 123).

To be eligible for a grant under the PBI Formula Grant Program, an applicant must also meet the definition of a *Predominantly Black Institution* in section 318(b)(6) of the HEA. The term *Predominantly Black Institution* means an institution of higher education, as defined in section 101(a) of the HEA—

(A) That is an eligible institution with not less than 1,000 undergraduate students;

(B) At which not less than 50 percent of the undergraduate students enrolled at the eligible institution are low-income individuals or first-generation college students; and

(C) At which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the eligible institution is licensed to award by the State (defined as each of the 50 States and the District of Columbia) in which the eligible institution is located.

2. *Cost Sharing or Matching*: This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds in an amount equal to or greater than the Federal funds used for the establishment or increase of the endowment fund (20 U.S.C. 1059e(d)(3)).

IV. Application and Submission Information

1. *Address to Request Application Package*: You can obtain an application package via the Internet or from the Department. To obtain a copy via the Internet, use the following address for the PBI Formula Grant Program Web site: *http://www.ed.gov/programs/pbihea/index.html*. To obtain a copy from the Department, write, fax, or call the following: Bernadette D. Miles, U.S. Department of Education, 1990 K Street, NW., Room 6025, Washington, DC 20006–8515. Telephone: (202) 502–7616, or by e-mail: *bernadette.miles@ed.gov*.

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 can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission*: The application process for this program has two phases: Phase I involves submitting 2009–2010 data used to run the funding formula; Phase II includes the narrative project plan and standard forms. The deadline dates for submitting Phases I and II of the application are listed in this notice. Other requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times*:

Applications Available: August 17, 2011.

Deadline for Transmittal of Phase I of Applications: September 1, 2011.

Deadline for Transmittal of Phase II of Applications: September 16, 2011.

Applications for grants under this competition must be submitted electronically as an e-mail attachment to *pbiprogram@ed.gov* by 12:00:00 a.m. Washington, DC time, on the deadline date.

We do not consider an application that does not comply with the deadline requirements.

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 in 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.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Predominantly Black Institutions Formula Grant Program—CFDA Number 84.031P must be submitted electronically via e-mail to *pbiprogram@ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you

qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the PBI Program at *http://www.ed.gov/programs/pbihea/index.html.*

Please note the following:

• You must complete the electronic submission of your grant application by 12:00:00 a.m., Washington, DC time, on the application deadline date. We will not accept an application for this program after 12:00:00 a.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• Within three working days after submitting Phase II of your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

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 via e-mail because—

• You do not have access to the Internet;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Bernadette D. Miles, U.S. Department of Education, 1990 K Street, NW., Room 6025, Washington, DC 20006–8515. FAX: (202) 502–7861.

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 84.031P), 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 84.031P), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this 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

Grants awarded under the PBI Formula Grant Program are based on a formula. All applicants who meet the eligibility requirements will receive a portion of the total appropriations for

this program based on the formula contained in section 318(e) of the HEA (20 U.S.C. 1059e(e)).

Department staff will review applications to determine eligibility and to ensure that all activities proposed in the application are allowable under section 318(d) of the HEA (20 U.S.C. 1059e(d)).

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. 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.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the PBI Formula Grant Program:

(a) Enrollment Rate: The percentage change of the number of full-time degree-seeking undergraduate students enrolled at PBIs.

(b) Persistence Rate—four-year institutions: The percentage of first-time, full-time degree-seeking undergraduate students at four-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year PBI.

(c) Persistence Rate—two-year institutions: The percentage of first-time, full-time degree-seeking undergraduate students at two-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year PBI.

(d) Completion Rate—four-year institutions: The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year PBIs who graduate within six years of enrollment.

(e) Completion Rate—two-year institutions: The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year PBIs who graduate within three years of enrollment.

(f) Efficiency Measure: Cost per successful program outcome: Federal cost per undergraduate degree at PBIs.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Bernadette D. Miles, Institutional Service, U.S. Department of Education, 1990 K Street, NW., Room 6025, Washington, DC 20006–8515. Telephone: (202) 502–7616, or by e-mail: *bernadette.miles@ed.gov.*

If you use a TDD, call the 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 compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 12, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–20998 Filed 8–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice of December 14–16, 2011 open meeting of the National Advisory Committee on Institutional Quality and Integrity and an invitation to make third-party written comments concerning agencies scheduled for review.

ADDRESSES: U. S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., Room 8060, Washington, DC 20006.

SUMMARY: This meeting notice sets forth the agenda of the upcoming December 14–16, 2011 open meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and informs the public of its opportunity to attend the meeting. It also invites the public to submit third-party written comments concerning agencies scheduled for review. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965 (HEA), as amended.

Meeting Date and Place: The NACIQI meeting will be held on December 14–16, 2011, at the Crowne Plaza Old Town Alexandria, 901 North Fairfax, Alexandria, Virginia, from 8:00 a.m., to approximately 5:30 p.m., except for December 16, 2011, when it is anticipated that the meeting will end mid-afternoon.

NACIQI's Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, HEA, as amended;

The recognition of specific accrediting agencies or associations, or a specific State approval agency;

The preparation and publication of the list of nationally recognized accrediting agencies and associations;

The eligibility and certification process for institutions of higher education under Title IV, HEA;

The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions; and,

Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

Agenda: The December 14–16, 2011 NACIQI meeting will consist of two different parts. The first part of the meeting will involve the review of specific accrediting agencies, State agencies for the approval of nursing education, and State agencies for the approval of public postsecondary vocational education. The second part will involve review of the report to the Secretary of the U.S. Department of Education containing the NACIQI's recommendations concerning the reauthorization of the HEA.

Below is a list of agencies scheduled for review during the December 14–16 NACIQI meeting.

Petition for Initial Recognition

State Approval Agency for Nursing Education

1. Mississippi Institutions of Higher Learning, Board of Trustees of State Institutions of Higher Education.

Petitions for Renewal of Recognition

Accrediting Agencies

1. American Podiatric Medical Association, Council on Podiatric Medical Education.

2. The Council on Chiropractic Education, Commission on Accreditation.

3. Commission on English Language Program Accreditation.

4. Joint Review Committee on Education in Radiologic Technology.

5. North Central Association Commission on Accreditation and School Improvement, Board of Trustees.

State Approval Agencies for Nursing Education

1. Kansas State Board of Nursing.

2. Maryland State Board of Nursing.

3. New York State Board of Regents, State Education Department, Office of the Professions (Nursing Education).

State Approval Agencies for Postsecondary Education Vocational Education

1. New York State Board of Regents, State Education Department, Office of the Professions (Public Postsecondary Vocational Education, Practical Nursing).

2. Pennsylvania State Board for Vocational Education, Bureau of Career and Technology Education.

Petitions for Renewal of Recognition and Expansion of Scope To Include Distance Education

Accrediting Agency

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education.

State Approval Agency for Postsecondary Education Vocational Education

1. Oklahoma Board of Career and Technology Education.

Compliance Reports

Accrediting Agencies

1. American Optometric Education, Accreditation Council on Optometric Education.

2. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

Submission of Written Comments Concerning Agencies Scheduled for Review: Submit your written comments by e-mail, no later than thirty days after the date of publication, to the Accreditation Group Records Manager at *aslrecordsmanager@ed.gov*, with the subject line ''Written Comments re (agency name).'' Do not send material directly to NACIQI members.

In all instances, your comments about an agency's initial recognition or the renewal of recognition must relate to whether the agency meets the Criteria for Recognition. In addition, your comments for any agency whose compliance report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the report. Third parties having concerns about agencies regarding matters outside the scope of the petition should report those concerns to Department staff.

Only material submitted by the deadline to the e-mail address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and the NACIQI in their deliberations.

This notice announces the only opportunity you will have to submit written comments concerning the agencies scheduled for this meeting. There will be another **Federal Register** notice concerning the opportunity to make written comments about the NACIQI's report to the Secretary concerning recommendations on the reauthorization of the HEA.

Requests to Make Oral Comments: There will be another notice that will invite the public to submit requests to make oral presentations before the NACIQI concerning the agencies scheduled for review. That notice will explain the methods the public may use to request to make oral presentations and provide the instructions for each method. A separate **Federal Register** notice will invite the public to make oral presentations concerning the NACIQI's report on the reauthorization of the HEA.

Access to Records of the Meeting: The Department will record the meeting and post the official report of the meeting on the NACIQI Web site. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street, NW., Washington, DC, by e-mailing *aslrecordsmanager@ed.gov*, or by calling 202–219–7067 to schedule an appointment.

Reasonable Accommodations: Individuals who will need accommodations for a disability in order to attend the December 14–16, 2011 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format) should contact Department staff at 202–219–7011; or, e-mail *aslrecordsmanager@ed.gov,* no later than November 17, 2011. We will attempt to meet requests after this date, but we cannot guarantee the availability of the requested accommodation. The meeting site will be accessible.

For Additional Information: Contact Melissa Lewis, NACIQI Executive Director, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006; telephone: 202–219–7009; e-mail: *Melissa.Lewis@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 5:00 p.m., Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF,

you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–20947 Filed 8–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 18–095]

Idaho Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to article 410 of the project license.

b. *Project No:* 18–095.

c. *Date Filed:* July 12, 2011.

d. *Applicant:* Idaho Power Company of Boise, Idaho.

e. *Name of Project:* Twin Falls Hydroelectric Project.

f. *Location:* This project is located on the Snake River in Jerome County, Idaho.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Nathan F. Gardiner, Attorney, Idaho Power Company, P.O. Box 70, Boise, ID 83702, 208–388–2975, *ngardiner@idahopower.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lorance Yates, 678–245–3084, *lorance.yates@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 12, 2011.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–18–095) on any comments or motions filed.

k. *Description of Application:* The licensee requests that the definition of ''peak viewing times'' in article 410 of the Twin Falls Project license be amended. This request would eliminate the requirement for aesthetic flows during the low-visitation season (September through March) and reduce the number of viewing hours during the high-visitation season (April through August). Currently, article 410 requires the licensee to maintain flows that average 300 cubic feet per second (cfs) over Twin Falls from 8 a.m. to 30 minutes after sunset each day, 7 days a week, April 1 through August 31, and 8 a.m. to 30 minutes after sunset on all Saturdays, Sundays and holidays, September 1 through March 31 (peak viewing times). At no time during these peak viewing times is the flow over Twin Fails to fall below 270 cfs or inflow, whichever is less, nor should flows average less than 300 cfs, or inflows less 200 cfs. The licensee is requesting that peak viewing times in article 410 be changed to require minimum flows over Twin Falls from 10 a.m. to 8 p.m., 7 days a week, April 1 through August 31 and no minimum flows the remainder of the year. No change in flow rates is requested.

l. *Locations of the Application:* A of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–18) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20977 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–196]

PPL Montana, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 2188–196.

c. *Date Filed:* July 7, 2011.

d. *Applicant:* PPL Montana, LLC.

e. *Name of Project:* Missouri-Madison Hydroelectric Project.

f. *Location:* The project consisting of nine developments is located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark and Cascade Counties in Montana.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David R. Poe, Dewey & LeBoeuf LLP, 1101 New York Avenue, NW., Washington, DC 20001. Tel: (202) 346–8039. E-mail: *dpoe@dl.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 25, 2011.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system (*http://www.ferc.gov/docs-filing/ecomment.asp)* and must include name and contact information at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2188–196) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee proposes to replace the aged 100-kV radial lines that interconnect the Morony Development to the Great Falls substation, and the Ryan and Cochran Developments to the Rainbow Switch yard with new, more reliable structures and materials that terminate in the newly constructed Crooked Falls Switchyard. The corridors of the lines from the three developments occupy a total of 146.3 acres of land owned by licensee in fee and easements. There are no Federal lands within the corridors.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the ''eLibrary'' link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp.* Enter the docket number excluding the last three digits (P–2188) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20897 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–527–000]

ANR Pipeline Company; Notice of Application

Take notice that on August 2, 2010, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002, filed in Docket No. CP11–527–000, a request for abandonment authority, pursuant to 18 CFR part 157 and section 7(b) of the Natural Gas Act, to abandon transportation of service through certain natural gas facilities located offshore Texas. Specifically, ANR proposes to abandon its present and future obligation to provide transportation service through approximately 7.5 miles of 20-inch pipeline from the producer platform located in High Island Block A–571 to a sub-sea connection in the High Island Offshore System in High Island Block A–546. ANR states that the proposed abandonment will not reduce the capacity that is currently available to the current shipper, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Rene Staeb, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002, telephone no. (832) 320–5212, facsimile no. (832) 320–6215, and *e-mail: Rene_staeb@transcanada.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: August 31, 2011.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20892 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2350–000.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Non-Conforming Service Agreement—Nesson to be effective 9/1/2011.

Filed Date: 08/02/2011.

Accession Number: 20110802–5114.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2011.

Docket Numbers: RP11–2351–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.204: Negotiated Rates Filing—12 to be effective 7/16/2011.

Filed Date: 08/04/2011.

Accession Number: 20110804–5085.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2011.

Docket Numbers: RP11–2352–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.203: Baseline Filing Volume No. 1–A to be effective 7/16/2011.

Filed Date: 08/04/2011.

Accession Number: 20110804–5089.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2011.

Docket Numbers: RP11–2353–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2011 ACA Filing to be effective 10/1/2011.

Filed Date: 08/04/2011.

Accession Number: 20110804–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2011.

Docket Numbers: RP11–2354–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Enterprise K12–7 Amendment to Negotiated Rate Agreement to be effective 8/6/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5014.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2011.

Docket Numbers: RP11–2355–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Sheyenne Expansion Additional Contracts to be effective 9/5/2011.
Filed Date: 08/05/2011.
Accession Number: 20110805–5033.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2011.

Docket Numbers: RP11–2356–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits tariff filing per 154.203: 2011 August 5 Compliance Filing (RP04–274–023) to be effective 9/1/2011.
Filed Date: 08/05/2011.
Accession Number: 20110805–5060.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2011.

Docket Numbers: RP11–2357–000.
Applicants: PostRock KPC Pipeline, LLC.
Description: PostRock KPC Pipeline, LLC submits tariff filing per 154.402: KPC ACA Filing to be effective 10/1/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5031.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: RP11–2358–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Virginia Natural Gas Negotiated Rate Agreement and Amendment to be effective 8/6/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5032.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Docket Numbers: RP11–2359–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: Tres Palacios Gas Storage LLC submits tariff filing per 154.204: Tres Palacios Gas Storage LLC—Revisions to FERC Gas Tariff to be effective 9/8/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5020.
Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2199–001.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC. submits tariff filing per 154.203: Revised Compliance Filing for Volume No. 2 Baseline and Rate Schedule X–275 to be effective 7/20/2011.

Filed Date: 08/03/2011.

Accession Number: 20110803–5080.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2011.

Docket Numbers: RP11–2323–001.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.205(b): DTI—July 29, 2011 Negotiated Rate Amendment to be effective 8/1/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5064.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2011.

Docket Numbers: RP11–2308–001.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.205(b): Winter Operations Supplemental Filing to be effective 9/1/2011.

Filed Date: 08/08/2011.

Accession Number: 20110808–5092.

Comment Date: 5 p.m. Eastern Time on Monday, August 22, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20891 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: ER11–2935–002.
Applicants: Paulding Wind Farm II LLC.
Description: Notice of Non-Material Change in Status of Paulding Wind Farm II LLC.
Filed Date: 08/09/2011.
Accession Number: 20110809–5147.
Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4264–000.
Applicants: New England Power Company.
Description: New England Power Company submits tariff filing per 35: Filing to Implement Settlement Agreement in Docket ER10–523 to be effective 3/31/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5021.
Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4265–000.
Applicants: Midwest Independent Transmission System, ITC Midwest LLC.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Notice of Succession for Interconnection Agreement to be effective 10/9/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5038.
Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4266–000.
Applicants: Richland-Stryker Generation LLC.
Description: Richland-Stryker Generation LLC submits tariff filing per 35.12: Market Based Rate to be effective 9/26/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5083.
Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4267–000.
Applicants: Algonquin Energy Services Inc.
Description: Algonquin Energy Services Inc. submits tariff filing per 35.12: AES Baseline Tariff to be effective 8/9/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5092.
Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4268–000.

Applicants: Algonquin Northern Maine Gen Co.

Description: Algonquin Northern Maine Gen Co. submits tariff filing per 35.12: Algonquin Northern Baseline Tariff to be effective 8/9/2011.

Filed Date: 08/09/2011.

Accession Number: 20110809–5093.

Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4269–000.

Applicants: Algonquin Tinker Gen Co.

Description: Algonquin Tinker Gen Co. submits tariff filing per 35.12: Algonquin Tinker Baseline Tariff to be effective 8/9/2011.

Filed Date: 08/09/2011.

Accession Number: 20110809–5094.

Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4270–000.

Applicants: Algonquin Windsor Locks LLC.

Description: Algonquin Windsor Locks LLC submits tariff filing per 35.12: Algonquin Windsor Baseline Tariff to be effective 8/9/2011.

Filed Date: 08/09/2011.

Accession Number: 20110809–5095.

Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4271–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 108 EPE Eng. & Proc. Agreement to be effective 8/6/2011.

Filed Date: 08/09/2011.

Accession Number: 20110809–5118.

Comment Date: 5 p.m Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4272–000.

Applicants: Midwest Independent Transmission System, ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Filing of Notice of Succession to be effective 10/10/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5034.

Comment Date: 5 p.m Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4273–000.

Applicants: Midwest Independent Transmission System, ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Filing of Notice of Succession to be effective 10/10/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5035.

Comment Date: 5 p.m Eastern Time on Wednesday, August 31, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–399–000.

Applicants: Graphic Packaging International Inc.

Description: Form 556 of Graphic Packaging International Inc., for self certification of cogeneration facilities at Graphic Packaging Paperboard Mill in Macon, GA.

Filed Date: 07/12/2011.

Accession Number: 20110712–5018.

Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20976 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–103–000.

Applicants: Duke Energy Ohio, Inc., Duke Energy Commercial Asset Management.

Description: Application of Duke Energy Ohio, Inc., *et al.*

Filed Date: 08/08/2011.

Accession Number: 20110808–5157.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1777–003; ER10–2983–002; ER10–2980–002; ER10–2988–003.

Applicants: Thompson River Power, LLC, Castleton Power, LLC, Sundevil Power Holdings, LLC, Castleton Energy Services, LLC.

Description: Notification of Change in Status of Sundevil Power Holdings, LLC, *et al.*

Filed Date: 08/08/2011.

Accession Number: 20110808–5155.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–2051–001.

Applicants: Pure Energy Inc.

Description: Pure Energy Inc. submits tariff filing per 35: Order 697 Compliance Filing to be effective 11/9/2010.

Filed Date: 08/08/2011.

Accession Number: 20110808–5035.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4248–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/8/2011.

Filed Date: 08/08/2011.

Accession Number: 20110808–5015.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4249–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/8/2011.

Filed Date: 08/08/2011.

Accession Number: 20110808–5017.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4250–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/8/2011.

Filed Date: 08/08/2011.

Accession Number: 20110808–5018.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4251–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/8/2011.

Filed Date: 08/08/2011.
Accession Number: 20110808–5020.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4252–000.
Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/8/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5024.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4253–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii: Certificates of Concurrence for Pere Marquette, Sternberg & Vestaburg IFAs to be effective 4/21/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5030.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4254–000.
Applicants: New England Power Company.
Description: New England Power Company submits tariff filing per 35.13(a)(2)(iii: Interconnection Agreement with Lowell Cogeneration to be effective 10/1/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5093.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4255–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA North Sky River Wind Project—North Sky River Energy LLC to be effective 8/9/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5126.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4256–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA Amendment to Walnut Creek Energy Park Project to be effective 8/9/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5144.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4257–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO Tariff Revisions re: Bidding, Scheduling, Settlement of Ancillary Services to be effective 10/7/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5146.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4258–000.
Applicants: Desert View Power, Inc.
*Description:*Desert View Power, Inc. submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 10/7/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5163.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4259–000.
Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to Interconnection Agreement to be effective 10/8/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5190.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4260–000.
Applicants: Elk Hills Power, LLC.
Description: Elk Hills Power, LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Category 1 Seller Status and Revised Market-Based Rate Tariff to be effective 8/9/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5191.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4261–000.
Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Notice of Succession for Interconnection Agreement to be effective 10/8/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5192.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4262–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.1: Residential Purchase and Sale Agreement to be effective 10/1/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5193.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4263–000.
Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/8/2011.
Filed Date: 08/08/2011.
Accession Number: 20110808–5194.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20890 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14204–000, 14231–000]

Percheron Power, LLC, FFP Project 85, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 31, 2011, Percheron Power, LLC (Percheron Power), filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Scooteney Reservoir Inlet Water Power Project, to be located on the Potholes East Canal, which is an inlet structure to the Scooteney Reservoir, near Othello, Franklin County, Washington. Another permit application for the Scooteney Water Power Project, located at the same site,

was filed by FFP Project 85, LLC (FFP), on July 18, 2011. Both of the proposed projects would utilize the existing Potholes East Canal, which is owned by the U.S. Bureau of Reclamation. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Percheron Power project would consist of the following: (1) An approximately 500-foot-long intake structure installed on the Potholes East Canal to divert flow from the canal to the turbines, which would be 120 feet wide at the intersection with the canal and would narrow to 60 feet wide before entering the powerhouse, and would include a 120-foot-wide, 15-foot-high intake grate and a 60-foot-wide, 15-foot-high trash rack; (2) a approximately 80-foot-long, 30-foot-wide powerhouse containing four low-head turbine/generator units rated for approximately 350 kilowatts each (total capacity of 1,420 kilowatts) at an average head of 14 feet; (3) a 600-foot-long, 11-foot-high bypass weir, constructed in parallel to the west bank of the existing Potholes East Canal, to function as a project spillway; (4) a discharge canal returning flows from the powerhouse to the Potholes East Canal; (5) a 20-foot-long, 40-foot-wide substation at the powerhouse which will connect with the existing distribution line at the project site; and (6) appurtenant facilities. The estimated annual generation of the project would be 4.23 gigawatt-hours (GWh).

The proposed FFP project would consist of the following: (1) An approximately 40-foot-wide, 100-foot-long approach channel installed on the Potholes East Canal to divert flow from the canal to the turbines; (2) a approximately 125-foot-long, 40-foot-wide powerhouse containing one Kaplan turbine/generator unit rated at 2,500-kW at a hydraulic head of 13 feet; (3) a 120-foot-long, 50-foot-wide discharge canal returning flows from the powerhouse to the Potholes East Canal; (4) a 40-foot-long, 50-foot-wide substation at the powerhouse which will connect with the existing distribution line at the project site; and (5) appurtenant facilities. The estimated annual generation of the project would be 15 GWh.

Applicant Contact (Percheron Power): Mr. Jerry Straalsund, President, Percheron Power, LLC, 6855 W. Clearwater Ave., A101–260, Kennewick, WA 99336; *e-mail: jls@percheronpower.com.*

Applicant Contact (FFP): Ms. Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; *phone:* (978) 283–2822.

FERC Contact: Jennifer Harper, (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about these projects, including copies of the applications, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket numbers (P–14204–000 and P–14231–000) in the docket number field to access the documents. For assistance, contact FERC Online Support.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20889 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–13563–001]

Juneau Hydropower, Inc.; Notice of Scoping Meeting and Site Visit and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 13563–001.

c. *Applicant:* Juneau Hydropower, Inc.

d. *Name of Project:* Sweetheart Lake Hydroelectric Project.

e. *Location:* On Sweetheart Lake, approximately 30 air miles southeast of the city of Juneau, Alaska. The project would occupy lands of the Tongass National Forest.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Duff Mitchell, Business Manager, Juneau Hydropower, Inc., P.O. Box 22775, Juneau, AK 99802; 907–789–2775, *e-mail: duff.mitchell@juneauhydro.com.*

h. *FERC Contact:* Jennifer Harper, at (202) 502–6136.

i. *Deadline for filing scoping comments:* October 7, 2011.

All documents (original and seven copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

j. *The proposed project would consist of:* (1) The existing Lower Sweetheart Lake, raised from a surface water elevation of 544 feet and a surface area

of 1,414 acres to a new surface water elevation of 629 feet and a new surface area of 1,635 acres; (2) a new, approximately 500-foot-long, 90-foot-high concrete and rock-faced dam, constructed at the outlet of Lower Sweetheart Lake; (3) an intake on the dam connecting to a 12-foot-diameter, 10,390-foot-long unlined tunnel; (4) a 9-foot-diameter, 1,650-foot-long penstock installed within the lower potion of the tunnel, connecting to the powerhouse; (5) a powerhouse containing two new Francis generating units with a total installed capacity of 30 MW; (6) a new tailrace discharging flows to Sweetheart Creek; (7) a new approximately 0.6-mile long road from the powerhouse to the dock/landing site; (8) a new dock/landing site for boat, seaplane, and/or helicopter access, located on the east shore of Gilbert Bay; (9) a new 138-kilovolt transmission line that would be either 8.9 miles long with 5.9 miles of overhead line and 3 miles of submerged line, or 8.4 miles long with 0.4 miles of overhead line and 8.0 miles of submerged line; and (10) appurtenant facilities.

k. Scoping Process

Juneau Hydropower, Inc. (Juneau Hydropower) is using the Commission's alternative licensing process (ALP). Under the ALP, Juneau Hydropower will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Sweetheart Lake Hydroelectric Project.

Juneau Hydropower expects to file, with the Commission, the APEA and the license application for the Sweetheart Lake project by November 30, 2012. Although Juneau Hydropower's intent is to prepare an APEA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the scoping requirements, pursuant to the National Environmental Policy Act of 1969, as amended, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

Juneau Hydropower and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, Native Alaskan tribes, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting September 7, 2011, 9 a.m.–12 p.m. (Alaska Standard Time), Juneau Ranger District Conference Room, 8510 Mendenhall Loop Road, Juneau, AK 99801.

Evening Meeting

September 7, 2011, 6 p.m.–9 p.m. (Alaska Standard Time), Juneau Centennial Hall, Hickel Room, 101 Egan Drive, Juneau, AK 99801.

Site Visit

Juneau Hydropower, Commission staff, and state and federal resource agencies will participate in an aerial tour of the project site on Thursday, September 8, 2011. Anyone with questions about the aerial tour should contact Duff Mitchell, Juneau Hydropower, at (907) 789–2775. Those individuals planning to participate in the aerial tour should notify Mr. Mitchell of their intent no later than September 1, 2011.

To help focus discussions, Scoping Document 1 (SD1) was mailed August 8, 2011, outlining the subject areas to be addressed in the APEA, to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist Juneau Hydropower in defining and clarifying the issues to be addressed in the APEA.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20898 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4266–000]

Richland-Stryker Generation LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Richland-Stryker Generation LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of

future issuances of securities and assumptions of liability, is August 30, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20896 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14207–000]

Percheron Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 31, 2011, Percheron Power, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Scooteney Reservoir Outlet Water Power Project (Scooteney Outlet Project or project) to be located on the Potholes East Canal, which is an outlet structure from the Scooteney Reservoir, near Othello, Franklin County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An approximately 300-foot-long intake structure installed on the Potholes East Canal to divert flow from the canal to the turbines, which would be 100 feet wide at the intersection with the canal and would narrow to 50 feet wide before entering the powerhouse, and would include a 100-foot-wide, 15-foot-high intake grate and a 50-foot-wide, 15-foot-high trash rack; (2) an approximately 65-foot-long, 20-foot-wide powerhouse containing four low-head turbine/generator units rated for approximately 260 kilowatts each (total capacity of 1,050 kilowatts) at an average head of 11 feet; (3) a 600-foot-long, 11-foot-high bypass weir, constructed in parallel to the west bank of the existing Potholes East Canal, to function as a project spillway; (4) a discharge canal returning flows from the powerhouse to the Potholes East Canal; (5) a 20-foot-long, 40-foot-wide substation at the powerhouse which will connect with the existing distribution line at the project site; and (6) appurtenant facilities. The project will be located on federal lands, and would operate as run-of-release using irrigation flows provided by the Bureau of Reclamation and the South Columbia Basin Irrigation District. The estimated annual generation of the Scooteney Outlet Project would be 3.76 gigawatt-hours.

Applicant Contact: Mr. Jerry Straalsund, President, Percheron Power, LLC, 6855 W. Clearwater Ave., A101–260, Kennewick, WA 99336; *e-mail: jls@percheronpower.com.*

FERC Contact: Jennifer Harper; *phone:* (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14207–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20894 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14219–000]

Gay & Robinson, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 1, 2011, Gay & Robinson, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Olokele River Hydroelectric Project (Olokele River Project or project) to be located on the Olokele River, near Waimea, Kauai County, Hawaii. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 100-foot-long, 20-foot-wide forebay; (2) a new intake; (3) a new 4,175-foot-long, 42-inch-diameter ductile iron penstock; (4) a new 40-foot-long, 40-foot-wide, 25-foot-

high pre-fabricated steel powerhouse housing a 6.0-megawatt (MW) Pelton turbine/generator unit; (5) a new 5-mile-long, 69-kilovolt transmission line; and (6) appurtenant facilities. The estimated annual generation of the Olokele River Project would be 20.5 gigawatt-hours.

Applicant Contact: Mr. Charles Okamoto, President, Gay & Robinson, Inc., P.O. Box 156, Kaumakani, Hawaii 96747; *phone:* (808) 335–3133.

FERC Contact: Kelly Wolcott; *phone:* (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14219–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20975 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14229–000]

Goat Lake Hydro, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 15, 2011, Goat Lake Hydro, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Connelly Lake Hydropower Project (Connelly Lake Project) to be located on Connelly Lake, and an unknown tributary of the Chilkoot River, Haimes Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project will consist of the existing 90-acre Connelly Lake and the following proposed new facilities: (1) A 60-foot-high rock-filled dam proposed to be constructed at the outlet of Connelly Lake which would raise Connelly Lake from elevation 2,280 feet to 2,325 feet mean sea level and increase the surface area from 90 acres to170 acres; (2) an intake to be constructed on the left abutment of the dam; (3) a spillway (either an ungated weir on the right abutment of the dam, or a shaft spillway on the left abutment); (4) a 42-inch-diameter, 5,700-foot-long, above-ground penstock extending from the outlet of the intake tunnel to the powerhouse on the west bank of the Chilkoot River; (5) a 40-foot-long, 60-foot-wide powerhouse to contain two turbine/generating units with a total installed capacity of 12 megawatts, with a hydraulic capacity of 90 cubic feet per second, and an average hydraulic head of 2,120 feet; (6) an excavated, riprap-lined channel tailrace extending about 50 feet from the powerhouse to the Chilkoot River; (7) a 14-mile-long, 34.5-kilovolt transmission line proposed to interconnect with a local, existing utility transmission line; and (8) appurtenant facilities. The estimated annual generation of the Connelly Lake Project would be 45 gigawatt-hours.

Applicant Contact: Mr. Robert S. Grimm, CEO/President, Goat Lake Hydro, Inc., c/o Alaska Power & Telephone Company, P.O. Box 3222, Port Townsend, WA 98368, phone: (360) 385–1733 ex. 120.

FERC Contact: Patrick Murphy; phone: (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14229–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20972 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14208–000]

Percheron Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 31, 2011, Percheron Power, LLC filed an application for a

preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Potholes East Canal Water Power Project (East Canal Project or project) to be located on the Potholes East Canal, near Othello, Franklin County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An approximately 400-foot-long intake structure installed on the Potholes East Canal to divert flow from the canal to the turbines, which would be 120 feet wide at the intersection with the canal and would narrow to 75 feet wide before entering the powerhouse, and would include a 120-foot-wide, 15-foot-high intake grate and a 75-foot-wide, 15-foot-high trash rack; (2) an approximately 100-foot-long, 20-foot-wide powerhouse containing five low-head turbine/generator units rated for approximately 400 kilowatts each (total capacity of 2,020 kilowatts) at an average head of 18 feet; (3) a 600-foot-long, 11-foot-high bypass weir, constructed in parallel to the west bank of the existing Potholes East Canal, to function as a project spillway; (4) a discharge canal returning flows from the powerhouse to the Potholes East Canal; (5) a 20-foot-long, 50-foot-wide substation at the powerhouse which will connect with the existing distribution line at the project site; and (6) appurtenant facilities. The project will be located on federal lands, and would operate as run-of-release using irrigation flows provided by the Bureau of Reclamation and the South Columbia Basin Irrigation District. The estimated annual generation of the Scooteney Outlet Project would be 5.44 gigawatt-hours.

Applicant Contact: Mr. Jerry Straalsund, President, Percheron Power, LLC, 6855 W. Clearwater Ave., A101–260, Kennewick, WA 99336; *e-mail: jls@percheronpower.com.*

FERC Contact: Jennifer Harper; *phone:* (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14208–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20895 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–147—South Carolina and North Carolina Keowee-Toxaway Hydroelectric Project]

Duke Energy Carolinas, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission's) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the South Carolina State Historic Preservation Officer (SHPO), the North Carolina SHPO, and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. section 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the existing Keowee-Toxaway Hydroelectric Project.

The Programmatic Agreement, when executed by the Commission, the South Carolina SHPO, the North Carolina SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR section 800.13(e)). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

Duke Energy Carolinas, LLC, as licensee for Project No. 2503–147, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2503–147 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Dr. Jodi Barnes, South Carolina Archives & History Center, 8301 Parklane Road, Columbia, SC 29223–4905.

Rebekah Dobrasko, South Carolina Archives & History Center, 8301 Parklane Road, Columbia, SC 29223–4905.

Jennifer Huff, Duke Energy Carolinas, LLC, Mail Code EC12y, 526 South Church Street, Charlotte, NC 28202–1802.

Brett A. Garrison, Duke Energy Lake Services—ONO2LM, 7800 Rochester Highway, Seneca, SC 29672.

Tyler B. Howe, Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, NC 28719.

Renee Gledhill-Earley, North Carolina Department of Cultural Resources, 4617 Mail Service Center, Raleigh, NC 27699–4610.
Dolores Hall, North Carolina Office of State Archaeology, 4619 Mail Service Center, Raleigh, NC 27699–4619.
Russell Townsend, THPO, Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, NC 28719.
Wenonah G. Haire, DMD, THPO, Catawba Indian Nation, 1536 Tom Stevens Road, Rock Hill, SC 29730.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original plus seven copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20973 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–530–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on August 5, 2011, National Fuel Gas Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221–5887, filed in Docket No. CP11–530–000, an application pursuant to sections 157.205, 157.208 and 157.213 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to drill two new horizontal injection/withdrawal wells within the Colden Storage Field in Erie, New York, under National Fuel's blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The new wells are proposed to restore and maintain field deliverability. National Fuel will also construct two new well lines to connect the wells to the existing storage pipelines. Each new well line will consist of approximately 150 feet of 8-inch storage pipelines. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Janet R. Bayer, Regulatory Analyst, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221–5887 at telephone (716) 857–7429, facsimile (716) 857–7206 or e-mail: *jrbferc@natfuel.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: August 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20893 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12629–003]

F&B Wood Corporation; Milltown Hydroelectric LLC.; Notice of Transfer of Exemption

1. Pursuant to section 4.106(i) of the Commission's regulations,[1] F&B Wood Corporation, exemptee for the Corriveau Hydroelectric Project No. 12629[2], has informed the Commission that it has transferred ownership of the exempted project property and facilities for Project No. 12629 to Milltown Hydroelectric LLC.[3] The project is located on the Swift River in Oxford County, Maine. The transfer of an exemption does not require Commission approval.[4]

2. Milltown Hydroelectric LLC, located at 8 Brown Street, Mexico, Maine, is now the exemptee of the Corriveau Project No. 12629.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20974 Filed 8–16–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0005; FRL–8882–6]

Pesticide Products; Receipt of Applications to Register New Uses

AGENCY: Environmental Protection Agency (EPA).

[1] 18 CFR 4.106(i) (2011).

[2] The Commission issued an exemption from licensing for Project No. 12629 on October 24, 2006. *F&B Wood Corp.,*117 FERC ¶ 62,059 (2006)

[3] *See* filings of May 9 and July 5, 2011, from Fernand Corriveau, President of F&B Wood Corporation.

[4] *E.g., John C. Jones,* 99 FERC ¶ 61,372, at 62,580 n.2 (2002).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before September 16, 2011.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number specified by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 *regulations.gov* or e-mail. The *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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting on a docket that addresses multiple products, please indicate to which registration number(s) your comment applies.

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications for New Uses

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Number:* 241–245. *Docket Number:* EPA–HQ–OPP–2011–0521. *Company name and address:* BASF Corporation; 26 Davis Dr., Research Triangle Park, NC 27709. *Active ingredient:* Pendimethalin. *Proposed Use(s):* Brassica leafy greens, edamame, leaf lettuce, melons, turnip greens, and vine climbing small fruits. *Contact:* Hope Johnson, Registration Division, (703) 305–5410, *johnson.hope@epa.gov.*

2. *Registration Number:* 241–418. *Docket Number:* EPA–HQ–OPP–2011–0521. *Company name and address:* BASF Corporation; 26 Davis Dr., Research Triangle Park, NC 27709. *Active ingredient:* Pendimethalin. *Proposed Use(s):* Amur river grape, broccoli raab, cantaloupe, Chinese cabbage (bok choy), citron melon, collards, fuzzy kiwifruit, gooseberry, hardy kiwifruit, kale, leaf lettuce, maypop, mizuna, muskmelon, mustard greens, mustard spinach, rape greens, schisandra berry, turnip greens, vegetable soybean (edamame) and watermelon. *Contact:* Hope Johnson, Registration Division, (703) 305–5410, *johnson.hope@epa.gov.*

3. *Registration Numbers:* 352–529, 352–571. *Docket Number:* EPA–HQ–OPP–2011–0564. *Company name and address:* E.I. du Pont de Nemours and Company. 1007 Market St., Wilmington, DE 19898. *Active ingredient:* Thifensulfuron-methyl. *Proposed Use(s):* Sulfonylurea-tolerant chicory. *Contact:* Mindy Ondish, Registration Division, (703) 605–0723, *ondish.mindy@epa.gov.*

4. *Registration Numbers:* 352–555, 352–571. *Docket Number:* EPA–HQ–OPP–2011–0563. *Company name and address:* E.I. du Pont de Nemours and Company. 1007 Market St., Wilmington, DE 19898. *Active ingredient:* Rimsulfuron. *Proposed Use(s):* Sulfonylurea-tolerant chicory. *Contact:* Mindy Ondish, Registration Division, (703) 605–0723, *ondish.mindy@epa.gov.*

5. *File Symbol:* 352–IUR. *Docket Number:* EPA–HQ–OPP–2011–0591. *Company name and address:* DuPont Crop Protection, Stein Haskell Research Center, P.O. Box 30, Newark, DE 19714–0030. *Active ingredient:* Chlorantraniliprole. *Proposed Use(s):* Field corn seed treatment. *Contact:* Rita Kumar, Registration Division, (703) 308–8291, *kumar.rita@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 3, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–20595 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9452–4]

Proposed CERCLA Administrative Cost Recovery Settlement; Carpenter Avenue Mercury Site, Iron Mountain, Dickenson County, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Carpenter Avenue Mercury site in Iron Mountain, Dickenson County, Michigan with the following settling parties: The Salvation Army of Wauwatosa, Wisconsin, and the Trinity United Lutheran Church of Iron Mountain, Michigan. The settlement requires the Settling Parties to pay $35,000.00, plus any interest accrued between the date of receipt of notice by the Settling Parties that EPA has signed the CERCLA 122(h), 42 U.S.C. 9622(h) Settlement Agreement (Agreement) and the Effective Date of the Agreement, to the Hazardous Substance Superfund through an escrow account to be established by the Settling Parties. The settlement includes a covenant not to sue the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and contribution protection for the Settling Parties pursuant to Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Dickenson County Public Library, 401 Iron Mountain Street, Iron Mountain, Michigan (p: 906/774–1218), and the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604.

DATES: Comments must be submitted on or before September 16, 2011.

ADDRESSES: The proposed settlement and a fact sheet providing additional background information relating to the settlement is available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Thomas Turner, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604. Comments should reference the Carpenter Avenue Mercury site, Iron Mountain, Dickenson County, Michigan and EPA Docket No. and should be addressed to Thomas Turner, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Thomas Turner, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The Site is comprised of a former duplex residential building (demolished by the Settling PRPs during the removal action) located at 800 S. Carpenter Avenue, Iron Mountain (Dickenson County), Michigan. The Site is located in a residential neighborhood. At the time of the removal action, the Site building was owned by Settling Party Church and leased to Settling Party Salvation Army for use as housing for indigent people. In October 2008, the residents of the building discovered a 1 gallon gasoline container full of elemental mercury in the basement of the duplex residential building. The residents at the Site caused a release of the mercury. After initial response from local law enforcement and fire departments, EPA was contacted and began emergency response procedures, especially involving tracking and screening the potential spread of the Site mercury to nearby locations. Under EPA direction

and oversight, Settling Party Salvation Army implemented a removal action at the Site to address the principal release of mercury. At the conclusion of this activity, Settling Party Church demolished the duplex residential building at the Site. EPA issued a June 21, 2010 Demand Letter to Settling Parties. Between June and December 2010, EPA and Settling Parties negotiated the present proposed Administrative Settlement.

Dated: July 27, 2011.

Richard C. Karl,

Director, Superfund Division.

[FR Doc. 2011–20967 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9452–5]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson*, No. 1:10–cv–02112–JEB (D. DC). Plaintiffs filed a complaint alleging that EPA failed to take timely action to approve or disapprove, approve in part, or disapprove in part an Arkansas State Implementation Plan (SIP) revision addressing regional haze dated July 29, 2008 (Arkansas Regional Haze SIP), as required by sections 110(k)(2) and (3) of the CAA. The proposed consent decree establishes a deadline of December 15, 2011 for EPA to take action on the Arkansas Regional Haze SIP.

DATES: Written comments on the proposed consent decree must be received by *September 16, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0690, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5571; fax number (202) 564–5603; e-mail address: *anderson.lea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Sierra Club seeking to compel the Agency to take final action under sections 110(k)(2) and (3) of the CAA on an Arkansas Regional Haze SIP revision dated July 29, 2008. The proposed consent decree requires that no later than December 15, 2011, EPA shall sign a notice of final rulemaking in which it approves or disapproves the Arkansas Regional Haze SIP revision pursuant to sections 110(k)(2) and (3) of the CAA, 42 U.S.C. 7410(k)(2) and (3). In addition, the proposed consent decree requires that following signature, EPA shall expeditiously deliver the notice to the Office of the Federal Register for publication in the **Federal Register** and shall provide a copy of the notice to Plaintiff within ten (10) days. After EPA fulfills its obligations under the proposed consent decree, the consent decree may be terminated.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0690) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the

close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 10, 2011.

Patricia A. Embrey,

Acting Associate General Counsel.

[FR Doc. 2011–20968 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0955; FRL–8881–2]

Registration; Cancellation Order for Rodenticide Products That Have Expired

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for certain rodenticide products containing the pesticide active ingredients brodifacoum, difenacoum and bromethalin, pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) because as of June 4, 2011 these time-limited registrations expired. These are not the last products containing these pesticide active ingredients registered for use in the United States. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stock provisions.

DATES: The expirations occurred on June 4, 2011.

FOR FURTHER INFORMATION CONTACT: Rusty Wasem, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460–0001; *telephone number:* (703) 305–6979; *e-mail address: wasem.russell@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0955. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

II. What Action is the Agency Taking

This notice announces the June 4, 2011 expiration of certain products registered under section 3 of FIFRA. This notice serves as a cancellation order to provide for existing stocks of affected products. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—REGISTRATIONS AND PRODUCT NAMES

EPA Registration No.	Product name
47629–14*	Difenacoum Rat and Mouse Pellets (consumer use only).
47629–16*	Difenacoum Rat and Mouse Block (consumer use only).
47629–17*	Difenacoum Rat and Mouse Place Packs (consumer use only).
47629–11	Bromethalin Rat & Mouse Block.
47629–13	Bromethalin 0.01% Pellet.
7173–284	Difethialone 12G Mini Blocks.
3282–89	Fleeject.
3282–90	D-Con Bait Station.
3282–91	Mimas.
72159–11	Gladiator All Weather Bait.
72159–12	Agrisel Gladiator Place Pack Pellets.

*The registrations 47629–14, 47629–16, and 47629–17 were each registered for three different use patterns: (1) Consumer use, (2) Agricultural use, and (3) Professional use. Because the expiration date for 47629–14, 47629–16, and 47629–17 applied only to the consumer use, in regard to these three products, this cancellation order applies only to the consumer use.

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit, by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF EXPIRED RODENTICIDE PRODUCTS

EPA Company No.	Company name and address
47629	Woodstream Corp., 69 North Locust St., P.O. Box 327, Lititz, PA, USA 17543–0327.
3282	Reckitt Benckiser Inc., 399 Interspace Parkway, Parsippany, NJ, USA 07054–0225.
7173	Liphatech Inc., 3600 W. Elm St., Milwaukee, WI, USA 53209.
72159	Agrisel USA, Inc., P.O. Box 3528, Suwanee, GA, USA 30024.

III. Cancellation Order

Pursuant to FIFRA section 3, EPA hereby announces the June 4, 2011 expiration of the time-limited registrations identified in Table 1 of Unit II. The registrants listed above in Table 2, Unit II agreed at the time the registrations were issued to the June 4, 2011 expiration date for these registrations. Additionally, on May 27, 2011 EPA accepted Woodstream's request to amend its difenacoum products to narrow the scope of the time-limited registration so that the expiration date would apply only to the consumer use (Sublabel A), allowing the products to remain registered but only for agricultural and professional uses. All other registrations listed in Table 1 in Unit II expired on June 4, 2011 without exception. The Agency considers the expiration of a time-limited registration to be a cancellation under section 3 of FIFRA, for purposes of section 6(a)(1) of FIFRA. Any distribution, sale, or use of existing stocks of the canceled products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit IV., will be considered a violation of FIFRA section 12(a)(2)(K).

Pursuant to the terms set forth in Unit IV., EPA is allowing the sale, distribution, and use of existing stocks of the registrations subject to this cancellation order primarily because there are other similar rodenticide products that remain registered, and may lawfully be distributed, sold, and used until EPA completes cancellation proceedings pursuant to FIFRA section 6(b).[1] Although, EPA is allowing the sale, distribution, and use of existing stocks of the registrations subject to this cancellation order, the Agency retains the right to amend this order, if circumstances warrant. If the similar products are cancelled, it is likely that the Agency will consider modifying this cancellation order to mirror the treatment of existing stocks of the other cancelled products.

IV. Provisions for Disposition of Existing Stocks

For purposes of this order, existing stocks are those stocks of pesticide products subject to the cancellation order that are currently in the United States and were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. This cancellation order includes the following existing stock provisions:

All registrants identified in Table 2 in Unit II may continue to sell or distribute existing stocks of the products identified in Table 1 of Unit II released for shipment on or before June 4, 2011 bearing appropriate previously approved labeling until supplies are exhausted.

Persons other than the registrant may continue to sell or distribute existing stocks of the products identified in Table 1 of Unit II until supplies are exhausted, provided that products contain the appropriate, previously-approved labeling and that products were released by registrant on or before June 4, 2011. Any person may continue to use existing stocks of canceled products provided that such use is consistent with the terms of the previously approved labeling of the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 5, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–20572 Filed 8–16–11; 8:45 am]

BILLING CODE 6560–50–P

[1] In its June 7, 2011 press release, EPA announced that it is preparing to initiate cancellation proceedings against similar rodenticide registrations that have not expired. See *http://yosemite.epa.gov/opa/admpress.nsf/1e5ab1124055f3b28525781f0042ed40/5689a230c1490219852578a80053a4b7!OpenDocument*

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On April 28, 2011 (76 FR 23814), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Recordkeeping and Disclosure Requirements in Connection with Regulation Z-Truth in Lending (3064–0082). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before September 16, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.*

Include the name of the collection in the subject line of the message.

- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

OMB Number: 3064–0082.

Frequency of Response: On occasion.

Affected Public: State nonmember banks that regularly offer or extend consumer credit.

Estimated Number of Respondents: 4380.

Estimated Time per Response: 499.1 ongoing; 40 hours one-time change.

Total Annual Burden: 2,361,304 hours.

General Description of Collection: Regulation Z (12 CFR 226), issued by the Board of Governors of the Federal Reserve System, prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of August 2011.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2011–20916 Filed 8–16–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011962–007.

Title: Consolidated Chassis Management Pool Agreement.

Parties: The Ocean Carrier Equipment Management Association and its member lines; the Association's subsidiary Consolidated Chassis Management LLC and its affiliates; Chicago Ohio Valley Consolidated Chassis Pool LLC; China Shipping Container Lines Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay; Matson Navigation Co.; Mediterranean Shipping Co., S.A.; Midwest Consolidated Chassis Pool LLC; Norasia Container Lines Limited; Westwood Shipping Lines; and Zim Integrated Shipping Services Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment provides authority for the corporate restructuring of Consolidated Chassis Management and its affiliated chassis pools, including authority to form separate business entities to facilitate the purpose of the Agreement; allows for increased participation in the pools regarding chassis carrying international shipping containers by non-ocean carrier entities, including shippers, inland carriers, and chassis leasing companies; provides limited authority for chassis leasing companies and inland carriers to participate in pool governances; and authorizes pools formed under the Agreement, upon the approval of a pool's governing body, to interchange chassis directly with non-contributing inland carriers, shippers and others and to develop terms of use and charges for such interchanged chassis.

By Order of the Federal Maritime Commission.

Dated: August 12, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–21009 Filed 8–16–11; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer), P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Bancorp of Indiana, Inc.,* Evansville, Indiana; to become a bank holding company through the conversion of First Federal Savings Bank, Evansville, Indiana, from a federally chartered savings bank to a state chartered commercial bank.

Board of Governors of the Federal Reserve System, August 12, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–20942 Filed 8–16–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Draft NTP Monograph on Potential Developmental Effects of Cancer Chemotherapy During Pregnancy; Request for Comments; Announcement of a Panel Meeting To Peer Review Draft Monograph

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Availability of Draft Monograph; Request for Comments; Announcement of a Peer Review Panel Meeting.

SUMMARY: The NTP announces the availability of the Draft NTP Monograph on Potential Developmental Effects of Cancer Chemotherapy During Pregnancy (available at *http://ntp.niehs.nih.gov/go/36639*) that will be peer reviewed by an NTP Peer Review Panel at a meeting on October 19–20, 2011. The meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on the draft monograph (see Request for Comments below).

DATES: The meeting to peer review the draft NTP monograph will be held on October 19–20, 2011. The draft NTP monograph should be available for public comment by September 9, 2011. The deadline to submit written comments is October 5, 2011, and the deadline for pre-registration to attend the meeting and/or provide oral comments is October 12, 2011.

ADDRESSES: The meeting will be held at the Rodbell Auditorium, Rall Building, NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence on the draft monograph should be sent to Dr. Lori White, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709, *Fax*: (919) 541–0295, or *whiteld@niehs.nih.gov*. Courier address: 530 Davis Drive, Room 2136, Morrisville, NC 27560. Individuals with disabilities who need accommodation to participate in this event should contact Dr. White at voice telephone: 919–541–9834 or *e-mail: whiteld@niehs.nih.gov*. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, NTP Designated Federal Officer, (919) 541–9834, *whiteld@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

The panel will peer review the Draft NTP Monograph on Potential Developmental Effects of Cancer Chemotherapy During Pregnancy, which has been prepared by the NTP Office of Health Assessment and Translation (OHAT, formerly the Center for the Evaluation of Risks to Human Reproduction [CERHR]). Cancer during pregnancy affects 1/1000 to 1/6000 women per year and treatment for cancer frequently involves chemotherapy. The majority of the reviews of pregnancy outcomes in the medical literature have focused on a specific cancer type or a particular agent. Therefore, OHAT has prepared a comprehensive survey of the literature that reviews pregnancy outcomes and follow-up evaluations, when available, of conceptuses exposed to cancer chemotherapy *in utero*. The main body of this document includes the published human data for over 40 different cancer chemotherapy drugs in tables, and it presents a summary of the human developmental effects as well as background information on mechanism of action, placental and breast milk transport, and laboratory animal developmental toxicology for the more frequently used agents in accompanying text. This document should provide clinicians, patients, and researchers with a comprehensive review of the incidence and types of adverse effects observed in humans exposed *in utero* to cancer chemotherapy.

Preliminary Agenda and Availability of Meeting Materials

The preliminary agenda and draft monograph should be posted on the NTP Web site by September 9, 2011. Any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/36639*) or may be requested in hardcopy from the Designated Federal Officer (see **ADDRESSES** above). Following the meeting, a report of the peer review will be prepared and made available on the NTP Web site.

Attendance and Registration

The meeting is scheduled for October 19, from 8:30 a.m. Eastern Daylight Time to 5 p.m., and October 20, from 8:30 a.m. until adjournment. The meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/36639*) by October 12, 2011, to facilitate access to the NIEHS campus. A photo ID is required to access the NIEHS campus. The NTP is making plans to webcast the meeting at *http://www.niehs.nih.gov/news/video/live*. Registered attendees are encouraged to access the meeting page to stay abreast of the most current information regarding the meeting.

Request for Comments

The NTP invites written comments on the draft monograph, which should be received by October 5, 2011, to enable review by the panel and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public input at this meeting is also invited, and time is set aside for the presentation of oral comments on the draft monograph. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8:30 a.m. until 5 p.m. on October 19 and from 8:30 until adjournment on October 20, although public comments will be received only during the formal public comment periods indicated on the preliminary agenda. Each organization is allowed one time slot. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair. Persons wishing to make an oral presentation are asked to notify Dr. Lori White via online registration at *http://ntp.niehs.nih.gov/go/36639*, phone, or email (see **ADDRESSES** above) by October 12, 2011, and if possible, to send a copy of their slides and/or statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register on-site.

Background Information on OHAT and NTP Peer Review Panels

The NIEHS/NTP established OHAT to serve as an environmental health resource to the public and to regulatory and health agencies. This office conducts evaluations to assess the evidence that environmental chemicals,

physical substances, or mixtures (collectively referred to as ''substances'') cause adverse health effects and provides opinions on whether these substances may be of concern given what is known about current human exposure levels. Assessments of potential adverse effects of environmental substances on reproduction or development carried out by CERHR from 1998–2010 are now conducted by OHAT. OHAT also organizes workshops or state-of-the-science evaluations to address issues of importance in environmental health sciences. OHAT assessments are published as NTP Monographs. Information about OHAT is found *http://ntp.niehs.nih.gov/go/ohat.*

NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide a current curriculum vitae to Dr. Lori White (see **ADDRESSES**). The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: August 8, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–20958 Filed 8–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from Sandia National Laboratories in Albuquerque, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 29, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area at the Sandia National Laboratories in Albuquerque, New Mexico, from January 1, 1949 through December 31, 1962, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on September 9, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–20925 Filed 8–16–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–08AJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Focus Group Testing to Effectively Plan and Tailor Cancer Prevention and Control Communication Campaigns (OMB No. 0920–0800, exp. 1/31/2012)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the CDC's Division of Cancer Prevention and Control (DCPC) is to reduce the burden of cancer in the United States through cancer prevention, reduction of risk, early detection, better treatment, and improved quality of life for cancer survivors. Toward this end, the DCPC supports the scientific development, implementation, and evaluation of various health communication campaigns with an emphasis on specific cancer burdens. This process requires testing of messages, concepts, and materials prior to their final development and dissemination, as described in the second step of the health communication process, a scientific model developed by the U.S. Department of Health and Human Services' National Cancer Institute to guide sound campaign development. CDC is currently approved to collect information for these purposes (OMB No. 0920–0800, exp. 1/31/2012). A three-year extension of the existing generic approval is requested.

The communication literature supports various data collection methods to conduct credible formative,

concept, message, and materials testing, one of which is focus groups. The purpose of focus groups is to ensure that the public and other key audiences, like health professionals, clearly understand cancer-specific information and concepts, are motivated to take the desired action, and do not react negatively to the messages.

Information collection will involve focus groups to assess numerous qualitative dimensions of cancer prevention and control messages, including, but not limited to, knowledge, attitudes, beliefs, behavioral intentions, information needs and sources, and compliance to recommended screening intervals. Insights gained from the focus groups will assist in the development and/or refinement of future campaign messages and materials. Respondents will include health care providers as well as members of the general public. Communication campaigns will vary according to the type of cancer, the qualitative dimensions of the message described above, and the type of respondents. DCPC has developed a set of example questions that can be tailored to screen for targeted groups of respondents, and a set of example questions that can be used to develop discussion guides for a variety of focus groups.

The average burden for each focus group discussion will be two hours. DCPC will conduct or sponsor up to 72 focus groups per year over a three-year period. An average of 12 respondents will participate in each focus group discussion. A separate information collection request will be submitted to OMB for approval of each focus group activity.

There are no costs to respondents except their time. The total estimated annualized burden hours are 1,814.

Estimated Annualized Burden Hours:

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Health care providers and general public.	Screening Form	1,728	1	3/60	86
	Focus Group Discussion Guide	864	1	2	1728
Total					1814

Dated: August 10, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–20920 Filed 8–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0802]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Active Bacterial Core Surveillance (ABCs) Projects—OMB 0920–0802, Expiration January 31, 2012 (Revision)—National Center for Immunization and Respiratory Disease (NCIRD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a revision to the approved data collection instruments for Active Bacterial Core surveillance (ABCs), to add supplemental questions for invasive methicillin-resistant *Staphylococcus aureus* (MRSA). CDC requests OMB approval to collect supplemental information to assess risk factors for invasive MRSA among patients recently discharged from acute care hospitals. Seventeen acute care facilities in 7 ABCs/EIP sites (CA, CT, CO, GA, NY, MN, TN) will participate in the collection of supplemental information for ABCs MRSA.

Preventing healthcare-associated invasive MRSA infections is one of CDC's priorities. Essential steps in reducing the occurrence of healthcare-associated invasive MRSA infections are to quantify the burden and to identify modifiable risk factors associated with invasive MRSA disease. The current ABCs MRSA surveillance has been essential to quantify the burden of invasive MRSA in the United States. Through this surveillance CDC was able to estimate that 94,360 invasive MRSA infections associated with 18,650 deaths occurred in the United States in 2005. The majority of these infections (58%) had onset in the community or within 3 days of hospital admission and occurred among individuals with recent healthcare exposures (healthcare-associated community-onset [HACO]). More recent data from the CDC's EIP/ABCs system have shown that two thirds of invasive HACO MRSA infections occur among persons who are discharged from an acute care hospital in the prior 3 months. Risk factors for invasive MRSA infections post-discharge have not been well evaluated, and effective prevention measures in this population remain uncertain.

The goal of the supplemental questions to be added to ABCs MRSA surveillance is to assess risk factors for invasive healthcare-associated MRSA infections, which will inform the development of targeted prevention measures. This activity supports the HHS Action Plan for elimination of healthcare-associated infections. This change will result in minimal impact on the current public burden.

An estimated total of 450 new patients (150 patients with HACO MRSA infection and 300 patients without HACO MRSA infection) will be contacted for the MRSA interview annually. This estimate is based on the numbers of MRSA cases reported by the EIP sites annually (*http://www.cdc.gov/abcs/reports-findings/survreports/mrsa08.html*) who are 18 years of age or older, had onset of the MRSA infection in the community or within 3 days of hospital admission, and history of hospitalization in the prior 3 months. There are no costs to respondents other than their time. The total response burden for the study is estimated as follows:

The OMB-approved ABCs MRSA form (#0920–0802) will be used to identify patients to be contacted for a telephone interview. These 450 patients will be screened for eligibility and those considered to be eligible will complete the telephone interview. We anticipate that 350 of the 450 patients screened will complete the telephone interview across all 7 EIP sites per year. We anticipate the screening questions to take about 5 minutes and the telephone interview 20 minutes per respondent.

TABLE—ESTIMATED BURDEN

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
Hospital Patients	Screening Form	450	1	5/60	38
	Telephone interview	350	1	20/60	117
Total					155

Dated: August 10, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–20919 Filed 8–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0507]

Determination That Halflytely and Bisacodyl Tablets Bowel Prep Kit (Containing Two Bisacodyl Delayed Release Tablets, 5 Milligrams) Was Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Halflytely and Bisacodyl Tablets Bowel Prep Kit (polyethylene glycol (PEG) 3350, sodium chloride, sodium bicarbonate, and potassium chloride for oral solution and two bisacodyl delayed release tablets, 5 milligrams (mg) (10-mg bisacodyl)) was withdrawn from sale for reasons of safety or effectiveness. The Agency will not accept or approve abbreviated new drug applications (ANDAs) for bowel prep kits containing PEG–3350, sodium chloride, sodium bicarbonate, and potassium chloride for oral solution and two bisacodyl delayed release tablets, 5 mg.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6312, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

On September 23, 2010, FDA received a citizen petition (Docket No. FDA–2010–P–0507), submitted under § 10.30 (21 CFR 10.30), from Perrigo Company (Perrigo). The petition requests that the Agency determine whether Halflytely and Bisacodyl Tablets Bowel Prep Kit (PEG–3350, sodium chloride, sodium bicarbonate, and potassium chloride for oral solution and two bisacodyl delayed release tablets, 5 mg) (Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl)), manufactured by Braintree Laboratories, Inc. (Braintree), was withdrawn from sale for reasons of safety or effectiveness.

Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl) (NDA 21–551) was approved on September 24, 2007. Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl) was indicated for the cleansing of the colon as preparation for colonoscopy in adults. Braintree informed FDA that it ceased to manufacture and market Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl) as of July 17, 2010. The drug product was then moved to the ''Discontinued Drug Product List'' section of the Orange Book.

FDA has reviewed its records concerning the withdrawal of Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl). FDA has also independently evaluated relevant literature, data from clinical trials, and

reports of possible postmarketing adverse events. FDA has determined, under § 314.161, that Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl) was withdrawn from sale for reasons of safety or effectiveness.

Braintree discontinued this product containing a total dose of 10 milligrams of bisacodyl from sale after receiving approval from FDA on July 16, 2010, for NDA 21–551/S–013, Halflytely and Bisacodyl Tablets Bowel Prep Kit (PEG–3350, sodium chloride, sodium bicarbonate, and potassium chloride for oral solution and one bisacodyl delayed release tablet, 5 mg (5-mg bisacodyl)). The data available from a clinical study comparing the 10-mg version of Halflytely and Bisacodyl Tablets Bowel Prep Kit to a 5-mg version of the drug product showed that the Halflytley and Bisacodyl Tablets Bowl Prep Kit (5-mg bisacodyl) has comparable effectiveness to the 10-mg product and has a safety advantage over the 10-mg product because there is less abdominal fullness and cramping in the patients treated with the 5-mg product. Furthermore, the 10-mg product may be associated with ischemic colitis.

FDA has also reviewed the latest approved labeling for the 10-mg product and has determined that it would need to be updated with additional safety information if Braintree were to reintroduce the 10-mg product to the market. FDA has determined that additional clinical studies of safety and efficacy would be necessary before Halflytely and Bisacodyl Tablets Bowel Prep Kit (10-mg bisacodyl) could be considered for reintroduction to the market. Accordingly, the Agency will remove Halflytely and Bisacodyl Tablets Bowel Prep Kit (PEG–3350, sodium chloride, sodium bicarbonate, and potassium chloride for oral solution and two bisacodyl delayed release tablets, 5 mg) from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that refer to this drug product.

Dated: August 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20853 Filed 8–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0068; formerly Docket No. 2007D–0290]

Draft Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells; Withdrawal of Draft Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance entitled ''Draft Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells (PBSCs)'' dated July 2007.

DATES: August 17, 2011.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM–17), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 26, 2007 (72 FR 41080), FDA announced the availability of a draft guidance entitled ''Draft Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells (PBSCs).''

FDA has carefully considered the comments received on the draft guidance and, since that document issued in 2007, has gained additional experience with point of care devices and the autologous cells selected by them. Based on these comments and experience, FDA believes that the draft guidance would not, if finalized in current form, reflect FDA's current thinking. For these reasons, FDA is withdrawing the draft guidance entitled ''Draft Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells (PBSCs).''

Dated: August 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20862 Filed 8–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0246]

Guidance for Industry on Residual Drug in Transdermal and Related Drug Delivery Systems; 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 entitled ''Residual Drug in Transdermal and Related Drug Delivery Systems.'' This guidance provides recommendations to developers and manufacturers of transdermal drug delivery systems (TDDS), transmucosal drug delivery systems (TMDS), and topical patch products regarding use of an appropriate scientific approach during product design and development—as well as during manufacturing and product life-cycle management—to ensure that the amount of residual drug substance at the end of the labeled use period is minimized. The guidance is applicable to investigational new drug applications, new drug applications, abbreviated new drug applications, and supplemental new drug applications for TDDS, TMDS, and topical patch products.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Terrance Ocheltree, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 21, rm. 1609, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1988.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Residual Drug in Transdermal and Related Drug Delivery Systems.'' This guidance provides recommendations to developers and manufacturers of TDDS, TMDS, and topical patch products regarding use of an appropriate scientific approach during product design and development—as well as during manufacturing and product life-cycle management—to ensure that the amount of residual drug substance at the end of the labeled use period is minimized. In the **Federal Register** of August 3, 2010 (75 FR 45640), FDA announced the availability of the draft version of this guidance. The public comment period closed on November 1, 2010. A number of comments were received from the public, all of which the Agency considered carefully as it finalized the guidance and made appropriate changes. Any changes to the guidance were minor and made to clarify statements in the draft guidance.

Existing TDDS, TMDS, and topical patches contain a larger amount of the drug substance than what is intended to be delivered to the patient. This excess amount of drug substance is needed to facilitate delivery of the intended amount of the drug to the patient and remains as residual drug in the used system. The amount of residual drug substance in TDDS, TMDS, and topical patches has a significant potential to impact the products' quality, efficacy, and safety (including abuse potential). Consequently, it is necessary to ensure that an appropriate scientific approach is used to design and develop these products. The approach should ensure that the amount of residual drug substance is minimized consistent with the current state of technology.

Currently marketed TDDS, TMDS, and topical patches may retain 10 to 95 percent of the initial total amount of drug as the residual drug after the intended use period. This raises a potential safety issue not only to the patient, but also to others, including family members, caregivers, children, and pets. For example, adverse events due to a patient's failure to remove TDDS at the end of the intended use period have been reported and are generally related to an increased or prolonged pharmacological effect of the drug. Also, some children have died from inadvertent exposure to discarded TDDS. Reported adverse events resulting from various quality problems pertaining to TDDS have lead to product recalls, withdrawals, and public health advisories.

To reduce some of these risks, the Agency recommends that a robust design and development approach be considered when developing and manufacturing TDDS, TMDS, and topical patches. One example of such an approach is quality by design, as described in the International Conference on Harmonization guidance for industry entitled ''Q8(R2) Pharmaceutical Development.'' The Agency also recommends that sufficient scientific justification to support the amount of residual drug in TDDS, TMDS, or topical patches be included in an application. The justification should include an evaluation of the safety risks involved with the formulation and system design, as well as support the amount of drug load in the TDDS, TMDS, or topical patch based on the proposed quality target product profile and formulation studies. Most important, the justification for applications of products with known safety issues—such as those with fentanyl-containing liquid reservoir systems—should demonstrate that the safety risk factors have been adequately mitigated.

In all cases, the level of information in the justification should be sufficient to demonstrate product and process understanding and ensure that a scientific, risk-based approach has been taken to minimize the amount of residual drug in a system after use to the lowest possible level. It is expected that the amount of residual drug in a newly developed system (including new generic drug products) will not exceed that of similar FDA-approved products.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on residual drug in transdermal and related drug delivery systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Information in an application on the product and process development and justification for the final formulation and system design is approved under OMB control numbers 0910–0001 and 0910–0014.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: August 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20852 Filed 8–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0013]

Statement of Organizations, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has reorganized the Center for Drug Evaluation and Research (CDER) by establishing four new Divisions under the Office of Generic Drugs. This reorganization includes the organization and their substructure components as listed in this document. This document is announcing the availability of the Staff Manual Guide that explains the details of this reorganization.

FOR FURTHER INFORMATION CONTACT: Karen Koenick, Center for Drug Evaluation and Research (HFD–063), Food and Drug Administration, 1919 Rockville Pike, Rm. 324, Rockville, MD 20852, 301–796–4422.

SUPPLEMENTARY INFORMATION:

I. Summary

The Statement of Organization, Functions, and Delegations of Authority

for CDER (35 FR 3685, February 25, 1970; 60 FR 56605, November 9, 1995; 64 FR 36361, July 6, 1999; 72 FR 50112, August 30, 2007; and 76 FR 19376, April 7, 2011) is amended to reflect the restructuring of CDER that was approved by the Secretary of Health and Human Services on May 25, 2011. This reorganization is explained in Staff Manual Guide 1264.31, 1264.36, 1264.37, 1264.38, and 1264.39, and includes the establishment of the Division of Bioequivalence II, Division of Microbiology, Division of Clinical Review, and Division of Chemistry IV. In addition, CDER is retitling the Division of Bioequivalence to the Division of Bioequivalence I.

II. Delegation of Authority

Pending further delegation, directives or orders by the Commissioner of Food and Drugs or the Center Director, CDER, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

III. Electronic Access

Person interested in seeing the complete Staff Manual Guide can find it on FDA's Web site at *http://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm.*

Dated: August 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20859 Filed 8–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Food and Drug Administration Clinical Trial Requirements, Regulations, Compliance, and Good Clinical Practice; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) Philadelphia District Office, in co-sponsorship with the Society of Clinical Research Associates (SoCRA) is announcing a public workshop. The public workshop on FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of FDA and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and clinical trial staff, investigators, and institutional review boards (IRB). Individual FDA representatives will discuss the informed consent process and informed consent documents; regulations relating to drugs, devices, and biologics; as well as inspections of clinical investigators, IRB, and research sponsors.

Date and Time: The public workshop will be held on November 16 and 17, 2011, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Sheraton Philadelphia City Center Hotel, 201 North 17th St., Philadelphia, PA 19103, 1–215–448–2000.

Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $159 plus applicable taxes (available until November 1, 2011, or until the SoCRA room block is filled).

Contact: Anne Johnson, Food and Drug Administration, Philadelphia District, 900 U.S. Customhouse, Second & Chestnut Streets, Philadelphia, PA 19106, 215–597–4390, FAX: 215–597–4660, e-mail: *anne.johnson@fda.hhs.gov*; or Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., suite 109, Chalfont, PA 18914, 1–800–762–7292 or 215–822–8644, FAX: 215–822–8633, e-mail: *SoCRAmail@aol.com,* Web site: *http://www.SoCRA.org.* (FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Registration: The registration fee covers the cost of actual expenses, including refreshments, lunch, materials, and speaker expenses. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Those accepted into the workshop will receive confirmation. The cost of registration is as follows:

COST OF REGISTRATION

SoCRA member	($575.00)
SoCRA nonmember (includes membership)	($650.00)
Federal Government member	($450.00)
Federal Government nonmember	($525.00)
FDA Employee	(free) Fee Waived

If you need special accommodations due to a disability, please contact SoCRA (see *Contact*) at least 21 days in advance.

Extended periods of question and answer and discussion have been included in the program schedule. SoCRA designates this educational activity for a maximum of 13.3 Continuing Education Credits for SoCRA CE and Nurse CNE. SOCRA designates this live activity for a maximum of 13.3 *AMA PRA Category 1 Credit(s)*™. Physicians should claim only the credit commensurate with the extent of their participation. CME for Physicians: SoCRA is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. CNE for Nurses: SoCRA is an approved provider of continuing nursing education by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC). ANCC/PSNA Provider Reference Number: 205–3–A–09.

Registration Instructions: To register, please submit a registration form with your name, affiliation, mailing address, telephone, fax number, and e-mail, along with a check or money order payable to ''SoCRA''. Mail to: SoCRA (see *Contact* for address). To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm.* Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the workshop, contact SoCRA (see *Contacts*).

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) What FDA Expects in a Pharmaceutical Clinical Trial; (2) Adverse Event Reporting—Science, Regulation, Error, and Safety; (3) Part 11 Compliance—Electronic Signatures; (4) Informed Consent Regulations; (5) IRB Regulations and FDA Inspections; (6) Keeping Informed and Working Together; (7) FDA Conduct of Clinical Investigator Inspections; (8) Meetings With FDA: Why, When, and How; (9) Investigator Initiated Research; (10) Medical Device Aspects of Clinical Research; (11) Working With FDA's Center for Biologics Evaluation and Research; (12) The Inspection is Over—What Happens Next? Possible FDA Compliance Actions; (13) Ethical Issues in Subject Enrollment; (14) Medical Device Aspects of Clinical Research); (15) Are We There Yet? An Overview of the FDA GCP Program.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) as outreach activities by Government Agencies to small businesses.

Dated: August 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20858 Filed 8–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Hemoglobin Standards and Maintaining Adequate Iron Stores in Blood Donors; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Hemoglobin Standards and Maintaining Adequate Iron Stores in Blood Donors.'' The purpose of this public workshop is to discuss blood donor hemoglobin and hematocrit qualification standards in the United States, its impact on donor safety and blood availability, and potential measures to maintain adequate iron stores in blood donors. The public workshop has been planned in partnership with the Department of Health and Human Services (HHS) Office of the Assistant Secretary for Health, the National Heart, Lung and Blood Institute, America's Blood Centers, AABB, and the Plasma Protein Therapeutics Association. This public workshop will include presentations and panel discussions by experts knowledgeable in the field from academic institutions, government agencies, and industry.

Dates and Times: The public workshop will be held on November 8, 2011, from 8 a.m. to 5:30 p.m. and November 9, 2011, from 8 a.m. to 3 p.m.

Location: The public workshop will be held at the Natcher Conference Center, Main Auditorium, Building 45, National Institutes of Health, 45 Center Dr., Bethesda, MD 20892.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov.*

Registration: Mail, fax, or email your registration information (including name, title, firm name, address, telephone and fax numbers) to Rhonda Dawson (see *Contact Person)* by October 14, 2011. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person)* at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

Under FDA's current regulations, allogeneic blood donors must have a hemoglobin level of no less than 12.5 grams of hemoglobin per 100 milliliters of blood or a hematocrit value of 38 percent prior to donation (21 CFR 640.3(b)(3) and 640.63(c)(3)). Hemoglobin and hematocrit measurements are typically obtained from a small sample of blood drawn from a finger or vein. New technologies that potentially allow for less invasive, faster, and more convenient methods of measuring blood donor hemoglobin and hematocrit levels are being studied. A low donor hemoglobin and hematocrit level is the most common reason that prospective blood donors, particularly women, are deferred.

Allogeneic donors of a unit of red blood cells generally may not donate more than once in an 8 week period to ensure recovery of their red blood cells and iron stores (21 CFR 640.3). Nonetheless, some donors, especially repeat and premenopausal female donors, can develop iron deficiency, with or without anemia, from blood donation. Improved understanding of iron loss in blood donors may help reduce donor deferrals due to low hemoglobin and hematocrit levels and reduce iron deficiency that can result from blood donation. Different strategies to minimize iron deficiency in blood donors (e.g., testing for iron stores, adjusting the donation interval, or providing iron replacement) have been explored in the past. Changes in qualifying hemoglobin levels have been discussed in various forums for both men and women to bring these levels into closer concordance with population norms. However, the potential risks and benefits of these strategies require further discussion.

This public workshop will serve as a forum for discussion of hemoglobin and hematocrit donation standards, current methods for hemoglobin measurement, iron loss and iron measurement methods in blood donors, and strategies to maintain adequate donor iron stores. The first day of the public workshop will include presentations and panel discussions on the following topics: (1) Hemoglobin standards for blood donors in the United States; (2) studies of hemoglobin distribution and deferral patterns in blood donors; and (3) measurement of hemoglobin and hematocrit and iron levels in blood donors. The second day of the public workshop will include a discussion of the following topics: (1) Iron

metabolism, iron stores and iron deficiency in blood donors; and (2) potential methods to maintain adequate iron stores in blood donors, including adjustment of the interdonation interval, iron measurement and iron replacement.

Transcripts: Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible on the Internet at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.* Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: August 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20861 Filed 8–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form (OMB No. 0915–0036)—Extension

The clearance request is for an extension of two forms that are currently approved by OMB. HEAL lenders use the Lenders Application for Insurance Claim to request payment from the Federal Government for federally insured loans lost due to borrowers' death, disability, bankruptcy, or default. The Request for Collection Assistance form is used by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers. The annual estimate of burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Lender's Application for Insurance Claim Form 510	13	28	364	0.50	182
Request for Collection Assistance Form 513	13	445	5,785	0.17	983
Total Burden	26				1,165

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: August 11, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–20999 Filed 8–16–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institutes of Health Construction Grants

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: National Institutes of Health Construction Grants 42 CFR Part 52b (Final Rule). *Type of Information Collection Request:* Extension of OMB Control No. 0925–0424, expiration date 10/31/2011. *Need and Use of the Information Collection:* This request is for OMB review and approval of a renewal for the information collection and recordkeeping requirements contained in the regulation codified at 42 CFR part 52b. The purpose of the regulation is to govern the awarding and administration of grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the buildings (or applicable part of the buildings) suitable for the purpose for which it was constructed. In terms of reporting requirements: Section 52b.9(b) of the regulation requires the transferor of a facility which is sold or transferred, or owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. Section 52b.10(f) requires a grantee to submit an approved copy of the construction schedule prior to the start of construction. Section 52b.10(g) requires a grantee to provide daily construction logs and monthly status reports upon request at the job site. Section 52b.11(b) requires applicants for a project involving the acquisition of existing facilities to provide the estimated cost of the project, cost of the acquisition of existing facilities, and cost of remodeling, renovating, or altering facilities to serve the purposes for which they are acquired. In terms of recordkeeping requirements: Section 52b.10(g) requires grantees to maintain daily construction logs and monthly status reports at the job site. *Frequency of Response:* On occasion. *Affected Public:* Non-profit organizations and Federal agencies. *Type of respondents:* Grantees. The estimated respondent burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Reporting:				
Section 52b.9(b)	1	1	.50	.50
Section 2b.10(f)	60	1	1.0	60
Section 2b.10(g)	60	12	1.0	720
Section 2b.11(b)	100	1	1.0	100
Recordkeeping:				
Section 2b.10(g)	60	260	1.0	15,600
Totals	281			16,480.5

The annualized cost to the public, based on an average of 60 active grants in the construction phase, is estimated at: $576,818. There are no Capital Costs to report. There are no operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information and recordkeeping are necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information and recordkeeping, including the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected and the recordkeeping information to be maintained; and (4) 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 and recordkeeping techniques of other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Jerry Moore, NIH Regulations Officer, Office of Management Assessment, Division of Management Support, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20852–7669; call 301–496–4607 (this is not a toll free number) or e-mail your request to *jm40z@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 12, 2011.

Jerry Moore,

Regulations Officer, National Institutes of Health.

[FR Doc. 2011–20961 Filed 8–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 15–16, 2011.

Open: September 15, 2011, 8:30 a.m. to 2 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research, NINDS; and Other Administrative and Program Developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: September 15, 2011, 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: September 16, 2011, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892. (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http:///www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: August 10, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20941 Filed 8–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 27, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to the Council's business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Laura K Moen, PhD, Director, Division of Extramural Research Activities, NIAMS/NIH, 6701 Democracy Blvd., Ste 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20946 Filed 8–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group DCLG.

Date: September 21–23, 2011.

Time: 12 p.m. to 12 p.m.

Agenda: 09/21 Welcome and review of how science is changing; 09/22 The role of regulatory science; 09/23 How is NIH/NCI responding to the changes in the Clinical Trials Process? What can the advocacy community do to create a broader understanding about this imperative for change and support these changes moving forward?

Place: Embassy Suites Hotel at Chevy Chase, 4300 Military Road, NW., Washington DC, 20015.

Contact Person: Shannon K. Bell, MSW, Director, Office of Advocacy Relations, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 10A30D, Bethesda, MD 20892. 301–451–3393.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 11, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20944 Filed 8–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: SAMHSA SOAR Web-Based Data Form—NEW

In 2009 the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services created a Technical Assistance Center to assist in the implementation of the SSI/SSDI Outreach Access and Recovery (SOAR) effort in all states. SOAR's primary objective is to improve the allowance rate for Social Security Administration (SSA) disability benefits for people who are homeless or at risk of homelessness, and who have serious mental illnesses. SOAR has three main components: strategic planning for systems change, training for case managers and ongoing technical assistance.

During the SOAR training, the importance of keeping track of SSI/SSDI applications through the process is stressed, since the process is complex and involves several steps. In response to requests from states implementing SOAR, the Technical Assistance Center under SAMHSA's direction developed a web-based data form that case managers can use to track the progress of submitted applications, including

decisions received from SSA either on initial application or on appeal. This password-protected web-based data form will be housed on the SOAR Web site (*http://www.prainc.com/soar*). Use of this form is completely voluntary.

In addition, data from the web-based form can be compiled into reports on decision results and the use of SOAR core components, such as the SSA–1696 Appointment of Representative which allows SSA to communicate directly with the case manager assisting with the application. These reports will be reviewed by agency directors, SOAR state-level leads, and the national SOAR Technical Assistance Center and SOAR national evaluation team to quantify the success of the effort overall and to identify areas where additional technical assistance is needed.

The estimated response burden is as follows:

Information source	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
SOAR Data Form	800	36	28,800	.25	7,200

Written comments and recommendations concerning the proposed information collection should be sent by September 16, 2011 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via e-mail to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via e-mail, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Cathy J. Friedman,

SAMHSA, Public Health Analyst.

[FR Doc. 2011–20856 Filed 8–16–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Children Affected by Methamphetamine in Family Drug Treatment Court—NEW

In 2010, the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), provided funding to 12 existing Family Treatment Drug Courts (FTDCs) for enhancement and/or expansion of their FTDC's capabilities to provide psycho-social, emotional and mental health services to children (0–17 years) and their families who have methamphetamine use disorders and involvement in child protective services. This program was authorized in House Report 111–220 accompanying H.R. 3293 in 2010. The Committee language stated that ''these grants will support a collaborative approach, including treatment providers, child welfare specialists, and judges, to provide community-based social services for the children of methamphetamine-addicted parents,'' and were to be awarded to Family Dependency Treatment Drug Courts.

The proposed data collection for the grantees, referred to as the Children Affected by Methamphetamine in Family Treatment Drug Court (CAM–FTDC) project, will provide knowledge about the services needed and provided to these and similar families. The data to be collected by the CAM–FTDC program is SAMHSA's first Federal data collection effort focused specifically on the needs of children whose parents have a substance use disorder and are participating in an FTDC and on effective strategies to address their needs. The information collected through the CAM–FTDC program will benefit SAMHSA by providing an in-depth understanding of the needs of the children and families served by CAM–FTDC. Findings from this program will provide SAMHSA with valuable information regarding appropriate service interventions for this population and, ultimately, inform SAMHSA on how the agency can best meet the needs of future drug endangered children. The results from this data collection will serve to inform future decisions regarding funding by SAMHSA as well as establish an evidence base for the practices undertaken for other localities and programs implementing Family Treatment Drug Courts.

The evaluation of the CAM–FTDC project will collect data on children, parents/caregivers, family functioning and interagency collaboration. The domains specified in the Request for Applications (RFA) are: (1) Child Outcomes; (2) Parent/Caregiver Outcomes; (3) Family Functioning; and, (4) Interagency Collaboration.

To the greatest extent possible, the data elements are operationally defined using standard definitions in child welfare and substance abuse treatment. *The use of standard data definitions will reduce the data collection burden on grantees as these variables are collected through data collection procedures that currently exist through all publically funded child welfare and substance abuse treatment systems.* The CAM–FTDC performance measures are data currently collected by programs as part of their normal operations (e.g., placement status in child welfare services, substance abuse treatment entry dates). Thus, no primary data collection from clients will be required as the grantees will be abstracting existing data. The information utilized for the North Carolina Family Assessment Scale rating is obtained during the intake interview that sites engage in when determining program eligibility and suitability. If needed, the CAM FTDC staff member may supplement this information by obtaining information from other staff that interact with the client (i.e., the social worker familiar with the family) or during a home visit (if this is part of their program activities).

It should be re-emphasized that the CAM–FTDC projects are expansions or enhancements of FTDC partnerships that currently have existing relationships (and information sharing/

confidentiality agreements) in place. It is through this existing information sharing forum that the CAM grantees will be able to obtain the requisite child welfare and substance abuse treatment performance measures.

The grantees will use electronic abstraction and secondary data collection for elements that are already being collected by counties and States in their reporting requirements of Federally-mandated data. There are five data sources that will be used to collect and report the performance measures: Two Federal child welfare data sets, a Federal substance abuse treatment data set, the North Carolina Family Assessment Scale, and an interagency collaboration survey administered to CAM FTDC program staff.

Exhibit 1 presents the estimated total cost burden associated with the collection of the CAM–FTDC data elements. The following estimates represent the minimum CAM–FTDC clients required to be served by the CAM–FTDC grantees (i.e., a minimum of 20 methamphetamine-using clients is required in order to have a sufficient number of participants in the program × 12 grantees). The identified respondent for the annualized hour burden for the child, parent/caregiver and family functioning elements is the grantee staff person who will extract data from CAM–FTDC client. For the interagency collaboration measure, the respondent is identified as a CAM–FTDC staff member. It is estimated that 10 CAM–FTDC staff members from each of the 12 grantees will complete the interagency collaboration measure. The estimated total cost of the time that will be spent completing data collection is $18,400 (total number of respondent hours × $18.40, the estimated average hourly wages for adults as published by the Bureau of Labor Statistics, 2010).

EXHIBIT 1—ANNUALIZED HOUR BURDEN

Form/instrument	Number of records	Responses per record	Total responses	Hours per response[1]	Total hour burden
CAM Form-Secondary extraction (12 sites × 20 families)	240	2	480	.5	240
North Carolina Family Assessment Form—Scale-General + Reunification (NCFAS–G+R) (12 sites × 20 families)	240	2	480	.5	240
Collaborative Capacity Instrument—(CCI) (12 sites × 10 families)	120	1	120	.33	39.6
Total	600		1,080		519.6

[1] The estimated response burden includes the extractions and uploads to the CAM Form and the North Carolina Family Assessment Form.

Written comments and recommendations concerning the proposed information collection should be sent by September 16, 2011 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via e-mail to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via e-mail, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Cathy J. Friedman,

SAMHSA, Public Health Analyst.

[FR Doc. 2011–20857 Filed 8–16–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Triennial Evaluation of the Projects for Assistance in Transition From Homelessness (PATH)—NEW

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to nonprofit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for a collection of contextual, process, and outcome information to evaluate the national PATH program. Section 528 of the PHS Act specifies that the Administrator of the Substance Abuse and Mental Health Services Administration shall evaluate at least once every 3 years the expenditures of grants under this part by eligible entities in order to ensure that expenditures are consistent with the provisions of this part. The evaluation shall include recommendations regarding changes in program design or operations.

The proposed data collection includes:

- Interviews with 10 State Path Contacts (SPCs) and an online survey with all 56 SPCs to gather more information on how States plan, solicit, and monitor local providers using PATH funding; the challenges faced in their operating environment, in working with the populations they serve, and the environment in which they work; remaining gaps and needs as well as possible solutions and

recommendations for bridging gaps and filling needs and improving PATH efficiency and effectiveness.

• Interviews with 20–60 local providers and an online survey with 1 representative who provides face-to-face, PATH-funded services to clients selected randomly from each local service provider (n = 483). Like SPC interviews and online surveys, the focus of this part of the data collection effort will be on assessing local providers' views on the challenges faced in their operating environment, in working with the populations they serve and the environment in which they work; on training received and needed; reporting requirements and burden; remaining gaps and needs and possible solutions and recommendations for bridging gaps and filling needs and improving PATH efficiency and effectiveness.

• Focus groups with 8–12 consumers that will be conducted on location at each of the 10 PATH locations selected for site visitation. The focus groups will assess clients' knowledge of PATH; the types of services they receive; satisfaction with services received; perceived needs that are not being met; and recommendations to improve service access, delivery, and comprehensiveness.

The estimated total burden for the reporting requirements for the triennial PATH evaluation is summarized in the table below.

TABLE 1—ANNUAL BURDEN

PATH evaluation	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hour burden
Online Surveys					
State PATH Contact	56	1	56	1	56
PATH Provider	483	1	483	.75	363
Site Visit Interviews (10 sites)					
State PATH Contact	* 10	1	10	1.1	11
Provider Staff—Supervisor/Administrator	** 30	1	30	.67	20
Provider Staff—Outreach Worker/Case Manager	*** 30	1	30	.67	20
Consumer Focus Group Discussion	**** 120	1	120	1.5	180
Total	729	.....	729	.....	650

* 1 respondent × 10 sites = 10 total respondents.
** Up to 3 respondents × 10 sites = 30 total respondents.
*** Up to 3 respondents × 10 sites = 30 total respondents.
**** Up to 12 respondents × 10 sites = 120 respondents.

Written comments and recommendations concerning the proposed information collection should be sent by September 16, 2011 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via e-mail to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via e-mail, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Cathy J. Friedman,

SAMHSA, Public Health Analyst.

[FR Doc. 2011–20855 Filed 8–16–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1981–DR; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 10 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 for the State of North Dakota (FEMA–1981–DR), dated May 10, 2011, and related determinations.

DATES: *Effective Date:* August 8, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 8, 2011, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding during the period of February 14 to July 20, 2011, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act'').

Therefore, I amend my declaration of May 10, 2011, to authorize Federal funds for Public Assistance at 90 percent of total eligible costs.

This adjustment to State, Tribal, and local government cost sharing applies only to Public Assistance costs eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(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.

August 11, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–20962 Filed 8–16–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1981–DR; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 9 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 North Dakota (FEMA–1981–DR), dated May 10, 2011, and related determinations.

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 10, 2011.

Benson County for Individual Assistance (already designated for Public Assistance).

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.

Dated: August 11, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–20964 Filed 8–16–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–82]

Notice of Submission of Proposed Information Collection to OMB Ginnie Mae Mortgage-Backed Securities Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collected is needed by Ginnie Mae for the participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

DATES: *Comments Due Date:* September 16, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806; *e-mail: OIRA_Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Programs.

OMB Approval Number: 2503–0033.

Form Numbers: HUD–1710B, HUD–11710D, HUD–1734, HUD–1710C, HUD–11702, HUD–1724, HUD–11772–II, HUD–11711B, HUD–11747, 11715, 11709, 11707, 11704, 11700, 11701, HUD–11747–II, HUD–11728, HUD–11732, HUD–11728–II, HUD–11714, HUD 11703–II, HUD–11712–II, HUD–11708, HUD–11710–A & –11710–E, 11711–A, 11705, 11720, HUD–11717–II, HUD 11706, HUD–1731, HUD–11709A, HUD–11712, HUD–11748–A, HUD–11714SN.

Description of the need for the information and its proposed use: The information collected is needed by Ginnie Mae for the participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

Frequency of Submission: On occasion, Monthly, Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	210	2358.38		0.1544		76,493

Total Estimated Burden Hours: 76,493.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 11, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–20877 Filed 8–16–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–81]

Notice of Submission of Proposed Information Collection to OMB; FHA Lender Approval, Annual Renewal, Periodic Updates and Required Reports by FHA Approved Lenders

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is required for: (1) FHA Lender Approval; (2) Annual renewal of each FHA Lender's Approval; (3) Updates to a FHA Lender's Approval; and (4) Various Reports from FHA Lenders.

DATES: *Comments Due Date: September 16, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0005) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *e-mail: OIRA_Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at Colette. *Pollard @hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FHA Lender Approval, Annual Renewal, Periodic Updates and Required Reports by FHA Approved Lenders.

OMB Approval Number: 2502–0005.

Form Numbers: HUD 92001–B, HUD 92001–A, HUD 92001–C.

Description of the Need for the Information and Its Proposed Use: This information is required for: (1) FHA Lender Approval; (2) Annual renewal of each FHA Lender's Approval; (3) Updates to a FHA Lender's Approval; and (4) Various Reports from FHA Lenders.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	4,360	5.004		0.694		15,145

Total Estimated Burden Hours: 15,145.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 10, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–20878 Filed 8–16–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–68]

Notice of Submission of Proposed Information Collection to OMB Public Housing Admissions/Occupancy Policies

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Correction

The Statute requires HUD to ensure the low-income character of public housing projects and to assure that sound management practices will be followed in the operation of the project. Public Housing Agencies (PHAs) enter into an Annual Contribution Contract (ACC) with HUD to assist low-income tenants. HUD regulations, Part 960, provide policies and procedures for PHAs to administer the low-income

housing program for admission and occupancy. Statutory and regulatory authority grants PHAs flexibility to structure admission and occupancy policies. PHAs must develop and keep on file the admission and continued occupancy policies and include this information in their Administrative Plan. PHA compliance will support the statute; and, HUD can ensure that the low-income character of the project and sound management practices will be followed.

DATES: *Comments Due Date: September 16, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0220) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Admissions/Occupancy Policies.

OMB Approval Number: 2577–0220.

Form Numbers: None.

Description of the need for the information and its proposed use: The Statute requires HUD to ensure the low-income character of public housing projects and to assure that sound management practices will be followed in the operation of the project. Public Housing Agencies (PHAs) enter into an Annual Contribution Contract (ACC) with HUD to assist low-income tenants. HUD regulations, part 960, provide policies and procedures for PHAs to administer the low-income housing program for admission and occupancy. Statutory and regulatory authority grants PHAs flexibility to structure admission and occupancy policies. PHAs must develop and keep on file the admission and continued occupancy policies and include this information in their Administrative Plan. PHA compliance will support the statute; and, HUD can ensure that the low-income character of the project and sound management practices will be followed.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,278	1		60		196,680

Total Estimated Burden Hours: 196,680.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 11, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Managemen Officer.

[FR Doc. 2011–20880 Filed 8–16–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–80]

Notice of Submission of Proposed Information Collection to OMB Certification and Funding of State and Local Fair Housing Enforcement Agencies

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

State and local fair housing agencies apply for equivalency status with the Fair Housing Act. Cooperative agreements provide support in Fair Housing enforcement. This proposed rule revises the funding criteria for agencies participating in the Fair Housing Assistance Program (FHAP).

DATES: *Comments Due Date: September 16, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0005) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *e-mail: OIRA_Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Certification and Funding of State and Local Fair Housing Enforcement Agencies.

OMB Approval Number: 2529–0005.

Form Numbers: None.

Description of the need for the information and its proposed use: State and local fair housing agencies apply for equivalency status with the Fair Housing Act. Cooperative agreements provide support in Fair Housing enforcement. This proposed rule revises the funding criteria for agencies participating in the Fair Housing Assistance Program (FHAP).

Frequency of Submission: On occasion, Biennually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	110	0.354		1792.30		69,900

Total Estimated Burden Hours: 69,900.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 10, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–20879 Filed 8–16–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N166; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
43716A	James Bibler	76 FR 32223; June 3, 2011	July 18, 2011.
45363A	Leonard Gordon Smith	76 FR 36934; June 23, 2011.	August 1, 2011

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
231088	U.S. Fish and Wildlife Service	75 FR 12255; March 15, 2010	August 8, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–20969 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N167; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before September 16, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: U.S. Geological Survey, San Diego, CA; PRT–41278A

The applicant requests a permit to import biological samples of Fiji crested iguanas (*Brachylophus vitiensis*), banded igunas (*Brachylophus bulabula*) and Fiji banded iguanas (*Brachylophus fasciatus*) from Fiji for the purpose of enhancement of the survival of the species through scientific research. This notification covers activities conducted by the applicant for a 5-year period.

Applicant: Nashville Zoo, Nashville, TN; PRT–48554A

The applicant requests a permit to import two captive-born red-crowned cranes (*Grus japonensis)* from Birdpark Avifauna, Netherlands for the purpose of enhancement of the survival of the species.

Applicant: Valley Zoological Society dba Gladys Porter Zoo, Brownsville, TX; PRT–48645A

The applicant requests a permit to import two captive held Orinoco crocodiles (*Crocodylus intermedius*) from Ontario, Canada for the purpose of enhancement of the survival of the species.

Applicant: Morani River Ranch, Uvalde, TX; PRT–49112A

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess barashingh (*Rucervus duvauceli*), Eld's deer (*Rucervus eldii*), and Arabian oryx (*Oryx leucoryx*) from the captive herds maintained at their facility for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Hawthorn Corporation, Grayslake, IL; PRT–058735, 058738, 059163, 068350, 068353, 154232, and 154233

The applicant requests permits to re-issue for re-export and re-import tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: [058735, Sariska; 058738, Calcutta; 059163, Kushka; 068350, Segal; 068353, Pashawn; 154232, Sirit; and 154233, Shakma]. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert Anderson, Casper, WY; PRT–49064A.

Applicant: John Hodges, Alexander City, AL; PRT–49772A.

Applicant: Christopher Stevens, Keller, TX; PRT–49810A.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–20960 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV956000.L142000000.XH0000.241E0; 11–08807; MO# 4500022720; TAS: 14X1109]

Notice of Change of Hours of Operation and Closure of P.O. Box for the Nevada State Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: The Bureau of Land Management (BLM) Nevada State Office, Information Access Center (IAC) will implement new hours of operation, weekdays, excluding Federal holidays, 8 a.m. to 4 p.m. The BLM Nevada State Office will close P.O. Box 12000 in Reno, Nevada. All postal service mail to the BLM Nevada State Office should be addressed to 1340 Financial Blvd., Reno, NV 89502.

DATES: *Effective Date:* The new hours of operation and the P.O. Box closure will be effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dilene A. Smith, Nevada State Office, 1340 Financial Blvd, Reno, NV 89502, telephone: (775) 861–6529, e-mail: *dasmith@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: The change in hours extends the hours the public may conduct business with the Information Access Center. The closure of the P.O. Box will result in all postal service mail to be delivered to the physical location of the Nevada State Office.

Robert M. Scruggs,

Deputy State Director, Support Services.

[FR Doc. 2011–20928 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.AL 0000]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, Sept. 10, 2011, from 8 a.m. to 5 p.m. at the Hampton Inn & Suites, 2710 Lenwood Rd., Barstow, CA 92311. There will be a field trip on Friday, Sept. 9, that will include Sawtooth Canyon Campground and El Mirage Dry Lake Off-Highway Vehicle Area. Field trip details will be posted on the DAC web page, *http://www.blm.gov/ca/st/en/info/rac/dac.html*, when finalized. Agenda topics for the Saturday meeting will include recreation fees, as well as updates by council members, the BLM California Desert District manager, five field office managers, council subgroups, and renewable energy. Final agenda items will be posted on the DAC web page listed above.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 5 p.m., the meeting could conclude prior to 5 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs (951) 697–5220.

Dated: August 9, 2011.

Jack L. Hamby,

California Desert Associate District Manager.

[FR Doc. 2011–20923 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will meet as indicated below.

DATES: September 15, 2011. On September 15, 2011, the Twin Falls District RAC members will meet at the Burley BLM Fire Conference Room, located at 3630 Overland Ave., Burley, Idaho 83318. The meeting will begin at 8:30 a.m. and end no later than 5 p.m. The public comment period for the RAC meeting will take place 2–2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the morning of the September 15th meeting, RAC members will tour different fuel break projects within the Burley Field Office. That afternoon, the RAC will return to the Burley Fire Conference room to discuss Wilderness and Wild and Scenic River and Craters of the Moon National Monument and Preserve Travel Management Plans. Additional topics may be added and will be included in local media announcements.

More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html.*

RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the Twin Falls District, BLM at (208) 736–2352.

Dated: August 5, 2011.

Bill Baker,

District Manager.

[FR Doc. 2011–20929 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT980300–L12100000–PH0000–24–1A]

Notice of Utah's Resource Advisory Council (RAC) Conference Call Meetings on the Statewide Travel and Transportation Management Planning Policy

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conference call meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah RAC will meet as indicated below.

DATES: The Utah RAC Subgroup on the Statewide Travel and Transportation Management Planning Policy will host a conference call meeting on September 8, 2011, from 3 p.m. until 4:30 p.m. (Mountain Time). The entire RAC will host a conference call on the same topic on September 15, 2011, from 11 a.m.–12:30 p.m. (Mountain Time).

ADDRESSES: On September 8, 2011, the public is invited to participate on the call at the BLM's Utah State Office, Monument A Conference Room, 440 West 200 South, Fifth Floor, Salt Lake City, Utah. On September 15, 2011, the public is invited to participate on the call at the BLM's Utah State Office, Monument A Conference Room, 440 West 200 South, Fifth Floor, Salt Lake City, Utah.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Utah. On September 8, the RAC Subgroup, which was formed to review the draft Instruction Memorandum (IM) on the Statewide Travel and Transportation Management Planning Policy, will host a conference call meeting to discuss the subgroup's recommendations to the entire RAC. On September 15, the entire RAC will host a conference call meeting to provide comments and feedback on the recommendations from the RAC Subgroup.

On September 8, from 4 p.m.–4:30 p.m., the public may address the Council during the public comment period. If there are no public comments, the conference call will conclude at 4:00 p.m. On September 15, from 12 p.m.–12:30 p.m., the public may address the Council during the public comment period. If there are no public comments, the conference call will conclude at noon. For further details about the conference call, contact Sherry Foot at the telephone number listed under **FOR FURTHER INFORMATION**. Written comments may be sent to the Bureau of Land Management addressed listed above.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Juan Palma,

State Director.

[FR Doc. 2011–20922 Filed 8–16–11; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–782]

In the Matter of Certain Liquid Crystal Display Devices and Products Containing the Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Unopposed Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 6) of the presiding administrative law judge (''ALJ'') granting complainant's unopposed motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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*.

SUPPLEMENTARY INFORMATION: On July 7, 2011, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Samsung Electronics Co., Ltd. of Korea (''Samsung'') alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain liquid crystal display devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,771,344; 6,882,375; 7,535,537; 7,787,087; and RE41,363. 76 FR 39897 (Jul. 7, 2011). Complainant Samsung named AU Optronics Corp. of Hsinchu, Taiwan; AU Optronics Corporation America of Houston, Texas; Acer America Corporation of San Jose, California; Acer Inc. of Taipei, Taiwan; BenQ America of Irvine, California; BenQ Corp. of Taipei, Taiwan; SANYO Electric Co., Ltd. of Osaka, Japan; and SANYO North America Corporation of San Diego, California as respondents.

On July 21, 2011, the ALJ issued an ID (Order No. 6) granting complainant's motion to amend the Complaint and Notice of Investigation to add SANYO Manufacturing Corporation of Forest City, Arkansas as a respondent and terminate SANYO North America Corporation from this investigation. No party petitioned for review of the subject ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.
Issued: August 11, 2011.

William R. Bishop.

Acting Secretary to the Commission.

[FR Doc. 2011–20918 Filed 8–16–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–723]

In the Matter of Certain Inkjet Ink Cartridges with Printheads and Components Thereof; Notice of Commission Determination to Review in Part A Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issue Under Review and on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on June 10, 2011, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 25, 2010, based on a complaint filed by Hewlett-Packard Company of Palo Alto, California and Hewlett-Packard Development Company, L.P., of Houston, Texas (collectively ''HP''). 75 FR. 36442 (June 25, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet ink cartridges with printheads and components thereof by reason of infringement of various claims of United States Patent Nos. 6,234,598 (''the '598 patent'') ; 6,309,053 (''the '053 patent''); 6,398,347 (''the '347 patent''); 6,481,817 (''the '817 patent''); 6,402,279 (''the '279 patent''); and 6,412,917 (''the '917 patent''). The '917 patent was subsequently terminated from the investigation. The complaint named the following entities as respondents: MicroJet Technology Co., Ltd. of Hsinchu City, Taiwan (''MicroJet''); Asia Pacific Microsystems, Inc. of Hsinchu City, Taiwan (''APM''); Mipo Technology Limited of Kowloon, Hong Kong (''Mipo Tech.''); Mipo Science & Technology Co., Ltd. of Guangzhou, China (''Mipo''); Mextec d/b/a Mipo America Ltd. of Miami, Florida (''Mextec''); SinoTime Technologies, Inc. d/b/a All Colors of Miami, Florida (''SinoTime''); and PTC Holdings Limited of Kowloon, Hong Kong (''PTC'').

Respondents Mipo, Mipo Tech., SinoTime, and Mextec were subsequently terminated from the investigation. Respondent MicroJet defaulted. Respondent PTC did not participate in the hearing and failed to file post-hearing briefs. Pursuant to 19 CFR 210.17(d) and (e), the ALJ drew an adverse inference against PTC that ''PTC imported accused products into the United States, that those products were manufactured by MicroJet, and that those products contain ICs [integrated circuits] made by APM.'' ID at 29.

On June 10, 2011, the ALJ issued his final ID, finding a violation of section 337 by the respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. The ALJ also found that there has been an importation into the United States, sale for importation, or sale within the United States after importation of the accused inkjet ink cartridges with printheads and components thereof. Regarding infringement, the ALJ found that MicroJet and PTC directly infringe claims 1–6 and 8–10 of the '598 patent, claims 1–6 and 8–17 of the '053 patent, claims 1, 3–5, and 8–12 of the '347 patent, claims 1–14 of the '817 patent, and claims 9–15 of the '279 patent. The ALJ also found that MicroJet induces infringement of those claims. The ALJ further found that APM does not directly infringe claims 1–5 of the '598 and does not induce infringement of the asserted patents. The ALJ, however, found APM liable for contributory infringement. With respect to invalidity, the ALJ found that the asserted patents were not invalid. Finally, the ALJ concluded that an industry exists within the United States that practices the '598, '053, '347, '817, and '279 patents as required by 19 U.S.C. 1337(a)(2).

On June 24, 2011, HP filed a contingent petition for review of the ID. On June 27, 2011, APM and the Commission investigative attorney (''IA'') filed petitions for review of the ID. On July 5, 2011, the parties filed responses to the various petitions and contingent petition for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the finding that HP failed to establish by a preponderance of the evidence that Respondent APM induced infringement of the asserted patents. The Commission has determined not to review any other issues in the ID.

The parties are requested to brief their positions on the issue under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in a response to the following question:

1. Does the record evidence demonstrate that APM's conduct meets the ''specific intent'' requirement for inducement in light of the ALJ's finding that ''APM certainly had knowledge of the asserted patents and the infringement at issue once it was served with HP's Complaint. And APM continued to sell its components to MicroJet even after receiving HP's Complaint''? ID at 91; RX–69C. *See DSU Med. Corp.* v. *JMS Co.,* 471 F.3d 1293, 1305 (Fed. Cir. 2006).

In connection with the final disposition of this investigation, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For

background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issue identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, August 25, 2011. Reply submissions must be filed no later than the close of business on Thursday, September 1, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

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. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: August 11, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–20913 Filed 8–16–11; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–751]

In the Matter of Certain Turbomachinery Blades, Engines, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (''ID'') (Order No. 8) granting a joint motion to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 2010, based on a complaint filed by United Technologies Corporation of Hartford, Connecticut, that named as respondents Rolls-Royce Group plc and Rolls-Royce plc, both of the United Kingdom. 75 FR 77904 (Dec. 14, 2010). The complaint alleged a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain turbomachinery blades, engines, and components thereof by reason of the infringement of certain claims of U.S. Patent No. RE38,040.

On July 15, 2011, the private parties moved to terminate the investigation based on a settlement. On July 22, 2011, the Commission investigative attorney filed a response in support of the motion. On July 25, 2011, the ALJ granted the motion as an ID (Order No. 8).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 11, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–20869 Filed 8–16–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Random Assignment Study To Evaluate the YouthBuild Program; Request for Comment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department) is prepared to

conduct an evaluation to provide rigorous estimates of the net impacts of services and training provided by YouthBuild program sites funded by the Department and by the Corporation for National and Community Service (CNCS or the Corporation). The Department has determined that it is in the public interest to use a random assignment impact methodology for the study. In the DOL-funded and CNCS-funded sites randomly selected to participate in this evaluation, all applicants for services and training under the YouthBuild program during a 12–18 month enrollment period will be required to participate in the study in order to be considered for services or training. Due to the random assignment methodology of the study, some eligible applicants will be enrolled in the study but will not be able to enroll in the YouthBuild program for 24 months after their enrollment in the study. At that time, those youth randomly assigned to the control group can re-apply to the YouthBuild program. The Department is soliciting comments concerning the Department's plan to carry out the study.

DATES: Written comments on the plan to require consent to participate in the study during the designated YouthBuild sites' study enrollment periods must be received by the office listed in the addresses section below on or before August 31, 2011.

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

- Mail or Hand Delivery/Courier: Please submit all written comments (including disk and CD–ROM submissions) to Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room N–5641, Washington, DC 20210. Commenters are advised that mail delivery in the Washington area may be delayed due to security concerns. Hand-delivered comments will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the date specified above.
- Facsimile: Please send comments to Eileen Pederson's attention, at fax number (202) 693–2766.
- E-mail: Please send comments to *pederson.eileen@dol.gov*.

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that are received after the comment period has closed.

Comments: All comments on this notice will be retained by the Department and released upon request via email to any member of the public. The Department also will make all the comments it received available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice available, upon request, in large print, Braille and electronic file on computer disk. The Department will consider providing the notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the notice in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact this office at the address listed above.

The Department will retain all comments received without making any changes to the comments, including any personal information provided. If requested, the comments will be released to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will be released with the comment if the comments are requested. It is the commenter's responsibility to safeguard his or her information. If the comment is submitted by e-mail, the e-mail addresses of the commenter will not be released.

FOR FURTHER INFORMATION CONTACT: Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. Telephone number: (202) 693–3647 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

I. Background

YouthBuild is a youth and community development program that addresses several core issues facing low-income communities: youth education, employment, homelessness and affordable housing. The program primarily serves high school dropouts and focuses on helping them attain a high school diploma or general educational development (GED) certificate and teaching them construction skills and other occupational skills geared toward career or post-secondary education placement. YouthBuild seeks to incorporate widely-recognized youth development principles while training youth to give back to their communities by expanding the supply of affordable housing, albeit on a small scale.

YouthBuild programs are operated by a diverse group of organizations, including community-based organizations, faith-based organizations, local government agencies, and educational institutions. These programs vary widely in how they fund services and the emphasis they place on various components of the program. Nearly 50 of the programs nationwide receive funding from the Corporation for National and Community Service (CNCS or the Corporation). These sites may place more emphasis on community service components of the program. Services and training provided by YouthBuild programs include educational activities, occupational/vocational training, personal development, leadership training, community service and a wide range of related, supportive services. Additional services also include staff assessments, counseling, and job placement assistance following completion of the program.

The recent recession, high unemployment rate and limited Federal resources serve as a reminder of the importance of ensuring that services and training provided to those who are just entering the workforce will enable them to succeed and that the programs which provide those services and training are as effective as possible. In order to improve the management and effectiveness of Workforce Investment Act (WIA) services and related activities, including YouthBuild programs, section 172 of the WIA requires the Department to continually evaluate WIA-funded programs and activities. These evaluations must ''utilize appropriate methodology and research designs, including the use of control groups chosen by scientific random assignment methodologies.'' Congress, the Office of Management and Budget, and the Government Accountability Office have called on DOL to conduct rigorous evaluations in order to learn if WIA-funded services and training, including those specifically for youth, are as effective as they can be. Accordingly, ETA is conducting a multisite control group evaluation to provide rigorous estimates

of the net impact of services provided by YouthBuild programs funded by the Department and the Corporation. This evaluation will offer policymakers, program administrators, service providers, future applicants, and the public information about the relative effectiveness of YouthBuild programs, how the effectiveness varies by target population, and how the services are implemented. The study will also produce estimates of the benefits and costs of these services. Compared to peers who remain in school, high school dropouts are more likely to be disconnected from school and work, be incarcerated, be unmarried, and have children outside of marriage. Thus, the evaluation represents an important opportunity to add to the growing body of knowledge about the impacts of ''second chance'' programs for youth who have dropped out of high school.

The complete experimental design impact evaluation of the YouthBuild program will take seven years, including a follow-up period that extends for four years after the last applicant is enrolled in the study and additional time for analyzing and reporting the results. The evaluation is funded by both the Department and the Corporation. It will measure core program outcomes including educational attainment, postsecondary planning, employment, earnings, personal development, delinquency and involvement with the criminal justice system. Random assignment will be conducted in approximately 60 randomly-selected DOL-funded sites and 17 randomly-selected CNCS-funded sites. Youth in those sites who are eligible for YouthBuild services will be randomly assigned to one of two groups: the program group, which can receive all YouthBuild services, and the control group, which cannot receive YouthBuild services for a 24 months after enrollment but can receive services from other organizations in their communities. In the participating YouthBuild sites, all eligible applicants for YouthBuild services will be asked to participate in the study during the 12–18 month study enrollment period. They will be informed of the evaluation, provided an opportunity to ask questions or seek clarification of their role and responsibilities should they agree to participate, and then asked to give their consent to participate. Applicants who do not consent to participate in the study will not be allowed to enroll in YouthBuild or receive services or training funded by the YouthBuild program. As will be the case for those in the control group, those who do not consent to participate in the study can receive training services from other organizations in their communities. The Department expects a total of about 4,600 YouthBuild program applicants to be randomly assigned to one of the two groups under the evaluation.

The Department has determined that it is in the public interest to use a random assignment impact methodology because random assignment is generally viewed as the best and most feasible design for credibly and reliably answering questions about the effectiveness of social programs and policy interventions. More than any other approach, random assignment minimizes the chance that any observed differences in outcomes between research groups are due to unmeasured, preexisting differences between members of the groups. When implemented carefully, random assignment creates groups that are almost identical in their characteristics before the intervention, differing only in whether they are exposed to the intervention. As a result, differences in average outcomes between the groups can be causally attributed to the intervention.

The Department recognizes that this design will assign some applicants to the control group, which will not have access to YouthBuild services. However, those who are assigned to the control group will be eligible for other services in their communities and also eligible to reapply for YouthBuild services 24 months after enrollment into the study.

To protect the rights and welfare of YouthBuild applicants who agree to participate in the evaluation, the evaluation team, lead by researchers from MDRC submitted the YouthBuild evaluation design to MDRC's Institutional Review Board (IRB) for concurrence. An IRB is a committee specifically responsible for protecting the rights and welfare of humans involved in biomedical and behavioral research. On May 3, 2011, MDRC's IRB determined this study to be of no more than minimal risk and approved it.

II. Desired Focus of Comments

Currently, DOL is soliciting comments concerning the Department's intent to carry out the random assignment study described above: for the limited enrollment period, applicants for YouthBuild services and training would be required to consent to participate in the study, where they would be randomly assigned to one of the two research groups. Applicants who do not consent to participate would be ineligible to receive YouthBuild services and training. This requirement would apply only to applicants in the limited number of YouthBuild program sites selected to participate in this evaluation.

The Department seeks comments focused on whether there is a methodology that would yield as credible and reliable an evaluation of the YouthBuild program as random assignment, but avoids adverse affect on the study participants. The Department also welcomes comments that suggest ways to more effectively minimize any adverse impact on the study participants who participate in the study described above.

III. Current Actions

Following receipt of comments in response to this request, ETA will adjust, as appropriate, the approach for temporarily requiring applicants for YouthBuild services and training at select DOL-funded and CNCS-funded sites to participate in random assignment. Comments submitted in response to this request will also become a matter of public record.

Signed at Washington, DC, this 12th day of August, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–20971 Filed 8–16–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before September 16, 2011.

ADDRESSES: You may submit your comments, identified by ''docket

number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Facsimile). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–022–C.

Petitioner: Sage Creek Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Peabody Sage Creek Mine, MSHA Mine I.D. No. 05–04952, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements.

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with respect to the braking systems on a grader. The petitioner states that: (1) The petition is limited in application to the diesel motorgraders. (2) The maximum speed on the Diesel Motorgraders will be limited to 10 mph by: (a) permanently blocking out the gear(s) or any gear ratio(s) that provide higher speeds. The device will limit the vehicle speed in both forward and reverse; and (b) using transmission(s) and differential(s) geared in accordance with the equipment manufacturer which limits the maximum speed to 10 mph. (3) Prior to implementing the alternative method: (a) The diesel grader will be inspected by MSHA to determine compliance with the terms and conditions; (b) grader operators will be trained to recognize appropriate levels of speed for different road conditions and slopes; (c) grader operators will be trained to lower the moldboard (grader blade) to provide additional stopping capability in emergencies; and (d) grader operators will be trained to recognize the transmission gear blocking device and its proper application requirements. (4) The grader will comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 CFR, parts 75 and 77. (5) Within 60 days after the proposed decision and order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions stated in the petition. The proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the standard.

Docket Number: M–2011–023–C.

Petitioner: Peabody Twentymile Mining LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Foidel Creek Mine, MSHA Mine I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with respect to the braking systems on a grader. The petitioner states that: (1) The petition is limited in application to the Diesel Motorgraders. (2) The maximum speed on the Diesel Motorgraders will be limited to 10 mph by: (a) permanently blocking out the gear(s) or any gear ratio(s) that provide higher speeds. The device will limit the vehicle speed in both forward and reverse; and (b) using transmission(s) and differential(s) geared in accordance with the equipment manufacturer which limits the maximum speed to 10 mph. (3) Prior to implementing the alternative method: (a) the diesel grader will be inspected by MSHA to determine compliance with the terms and conditions; (b) grader operators will be trained to recognize appropriate levels of speed for different road conditions and slopes; (c) grader operators will be trained to lower the moldboard (grader blade) to provide additional stopping capability in emergencies; and (d) grader operators will be trained to recognize the transmission gear blocking device and its proper application requirements. (4) The grader will comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 CFR, Parts 75 and 77. (5) Within 60 days after the proposed decision and order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions stated in the petition. The proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the standard.

Docket Number: M–2011–005–M.

Petitioner: Troy Mine, Inc., P.O. Box 1660, Highway 56 South Mine Road, Troy, Montana 59935.

Mine: Troy Mine, MSHA Mine I.D. No. 24–01467, located in Lincoln County, Montana.

Regulation Affected: 30 CFR 57.11055 (Inclined escapeways).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of a 317-foot portion of a designated secondary escapeway, which is steel-encased, with secure landings, and equipped with a leaky feeder communication system. The petitioner

seeks a modification of the existing standard: (1) As it pertains to a secondary escapeway/raisebore from the C Bed to the Lower Quartzite area; (2) The secondary escapeway/raisebore from the C Bed to the Lower Quartzite area is 42 inches in diameter and steel-encased. The escapeway/raisebore from the C Bed to the Lower Quartzite area is equipped with a ladder and secure landings at least every 30 feet, in conformance with 30 CFR 57.11025. The secondary escapeway/raisebore from the C Bed to the Lower Quartzite area consists of two sections. The first section is 114 feet, and the second section is 317 feet. The first section begins at the C Bed and ends at the Upper C Bed. The second section begins at the Upper C Bed and ends at the Lower Quartzite area. Refer to Attachments A and B for diagrams of the area in question; (3) The mine proposes an alternative method of compliance with the existing standard, by installation of a leaky feeder communication system in the steel-encased secondary escapeway. The alternative method provides mines in the escapeway with continuous communication with the surface and will allow for notification that personnel are in the raise and on their way out. The leaky feeder system will be protected from damage due to steel encasement of the escapeway/raisebore. The steel encasement of the escapeway/raisebore will also prevent exposure to falling rock in the secondary escapeway to miners. The landings spaced at a maximum of 30 foot intervals are configured to provide protection to resting miners from falling down the escapeway; (4) In the alternative to compliance with the existing standard, the petitioner proposes to: (a) Install a leaky feeder communication cable in the secondary escapeway/raisebore from the C Bed to the Lower Quartzite area; (b) install radio boxes in the secondary escapeway/raisebore from the C Bed to the Lower Quartzite area. The radio boxes will each contain: (i) A radio; (ii) A charging station for the radio; and (iii) An extra battery for the radio; (c) within 45 days after the proposed decision and order becomes final, the petitioner will submit proposed revisions to the escape and evacuation plan as required in 30 CFR 57.11053; and (d) with 60 days after the proposed decision and order becomes final, the petitioner will submit proposed revisions of its approved 30 CFR part 48 training plan to the Metal/Nonmetal Safety and Health District Manager. In addition to the requirements specified, these proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the proposed decision and order. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2011–006–M.

Petitioner: Degerstrom Ventures, 3268 Blackfoot River Road, Soda Springs, Idaho 83276.

Mine: Enoch Valley Mine and South Rasmussen Mine, MSHA Mine I.D. No. 10–01702, located in Caribou County, Idaho.

Regulation Affected: 30 CFR 56.9300(a) (Berms or guardrails).

Modification Request: The petitioner requests a modification of the existing standard to permit the haul road to be used without berms or guardrails being provided or maintained on the banks of the roadway where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment. The petitioner asserts that the addition of berms or guardrails to the haul road will add a substantial hazard to the safety of the haul trucks and will expose the operators of the trucks to an unnecessary, unsafe condition. The petitioner states that: (1) Its predecessor, Dravo Soda Springs, has previously obtained similar modification of 30 CFR 56.9300(a) on two previous occasions relating to other sections of the same roadway that applies to 8.6 miles of haul road covered by previous decision and orders as well as a new 3.1 mile section of roadway; and (2) The modification is needed because the mining operation is expected to be extended to a new site in the same vicinity, known as the Blackfoot Bridge Mine. The Record of Decision for the new proposed Blackfoot Bridge Mine was filed June 17, 2011, and will be covered under the same mine identification number as the Enoch Valley Mine and South Rasmussen Mine. The petitioner asserts that the use of berms or guardrails on the haul road will add a hazard to the safety of the haul trucks and will expose the operators of the trucks to unsafe conditions.

Dated: August 12, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–20978 Filed 8–16–11; 8:45 am]

BILLING CODE 4510–43–P

MARINE MAMMAL COMMISSION

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information

AGENCY: Marine Mammal Commission.

ACTION: Final guidelines.

SUMMARY: The Marine Mammal Commission adopts these guidelines to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the agency in accordance with the directive issued by the Office of Management and Budget (67 FR 8452–8460), pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

FOR FURTHER INFORMATION CONTACT: Michael L. Gosliner, General Counsel, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda MD 20814; *telephone*: (301) 504–0087; *fax*: (301) 504–0099

Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by federal agencies.'' Pursuant to this directive, OMB issued guidelines on 22 February 2002 (67 FR 8452–8460) that direct each federal agency to (1) Issue its own guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the agency; (2) establish administrative mechanisms to allow affected persons to seek and obtain correction of information that does not comply with the OMB guidelines or the agency's guidelines, and (3) report periodically to the director of OMB on the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and how such complaints were handled by the agency.

The Marine Mammal Commission was established under the Marine Mammal Protection Act of 1972 to provide independent oversight of the marine mammal conservation policies and programs being carried out by federal agencies. The Commission is charged with developing, reviewing, and making recommendations on domestic and international actions and

policies of all federal agencies with respect to marine mammal protection and conservation and with carrying out a research program. In carrying out its mission, the Commission develops and disseminates scientific and other information and reviews information provided by other federal agencies.

To comply with the OMB directive, the Marine Mammal Commission published proposed agency guidelines on 27 June 2011 (76 FR 37376) intended to ensure and maximize the quality, objectivity, utility, and integrity of information that is disseminated by the agency. The Commission solicited comments on the proposed guidelines and received one set of comments. Those comments are summarized, and the Commission's responses are provided, in the subsequent discussion.

Comments and Responses

The only comments on the Commission's proposed guidelines were submitted by the Center for Regulatory Effectiveness. The Center commended the Commission on its proposed guidelines and advocated that final guidelines be published as soon as possible. The Center also recommended that the proposed guidelines be amended in certain respects before they are finalized—first, by revising when requests for correction would not be considered, and second, by providing fixed and definite dates for taking action on requests for correction.

In the section concerning the administrative process for correction of information, the Commission identified five criteria under which a request for correction would not be considered. Included in these criteria were instances in which the ''the [requested] correction would serve no useful purpose'' and when the request is deemed ''to be duplicative, repetitious, or frivolous.'' The commenter thought that these criteria should be deleted because they are beyond the Commission's authority and because they may be subject to administrative abuse. The commenter did not believe that the Information Quality Act allowed the Commission the latitude to decide when corrections would be useful or when requests are frivolous or do not warrant a response.

The Commission believes that these exceptions are consistent with the guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies published by OMB on 22 February 2002. Those guidelines state that—

> Overall, OMB does not envision administrative mechanisms that would burden agencies with frivolous claims. Instead, the correction process should serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes. Agencies, in making their determination of whether or not to correct information, may reject claims made in bad faith or without justification, and are required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved, and explain such practices in their annual fiscal year reports to OMB.

Furthermore, these exceptions are consistent with similar exceptions included in the guidelines adopted by other agencies. For example, guidelines published by the National Science Foundation specify that the agency ''may reject claims made in bad faith, or without justification. The Foundation need not respond substantively to such requests, nor to frivolous, repetitive, or stale requests.* * *'' Guidelines published by the National Oceanic and Atmospheric Administration explain that a request for consideration will not be considered if it concerns ''disseminated information the correction of which would serve no useful purpose [such as when the information is not valid, used, or useful after a stated short period of time]'' and that ''requests that are duplicative, repetitious, or frivolous may be rejected.'' In addressing similar comments, the Council on Environmental Quality amended its proposed guidelines to provide that the agency's ''response will be proportional to the nature or the request'' and that it ''will generally not substantively respond to a request that is duplicative of an earlier request.''

The Commission does not share the commenter's concern that these exceptions are subject to abuse. Consistent with the guidance from OMB, the Commission would report on all requests for correction received during the fiscal year and explain its practices for responding to such requests, including those that fit within the scope of any of the exceptions. In addition, the Commission did not intend that it would simply ignore, without explanation, any request that it determined fell within any of the exceptions. Rather, the responsible official would return the request to the person who submitted it, indicating that further action would not be taken and identifying the exception on which the determination was based. Clarifying language to that effect has been added to the final guidelines.

The Center also advocated that the Commission delete the proposed exception concerning information disseminated in the course of a rulemaking or similar administrative process that includes an opportunity for public comment and a mechanism to dispute or challenge the information in question. For the most part, the Commission is not a regulatory agency. Rather, it provides recommendations concerning regulatory needs to other agencies, which are responsible under the Marine Mammal Protection Act and other statutes for adopting and implementing such regulations. As such, there would be very few instances when this exception would be applicable. As such, the Commission has decided to delete the proposed exception.

The Center also submitted comments on two timing provisions included in the proposed guidelines. The proposed guidelines specified that ''[w]ithin 60 days of the receipt of a properly filed request, the Commission will provide a final decision on the request or a statement of the status of the request and an estimated decision date.'' The provision concerning the consideration of an appeal of an initial determination also would have provided the Commission some flexibility as to when it responded. Under the proposed guidelines, the official responsible for considering an appeal would provide a decision to the requester, ''usually within 60 calendar days of receipt of the appeal.'' The Center believes that the Commission's guidelines should guarantee action on a request for correction or an appeal by a specific date. The commenter thought that the flexibility for responding contained in the proposed guidelines would give the Commission the ''discretion to extend forever any final action'' and was contrary to the requirement of the Information Quality Act that requesters be able to ''seek and obtain'' correction of information that does not comply with the Act or the Commission's guidelines. The Center recommended that the Commission establish a strict 60-day time limit for initial decisions and a 30-day time limit for decisions on appeals.

By including some degree of flexibility in the draft guidelines as to when it responds to initial requests and appeals, the Commission did not intend to suggest that it could extend action indefinitely. In most instances, the Commission believes that it will be able to respond to requests and appeals within the timeframes specified in the proposed guidelines—60 days for initial requests and 60 days for appeals. In any case in which the initial decision is extended beyond 60 days, the Commission would specify an estimated response date. The Commission

continues to believe that some flexibility is appropriate to allow the Commission time to consider and respond to complex requests or to follow the review procedures set forth in the guidelines, which may include review by members of the Commission's Committee of Scientific Advisors on Marine Mammals, who serve on a part-time basis, or by outside experts. To provide a thorough and objective review of information correction requests, there may be instances when more time is needed, particularly if the review requires specialized scientific knowledge and/or is pending when those with the necessary expertise are not available (e.g., during a researcher's field season). The situation may be exacerbated in the case of appeals, because the pool of potential reviewers would be further limited because the responsible official would need to be someone not materially involved in reviewing the initial request.

Because of these considerations, the Commission declines to adopt the commenter's request that strict deadlines be established in all cases. Nevertheless, the Commission has amended the guidelines in several ways to address the Center's concerns. The guidelines have been revised to indicate that the Commission's goal is to provide a decision on each request for correction within 60 days. In the event that resolving a request requires more time, the Commission will notify the requester, explaining the reasons that more time is needed and providing an estimated decision date. Similar notice and explanation requirements have been added to the appeals section of the guidelines.

Definitions

The following definitions, which are consistent with the definitions included in the directive published by OMB on 22 February 2002, are used in and apply to the Marine Mammal Commission's guidelines—

1. ''Affected'' persons are those who use, may benefit from, or may be harmed by the disseminated information.

2. ''Dissemination'' means agency-initiated or sponsored distribution of information to the public. Dissemination does not include the distribution of information limited to government employees or agency contractors or grantees; intra- or inter-agency use of or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas, or adjudicative processes.

3. ''Influential,'' when used in the phrase ''influential scientific, financial, or statistical information,'' means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policy and private sector decisions.

4. ''Information'' means any communication or representation of facts or data in any medium or form including textual, numerical, cartographic, narrative, or audiovisual.

5. ''Integrity'' refers to security—the protection of information from unauthorized access or revision—to ensure that the information is not compromised through corruption or falsification.

6. ''Objectivity'' is a measure of whether disseminated information is accurate, reliable, and unbiased and whether that information is presented in an accurate, clear, complete, and unbiased manner.

7. ''Person'' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a regional, national, state, territorial, tribal, or local government or branch, or a political subdivision of a state, territory, tribal, or local government, or a branch of a political subdivision, or an international organization.

8. ''Quality'' encompasses the ''utility,'' ''objectivity,'' and ''integrity'' of disseminated information. Thus, the government-wide guidelines and the Commission's guidelines may refer to these statutory terms collectively as ''quality.''

9. ''Reproducibility'' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to be more or less influential, the degree of imprecision that is tolerated will be reduced or increased accordingly. With respect to analytic results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

10. ''Transparency'' refers to a clear description of the methods, data sources, assumptions, outcomes, and related information that will allow a data user to understand how the information product was designed or produced.

11. ''Utility'' refers to the usefulness of the information to the Commission, other federal agencies, and other intended users, including the public.

Scope of the Guidelines

Information Disseminated and Covered by These Guidelines: Subject to the exceptions noted below, all information disseminated by the agency is subject to these guidelines. This includes Commission reports and recommendations provided to other agencies, and postings to the Commission's Web site.

Information Not Covered by These Guidelines: The following information and communications are not covered by the applicable data quality requirements and not subject to these guidelines—

- Information for which distribution is intended to be limited to government employees or agency contractors or grantees.
- Information for which distribution or sharing is intended to be limited to intra- or inter-agency use.
- Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law.
- Information relating solely to correspondence with individuals or persons.
- Press releases, fact sheets, press conferences, or similar communications in any medium that announce, support the announcement of, or give public notice of information that the Commission has disseminated elsewhere.
- Archival records, including library holdings.
- Archival information disseminated by the Commission before October 1, 2002, and still maintained as archival material.
- Public filings.
- Subpoenas.
- Information limited to adjudicative processes, such as pleadings, including information developed during the conduct of any criminal or civil action or administrative enforcement action, investigation, or audit against specific parties, or information distributed in documents limited to administrative action determining the rights and liabilities of specific parties under applicable statutes and regulations.
- Solicitations (*e.g.,* program announcements and requests for proposals).
- Hyperlinks to information that another person disseminates, as well as paper-based information from other sources referenced, but not approved or endorsed by the Commission.

• Policy manuals and management information produced for the internal management and operations of the Commission and not primarily intended for public dissemination.

• Information presented to Congress as part of legislative or oversight processes, such as testimony of Commission officials, and information or drafting assistance provided to Congress in connection with proposed or pending legislation, that is not simultaneously disseminated to the public. (However, information that would otherwise be covered by applicable guidelines is not exempted from compliance merely because it is also presented to Congress.)

• Documents not authored by the Commission and not intended to represent the Commission's views, including information authored and distributed by Commission grantees, as long as the documents are not disseminated by the Commission (see definition of ''dissemination'').

• Research data, findings, reports and other materials published or otherwise distributed by employees or by Commission contractors or grantees that are identified as not representing the Commission's views.

• Opinions where the presentation makes it clear that what is being offered is not the official view of the Commission.

Information Quality Standards and Pre-Dissemination Review

The Marine Mammal Commission remains committed to ensuring the quality, objectivity, utility, and integrity of the information it disseminates. To meet this objective, the Commission has established various pre-dissemination review procedures. The applicable review procedures vary depending on the type of information being disseminated and the extent to which such information is considered influential.

All reports disseminated by the Commission undergo multiple levels of review by knowledgeable individuals prior to publication to ensure that the information each report contains is of a high quality and supports the conclusions reached. In addition to the report drafters, reviewers generally include other staff members, members of the Commission's Committee of Scientific Advisors on Marine Mammals, and the Commissioners. When appropriate, Commission reports also are provided to other agencies, experts outside the federal government, and stakeholders in the relevant issue for review prior to publication.

Section 203 (c) of the Marine Mammal Protection Act (16 U.S.C. 1403(c)) requires the Commission to consult with its Committee of Scientific Advisors on Marine Mammals ''on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted [by the Commission], and on all applications for scientific permits.'' The Committee of Scientific Advisors consists of nine scientists ''knowledgeable in marine ecology and marine mammal affairs'' appointed by the Chairman of the Commission after consulting with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences. This appointment process helps to ensure that the Commission has ready access to a panel of knowledgeable experts in matters related to marine mammals and marine science, including members from the academic community and elsewhere outside of government. By submitting all agency recommendations and research programs to the Committee for review prior to adoption or dissemination, the Commission not only obtains policy advice, but has, in essence, a standing peer-review body to vet the quality of the information on which Commission recommendations are based before it is disseminated.

Information posted on the Commission's Web site consists largely of Commission reports and recommendations. These documents already have been subjected to extensive review prior to being disseminated. Other information also may be posted on the Web site, including information on marine mammal species and issues of special concern. As with other materials disseminated by the Commission, and as appropriate, such information is vetted by Commission staff, members of the Committee of Scientific Advisors on Marine Mammals, the Commissioners, and outside experts prior to posting.

In exigent circumstances (*e.g.,* when responding to emergencies such as oil spills or unusual mortality events that pose a risk to natural resources), it may not be possible for the Commission to provide full review of information prior to dissemination. In such cases, the Commissioners, the Commission's Executive Director, or the Commission's General Counsel may waive temporarily the information quality standards applicable to the dissemination of information. To the extent practicable, the Commission will provide public notice of any such waiver, explaining the reason for the waiver, identifying the official responsible for issuing the waiver, and indicating the expected duration of the waiver. To the extent practicable, full review of information disseminated under a waiver will be conducted after release of that information and revisions will be made as appropriate.

Information Integrity

The Commission maintains and posts material to its Web site through a contract. The contractor is responsible for, and has instituted safeguards and security measures to protect, the integrity of the information that it posts to the Commission's Web site.

Administrative Process for Correction of Information

Overview: Any affected person (see definition above) may request, where appropriate, timely correction of disseminated information that does not comply with applicable information quality guidelines. The burden of proof is on the requester to show both the necessity for and type of correction sought.

Procedures for Submission of Initial Requests for Correction: An initial request for correction of disseminated information must be made in writing and submitted to: General Counsel, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814, and marked to indicate that it is an information correction request. Any request for correction must include—

1. A description of the facts or data the requester seeks to have corrected;

2. An explanation of how the requester is an affected person with respect to the disputed facts or data;

3. The factual basis for believing the facts or data sought to be corrected are inconsistent with Commission or OMB information guidelines;

4. A proposed resolution, including the factual basis for believing the facts or data in the requester's proposed resolution are correct;

5. The consequences of not adopting the proposed resolution; and

6. The requester's contact information, including name, address, daytime Telephone number, and e-mail address.

No initial request for correction will be considered under these procedures if the request concerns—

1. A matter not involving information as defined in these guidelines;

2. Information that has not been disseminated as defined in these guidelines;

3. Disseminated information, the correction of which would serve no useful purpose; or

4. Requests that are deemed to be duplicative, repetitious, or frivolous.

If the Commission determines that any of these exceptions apply, the responsible official will return the request to the person who submitted it, indicating that further action on the request will not be taken, identifying the applicable exception or exceptions, and explaining the basis for applying each of those exceptions in that particular instance.

The Commission's goal is to provide a final decision on every properly filed request for correction within 60 days of receipt. If a request requires more than 60 days to resolve, the Commission will advise the requester that more time is needed, along with an explanation of the reason or reasons that more time is needed and an estimated decision date.

Action by the Responsible Official on Initial Requests for Correction: Upon receipt of a properly filed request, the responsible official will make a preliminary determination as to whether the request reasonably demonstrates, on the strength of the assertions made in the request alone, and assuming they are true and correct, that the information disseminated was based on a misapplication or non-application of the Commission's applicable information quality standards. The responsible official will communicate his or her initial determination concerning the sufficiency of a request, and otherwise specify the status of the request to the requester, usually within 30 days of receipt. A final determination that a request does not state a proper claim will be communicated, along with an explanation of the deficiencies, to the requester, usually within 60 days of receipt. The requester may correct the deficiencies, otherwise amend, and resubmit the request.

If the responsible official preliminarily determines that a properly filed request indicates that there may be a valid claim, the Commission will institute an objective review process to investigate and analyze relevant material in a manner consistent with established internal procedures to determine whether the disseminated information complies with the Commission's information quality standards. During such a review the Commission may consult with members of its Committee of Scientific Advisors on Marine Mammals or outside experts to obtain their views on the quality, objectivity, utility, and integrity of the disputed information. After considering the record as a whole, the responsible official will make an initial decision as to whether the information should be corrected and what, if any, corrective action should be taken. At its discretion, the Commission may provide the requester with an opportunity to discuss the request with the responsible official or other reviewers.

If the Commission determines that corrective action is appropriate, corrective measures may be taken through a number of forms, including, but not limited to, personal contacts via letter or telephone, form letters, press releases, postings on an appropriate Web site, or withdrawal or amendment of the information in question. The form of corrective action will be determined by the nature and timeliness of the information involved and such factors as the significance of the error, the use or anticipated use of the information, and the magnitude of the error.

The responsible official will communicate his or her decision or indicate the status of the request to the requester, usually within 60 days of receipt of the request. That communication will specify the agency's initial decision, the basis for that decision, and whether, and, if so, what corrective action has been or will be taken. In addition, an initial decision will indicate the name and title of the official responsible for making the decision, a notice that the requester may appeal an initial denial within 30 days of that denial, and the name and title of the official to whom an appeal may be submitted. An initial denial will become a final agency decision if no appeal is filed within 30 days of that denial.

Appeal From an Initial Denial: An appeal of an initial denial must be filed within 30 days of the date of the initial decision. Any such appeal must be in writing and addressed to the official identified in the initial decision. An appeal of an initial denial must include:

1. The requester's name, current home or business address, and telephone number or e-mail address (in order to ensure timely communication);

2. A copy of the original request and any correspondence regarding the initial denial; and

3. A statement of the reasons why the requester believes the initial denial to be in error.

The official responsible for considering an appeal will be a Commissioner or a senior staff member who was not materially involved in reviewing the initial request or in making the initial decision. A decision concerning the appeal will be based on the entirety of the information in the appeal record. Generally, no opportunity for a personal appearance, oral argument, or hearing concerning the appeal will be provided; however, at his or her discretion, the official responsible for considering the appeal may discuss the request with the appellant. The official responsible for considering the appeal will make every effort to make and communicate his or her decision to the requester within 60 calendar days of receipt of the appeal. In the event that more time is needed, the responsible official will inform the appellant and provide an explanation of the reason or reasons that more time is needed, along with an estimated decision date.

Reporting Requirements

The Commission will submit an annual report to OMB by 1 January of each year specifying the number and type of correction requests received during the previous year and how any such requests were resolved. These reports will explain the Commission's practices for responding to such requests, including those that fit within the scope of any of the exceptions under which a request was not considered. The Commission will submit its initial report in the first reporting cycle following adoption of final guidelines.

Dated: August 11, 2011.

Timothy J. Ragen,

Executive Director, Marine Mammal Commission.

[FR Doc. 2011–20915 Filed 8–16–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board (NSB) Committee on Audit and Oversight and the NSB Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of NSB business and other matters specified, as follows:

DATE AND TIME: Monday, August 29, 2011 at 4 p.m.–5 p.m., E.D.T.

SUBJECT MATTER: Review, discussion and recommendation of the NSF FY 2013 budget.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National

Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or *contact:* Kim Silverman or Blane Dahl, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. 2011–21132 Filed 8–15–11; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application from Mr. Sebastian Copeland for his private expedition crossing Antarctica from the Russian Novo station on the coast to the Pole of Inaccessibility to South Pole and ending at Antarctic Logistics and Expeditions camp at Union Glacier where they will be flown back to Punta Arenas, Chile. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within September 16, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for a private expedition planning to traverse to the South Pole then onward to Union Glacier where they will be flown to Punta Arenas Chile. While on the traverse, they will be camping in a two-man tent and using white camping fuel for cooking purposes. The fuel will be stored inside the sledges in five-liter containers and metal MSR bottles. Waste generated will consist of a small amount of rinse water from cooking, and human waste for two people. Empty plastic containers and packaging will be kept in the sledges to be discarded in Chile at the end of the expedition.

Application for the permit is made by: Sebastian Copeland, 1626 Ogden Drive, Los Angeles, CA 90046.

Location: Russian Nova Station on the coast to South Pole, then on to Union Glacier for extraction.

Dates: November 2, 2011 to January 27, 2012.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–20950 Filed 8–16–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–335–LA; ASLBP No. 11–911–01–LA–BD01]

Florida Power & Light Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Florida Power & Light Company (St. Lucie Plant, Unit 1)

This proceeding involves a license amendment request by Florida Power & Light Company to increase, from 2,700 megawatts thermal to 3,020 megawatts thermal, the licensed core power level for St. Lucie Plant, Unit 1, which is located in St. Lucie County, Florida. In response to a ''Notice of Consideration of Issuance of Amendment to Facility Operating License, and Opportunity for a Hearing'' published in the **Federal Register** on June 9, 2011 (76 FR 33,789), a hearing request was submitted by Thomas Saporito on behalf of Saprodani Associates.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Kenneth L. Mossman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 11th day of August 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011–20952 Filed 8–16–11; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the National Agency Check (NAC) Questionnaire for Peace Corps Volunteer Background Investigation (OMB Control Number 0420–0001) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. Notice of the information collection was previously published in the **Federal Register** on May 25, 2011, at 76 FR 12939, allowing for a 60-day public comment period. Peace Corps received 16 identical comments stating that ''the Peace Corps must ensure that the proposed information collection activity screens out and excludes those individuals motivated exclusively (or near exclusively) to promote or participate in the harmful male genital mutilation known as circumcision.'' As the NAC Questionnaire for Peace Corps Volunteer Background Investigation (OMB Control Number 0420–0001) requests only identifying information about Volunteer applicants in order to locate records pertaining to applicants' legal activities and legal suitability for Peace Corps Volunteer service. As those records are not likely to contain information concerning views about circumcision, it will not be possible to make such a judgment about applicants using this form.

The purpose of this notice is to allow an additional 30 days for public comments. Written comments and

suggestions from the public and affected agencies should address one or more of the following four points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Submit comments on or before September 16, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@peacecorps.gov.* Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: The NAC Questionnaire for Peace Corps Volunteer Background Investigation Form is used to conduct a formal background check. The data gathered is used to conduct a National Agency Check through the Office of Personnel Management who has pertinent records pertaining to applicants' legal activities and suitability for Peace Corps Volunteer service.

Overview of Information Collection

OMB Control Number: 0420–0001.

Title: National Agency Check (NAC) Questionnaire for Peace Corps Volunteer Background Investigation.

Type of Information Collection: Extension, without change, of a currently approved collection.

Affected Public: Potential and current volunteers.

Respondents' Obligation To Reply: Voluntary.

Burden to the Public:

a. Number of Average Applicants—13,500.
b. Number of Applicants who submit NAC form—13,500.
c. Frequency of response—One time.
d. Completion time—15 minutes.
e. Annual burden hours—3,375.

Dated: August 11, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–20931 Filed 8–16–11; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–42; Order No. 798]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Rex, North Carolina post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): August 25, 2011; *deadline for notices to intervene:* September 6, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 10, 2011, the Commission received a petition for review of the Postal Service's determination to close the post office in Rex, North Carolina. The petition was filed by James E. Shaw (Petitioner) and is postmarked July 27, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–42 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than September 14, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community. *See* 39 U.S.C. 404(d)(2)(A)(iii).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is August 25, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is August 25, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 6, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than August 25, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 25, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the Federal Register.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

August 10, 2011	Filing of Appeal.
August 25, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 25, 2011	Deadline for the Postal Service to file any responsive pleading.
September 6, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 14, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 4, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
October 19, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
October 26, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 25, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–20868 Filed 8–16–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–43; Order No. 799]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Stoy, Illinois post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): August 25, 2011; *deadline for notices to intervene:* September 6, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 10, 2011, the Commission received a petition for review of the Postal Service's determination to close the post office in Stoy, Illinois. The petition was filed by Lisa L. McKinley (Petitioner) and is postmarked August 1, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–43 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than September 14, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is August 25, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is August 25, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov*. Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Webmaster via telephone

at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov*, unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 6, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than August 25, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 25, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

August 10, 2011.	Filing of Appeal.
August 25, 2011.	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 25, 2011.	Deadline for the Postal Service to file any responsive pleading.
September 6, 2011.	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 14, 2011.	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 4, 2011.	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
October 19, 2011.	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
October 26, 2011.	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 28, 2011.	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–20875 Filed 8–16–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29752; File No. 812–13773]

Northern Trust Investments, N.A., et al.; Notice of Application

August 10, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares. The order would supersede a prior order (the ''Prior Order'').[1]

Applicants: Northern Trust Investments, Inc. (the ''Adviser''), FlexShares Trust (the ''Trust'') and Foreside Fund Services, LLC (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on May 14, 2010, and amended on November 3, 2010, and August 2, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 2, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street,

[1] *NETS Trust, et al.,* Investment Company Act Release Nos. 28166 (Feb. 25, 2008) (notice) and 28195 (Mar. 17, 2008) (order).

NE., Washington, DC 20549–1090; Applicants, c/o Peter K. Ewing and Craig R. Carberry, Esq., 50 S. LaSalle Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel at (202) 551–6817, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a newly organized Maryland statutory trust and will be registered under the Act as an open-end management investment company. The Trust initially will offer five series (''Initial Funds'') whose performance will correspond generally to the price and yield performance of a specified securities index (''Underlying Index'').[2]

2. Applicants request that the order apply to the Initial Fund and any future series of the Trust and any other open-end management investment companies or series thereof, that may be created in the future and that track a specified index comprised solely of securities (''Future Funds'' and collectively with the Initial Fund, the ''Funds'').[3] Any Fund will be (a) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions of the application. Future Funds may be based on Underlying Indexes comprised of equity securities (''Equity Funds''), Underlying Indexes comprised of fixed income securities (''Fixed Income Funds'') or Underlying Indexes comprised of equity securities or fixed income securities traded in foreign markets (''International Funds''). The Funds may also invest in a combination of equity, fixed income and U.S. money market securities and/or non-U.S. money market securities.[4] Funds may also invest in ''Depositary Receipts''.[5] A Fund will not invest in any Depositary Receipts that the Adviser or Subadviser deems to be illiquid or for which pricing information is not readily available.

3. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), and subject to approval by the Board of Trustees of the Trust or a Fund (the ''Board'') will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers each of which will serve as a sub-adviser to a Fund (each, a ''Subadviser''). Each Subadviser will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Funds.

4. Each Fund will consist of a portfolio of securities and other instruments (''Portfolio Securities'') selected to correspond generally to the price and yield performance of a specified Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Subadviser, or promoter of a Fund, or of the Distributor.

5. The investment objective of each Fund will be to provide investment results that closely correspond to the price and yield performance of its Underlying Index.[6] Each Fund will sell and redeem Creation Units on a ''Business Day,'' which is defined as any day that a Fund is required to be open under section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index.[7] Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

6. Creation Units are expected to consist of at least 25,000 Shares and to have an initial price in the range of $625,000 to $10,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''). Shares of the Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities (the ''Deposit Securities''), designated by the Adviser, together with the deposit or refund of a specified cash payment (''Cash Component'' and collectively with the Deposit Securities, ''Fund Deposit''). The Cash Component is an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit) of a Fund and (b) the total aggregate market value (per Creation

[2] Markit North America, Inc. (''Markit'') and Morningstar Inc. (''Morningstar'') will serve as index providers for the Initial Funds. The Markit Underlying Indexes for the Initial Funds are iBoxx 3-Year Target Duration TIPS Index, iBoxx 5-Year Target Duration TIPS Index, and iBoxx 7-Year Target Duration TIPS Index. The Morningstar Underlying Indexes for the Initial Funds are Morningside Global Upstream Natural Resources Index and Morningstar US Market Factor Tilt Index. Neither Markit nor Morningstar is affiliated with the Trust, the Adviser or the Distributor.

[3] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[4] Each Fund will comply with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009) before offering Shares.

[5] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants will serve as the depositary bank for any Depositary Receipts held by a Fund.

[6] Applicants represent that each Fund will invest at least 80% of its total assets (exclusive of collateral held from securities lending) in the component securities that comprise its Underlying Index (''Component Securities''), in the case of International Funds, Component Securities and Depositary Receipts (defined below) representing such Component Securities, or in the case of certain Fixed Income Funds, in Component Securities and TBAs (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets in futures contracts, options on future contracts, options and swaps, cash, cash equivalents, other investment companies, and securities that are not Component Securities but which the Adviser believes will assist the Fund in tracking the performance of its Underlying Index.

[7] Securities are selected for inclusion in a Fund following a representative sampling strategy to have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, duration maturity, earnings valuation and yield) and liquidity measures similar to those of the Fund's Underlying Index taken in its entirety.

Unit) of the Deposit Securities.[8] Each Fund may permit a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities, under certain circumstances. To preserve maximum efficiency and flexibility, a Fund reserves the right to accept and deliver Creation Units entirely for cash (''All-Cash Payment''), if doing so would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.

7. An investor acquiring or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[9] The Distributor also will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

8. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more Exchange market makers (''Market Makers''), will be assigned to the Shares and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[10] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

10. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated to be delivered for redemptions (''Fund Securities'') on the date that the request for redemption is submitted and (b) a ''Cash Redemption Amount,'' consisting of an amount calculated in the same manner as the Cash Amount. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.[11] A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

11. Applicants state that in accepting Deposit Securities and satisfying redemptions with Fund Securities, the relevant Funds will comply with the Federal securities laws, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act'').[12] The specified Deposit Securities and Fund Securities either (a) will correspond pro rata to the Portfolio Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Fund Securities (i) Consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (ii) consist only of securities that are already included among the existing Portfolio Securities, and (iii) are the same for all Authorized Participants on a given Business Day.[13]

12. Neither the Trust nor any individual Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''exchange-traded fund'' or an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The same approach will be followed in the shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the

[8] On each Business Day, prior to the opening of trading on the ''Exchange'' (as defined below), a list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on the information at the end of the previous Business Day) for each Fund or cash information for each Fund, including when the purchase of Creation Units from the Fund is an All-Cash Payment (as defined below), will be made available. In addition, the All-Cash Payment will be disclosed, if applicable. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Shares are listed will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per individual Share representing the sum of the current value of the Deposit Securities and the estimated Cash Component.

[9] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities.

[10] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[11] Applicants state that a cash-in-lieu amount will replace any ''to-be-announced'' (''TBA'') transaction that is listed as a Deposit Security or Fund Security of any Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security or a Fund Security.

[12] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A.

[13] In either case, the Deposit Securities and Fund Securities may differ from each other (and from the Portfolio Securities) (a) to reflect minor differences when it is not possible to break up bonds beyond certain minimum sizes needed for transfer and settlement, (b) for temporary periods to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index; or (c) in the case of equity securities, when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots.

Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) Prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the International Funds is contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles present in international markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each International Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[14] With respect to Future Funds that are International Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for each affected International Fund. Applicants are not seeking relief from section 22(e) with respect to International Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section

[14] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Investing Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit a Fund or broker-dealer that is registered under the Exchange Act (''Broker'') to sell Shares to Investing Funds in excess of the limits of section 12(d)(1)(B).

11. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Investing Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Investing Fund Subadviser''). Any investment adviser to an Investing Fund will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the Funds.[15] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting an Investing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Subadviser, any person controlling, controlled by or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Investing Fund's Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, Sponsor, or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. In addition, under condition B.5, an Investing Fund Adviser or a trustee (''Trustee'') or Sponsor of an Investing Trust will, as applicable, waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Investing Fund Adviser, Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Investing Fund in the Fund. Applicants state that any sales charges or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[16]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Investing Fund that intends to invest in a Fund in reliance on the requested order will enter into an agreement (''FOF Participation Agreement'') between the Fund and the Investing Fund requiring the Investing Fund to adhere to the terms and conditions of the requested order. The FOF Participation Agreement also will include an acknowledgement from the Investing Fund that it may rely on the requested order only to invest in Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by an

[15] An ''Investing Fund Affiliate'' is the Investing Fund Adviser, Investing Fund Subadviser(s), any Sponsor, promoter, or principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[16] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by Financial Industry Regulatory Authority.

Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or second-tier affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of the Trust or one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through ''in-kind'' transactions. The deposit procedures for both in kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. The composition of a Fund Deposit made by a purchaser or Fund Redemption given to a redeeming investor (except for any cash in lieu amounts) on any Business Day will be the same regardless of the investor's identity, and Fund Deposits and Fund Redemptions will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or second-tier affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Investing Fund to sell its Shares to and redeem its Shares from an Investing Fund, and to engage in the accompanying in-kind transactions with the Investing Fund.[17] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Shares.[18] Applicants believe that any proposed transactions directly between the Funds and Investing Funds will be consistent with the policies of each Investing Fund. The purchase of Creation Units by an Investing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as the Trust operates in reliance on the requested order, the Shares of the Funds will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Shares of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding Shares of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadviser or a person controlling, controlled by, or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or

[17] Applicants believe that an Investing Fund likely will purchase Shares of the Funds in the secondary market and will not purchase or redeem Creation Units directly from a Fund. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to cover the transactions that would accompany such sales and redemptions.

[18] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Fund Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Fund (''Board''), including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to an Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. The Investing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Fund, in connection with any investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in Fund Shares exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in Fund Shares in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating, without limitation, that their respective boards of directors or trustees and their investment advisers or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Fund Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of any investment company or company

relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20870 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65047; File No. SR–NYSEAmex–2011–56]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Rule 985NY To Permit Qualified Contingent Cross Orders To Be Electronically Submitted to the NYSE Amex System From the Floor of the Exchange for Potential Execution

August 5, 2011.

Correction

In notice document 2011–20388 appearing on pages 49812–49815 in the issue of August 11, 2011, make the following correction:

On page 49815, in the third column, in the first full paragraph, in the last line, ''August 31, 2011'' should read ''September 1, 2011.''

[FR Doc. C1–2011–20388 Filed 8–16–11; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65100; File No. SR–ISE–2011–33]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval to a Proposed Rule Change Relating to Appointments to Competitive Market Makers

August 11, 2011.

I. Introduction

On June 10, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to revise the manner in which Competitive Market Makers are appointed to options classes. The proposed rule change was published for comment in the **Federal Register** on June 28, 2011.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The ISE's membership is divided into three categories, Primary Market Makers (''PMMs''), Competitive Market Makers (''CMMs'') and Electronic Access Members. There are 10 PMM trading rights and 160 CMM trading rights (collectively ''market maker rights''). In order to access the Exchange as a market maker, a member must own or lease one or more market maker rights. EAMs are not required to purchase such a right in order to access the Exchange. Under the current structure, options traded on the Exchange are divided into 10 groups, with one of the 10 PMM trading rights and 16 of the 160 CMM trading rights appointed to each group. Thus, each PMM and CMM trading right is associated with a specific group of options. Under the existing structure, a member is required to own and/or lease 10 CMM trading rights (one in each of the 10 options groups) in order to have the ability to make markets in all of the options classes traded on the Exchange. Moreover, because the number of options classes contained in each group varies, CMM trading rights currently represent 10 different levels of participation.

The Exchange proposes to change the structure of CMM appointments to allow CMMs to seek appointment in the options classes listed on the Exchange across the groups of options assigned to particular PMMs. Under the proposal, the Exchange will assign points to each options class equal to its percentage of overall industry volume (not including exclusively-traded index options), rounded down to the nearest tenth of a percentage. A CMM will be able to seek appointments to options classes that total: (i) 20 points for the first CMM trading right it owns or leases; and (ii) 10 points for the second and each subsequent CMM trading right it owns or leases.[5] CMMs will be able to change their appointments at any time upon advance notification to the Exchange.[6] The Exchange will provide members with a transition period of 30 to 60 days following approval of the proposed rule change. During the transition period, the Exchange will work with existing market makers to restructure their appointments within the new point-based structure.

The proposal seeks to standardize the level of access gained by owning or leasing a CMM trading right. In addition, the proposal will make additional memberships available. Specifically, by assigning 20 points to the first CMM trading right owned or leased by a member and 10 points to each subsequent CMM trading right owned or leased by the same member, only 9 CMM trading rights (instead of 10) will be required to cover the entire ISE market.

The Exchange also proposes to adjust its CMM quotation requirements to reflect the proposed elimination of specified groups of options associated with CMM trading rights. Under the current structure, CMMs are required to participate in the opening and provide continuous quotations in a minimum number of options classes in each of their assigned groups. Since CMMs will have the flexibility to choose the options classes to which they are appointed, rather than being appointed to a pre-determined group of options, the Exchange proposes to modify this requirement to limit the number of appointed options classes in which a CMM can initiate intraday quoting to the number of options classes in which it participates in the opening rotation.

Under the current rules, a CMM is required to participate in the opening in 60% of the options classes in its appointed group of options or 40 options classes, whichever is lesser. If, for example, a CMM is appointed to a group with 100 options classes, then it must participate in the opening for 40 options classes and may initiate intra-day quoting in 60 options classes. Under the proposed structure, a CMM appointed to 100 options classes that participates in the opening in 40 options

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 64719 (June 22, 2011), 76 FR 37863 (''Notice'').

[5] Under the proposal, CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance. Under the proposal, either the Exchange or a committee designated by the Board will be permitted to make appointments.

[6] The Exchange will notify CMMs of the procedure for requesting changes to their appointments, including the length of advance notification required. The Exchange will establish the shortest advance notification period that is operationally feasible, such as a specific time on the day prior to the intended effectiveness of a change in a CMM's appointments, or by a specified time prior to the opening on the same trading day.

classes may only initiate intra-day quoting in 40 additional classes. Additionally, under the proposal the Exchange will retain the current requirement that once a CMM enters a quotation in an appointed options class, it must maintain continuous quotations for that series and at least 60% of the series of the options class until the close of trading that day. CMMs will also continue to be subject to the quotation requirements contained in Rule 803 and 804. If a CMM receives Preferenced Orders in an options class, it will continue to be required to maintain continuous quotations in at least 90% of the series in that class. The Exchange will continue to have the ability under its rules to call upon a CMM to submit quotations in one or more series of an options class to which the CMM is appointed.

Finally, the Exchange proposes to terminate its current CMM inactivity fee. That fee currently imposes a charge of $25,000 a month for CMM trading rights that are not active. The purpose of the fee is to help recoup a portion of the income that the Exchange loses when market makers do not operate their trading rights and generate transaction-based revenue. Under the proposed CMM trading rights structure, the Exchange does not believe that the inactivity fee is appropriate or necessary, as CMMs will now be able to manage the number of options classes to which they are appointed.[7] Moreover, the Exchange believes that there will be increased demand for CMM trading rights, and that owners of such rights will have a financial incentive to sell or lease any unused trading rights. If this does not turn out to be the case, the Exchange states that it will consider reinstituting some form of inactivity fee that is appropriate for the new structure.

III. Discussion and Commission Findings

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[8] and, in particular, the requirements of Section 6 of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also believes that the proposal is consistent with Section 6(b)(4) of the Act,[11] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable fees and other charges among the Exchange's members and issuers and other persons using its facilities.

In particular, the Commission believes that the proposal should allow CMMs additional flexibility to choosing their appointed classes.[12] The Commission notes that potential market makers will be able to purchase or lease newly-available CMM trading rights. Under the proposal, CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance.[13] In addition, because a PMM will continue to be appointed to each options class, there will continue to be continuous, two-sided quotations in all options listed on the Exchange.[14]

The Exchange proposes to limit the number of appointed options classes in which a CMM can initiate intraday quoting to the number of options classes in which it participates in the opening rotation. The Commission notes that CMMs will also continue to be subject to the quotation requirements contained in Rules 803 and 804. In addition, once a CMM enters a quotation in an appointed options class, it must maintain continuous quotations for that series and at least 60% of the series of the options class until the close of trading that day.[15] If a CMM receives Preferenced Orders in an options class, it will continue to be required to maintain continuous quotations in at least 90% of the series in that class.[16] Also, the Exchange will continue to have the ability under its rules to call upon a CMM to submit quotations in one or more series of an options class to which the CMM is appointed.[17]

Finally, the Exchange proposes to eliminate its current charge of $25,000 a month for CMM trading rights that are not active. The Exchange states that the inactivity fee is not appropriate or necessary, as CMMs will now be able to manage the number of options classes to which they are appointed. The Commission believes that the proposal is consistent with Section 6(b)(4) of the Act.[18]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–ISE–2011–33), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20901 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65104; File No. SR–NASDAQ–2011–116]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearly Erroneous Rule in Light of Changes to the Single Stock Trading Pause Process

August 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2011, The NASDAQ Stock Market LLC (''Exchange''), filed with the Securities

[7] For example, under the current structure, a CMM that owns or leases three CMM trading rights is obligated to continuously quote a minimum of 120 options classes. Under the new structure, a CMM with three trading rights could seek appointment for only three options classes (one for each trading right), thus making the inactivity fee ineffective.

[8] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] The Commission also notes that the new structure is similar to the Chicago Board Options Exchange's (''CBOE'') rules, which permit its market makers to choose the options to which they are appointed. *See* CBOE Rule 8.3.

[13] ISE Rule 802(e)–(f).

[14] Pursuant to Rule 804(a)(2), PMMs have the obligation to provide continuous quotations in all of the series of all of the options to which they are appointed.

[15] ISE Rule 804(e)(2)(iii).

[16] ISE Rule 804(e)(2)(iii).

[17] ISE Rule 802(e)(2)(iv).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective.

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Background

The Exchanges [3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''),[4] approved by the Commission on June 10, 2010.[5] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified ETPs to the Pause Pilot.[6] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[7] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 11890, NASDAQ replaced existing Rule 11890(a)(2)(C)(4) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 11890(a)(2)(C)(4), Latency Trades will be broken by the exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 11890(a)(2)(C)(1).[8] The Reference Price, for purposes of Rule 11890(a)(2)(C)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on NASDAQ would be broken by the exchange pursuant to Rule 11890(a)(2)(C)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[9]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[10] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. NASDAQ amended its Pause Pilot rule, Rule 4120(a)(11), by adding three new subparagraphs to address the treatment of the Phase III Securities. The rule applicable to the original Pause Pilot securities was placed in new Rule 4120(a)(11)(A). The rules applicable to the Phase III Securities were placed in new Rules 4120(a)(11)(B) and (C). A pause under Rule 4120(a)(11)(B) is triggered by a 30 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of $1 or more. A pause under Rule 4120(a)(11)(C) is triggered by a 50 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of less than $1. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAX [sic] OMX PHLX LLC.

[4] Rule 4120(a)(11). The pauses under Rule 4120(a)(11) occur when a security's price moves by the applicable percentage within a five minute period between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading. Such pauses last for five minutes. At the conclusion of the pause period, the security is opened pursuant to the Halt Cross process under Rule 4753.

[5] Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010– 01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[6] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[7] Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[8] Pursuant to Rule 11890(a)(2)(C)(1), a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[9] Rule 11890(a)(2)(C)(4).

[10] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rules 11890(a)(2)(C)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[11] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated member firm that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 11890(a)(2)(C)(1), would not be able to avail themselves of the clearly erroneous process. Another member firm that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. NASDAQ believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, NASDAQ believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rules 11890(a)(2)(C)(1)–(3).

Applying the clearly erroneous process under Rules 11890(a)(2)(C)(1)–(3) to the Phase III Securities would allow NASDAQ to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a member firm that trades in a security subject to Rule 4120(a)(11)(B) or (C) that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant Rule 11890(a)(2)(C)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member firm would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member firms that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 11890(a)(2)(C)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member firms would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference. NASDAQ believes a better outcome is to afford all members transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. NASDAQ believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, NASDAQ is proposing to amend Rules 11890(a)(2)(C)(1)–(4) to specify that Rule 11890(a)(2)(C)(4) applies only to the current securities of Pause Pilot, as found under Rule 4120(a)(11)(A).[12]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[13] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. NASDAQ believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. NASDAQ notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–

[11] *Id.*

[12] NASDAQ notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78s(b)(3)(A).

4(f)(6)(iii) thereunder.[16] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–116. 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 NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2011–116 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20905 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65106; File No. SR–Phlx–2011–114]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearly Erroneous Rule in Light of Changes to the Single Stock Trading Pause Process

August 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2011, NASDAQ OMX PHLX LLC (''PHLX''), 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 PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

PHLX proposes to amend Rule 3312, governing clearly erroneous executions on the NASDAQ OMX PSX system, so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective.

The text of the proposed rule change is available from PHLX's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at PHLX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHLX 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. PHLX 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

Background

The Exchanges[3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAX [sic] OMX PHLX LLC.

extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''), approved by the Commission on June 10, 2010.[4] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified ETPs to the Pause Pilot.[5] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[6] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 3312, PHLX replaced existing Rule 3312(a)(2)(C)(iv) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 3312(a)(2)(C)(iv), Latency Trades will be broken by the exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 3312(a)(2)(C)(i).[7] The Reference Price, for purposes of Rule 3312(a)(2)(C)(iv), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on PHLX would be broken by the exchange pursuant to Rule 3312(a)(2)(C)(iv) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[8]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[9] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. Specifically, the rules of the listing markets were amended so that a pause in a Phase III Security with a closing price on the previous trading day of $1 or more is triggered by a 30 percent price move within a five minute period. A pause in a Phase III Security with closing price on the previous trading day of less than $1 is triggered by a 50 percent price move within a five minute period. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rules 3312(a)(2)(C)(i)–(iii), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[10] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated member firm that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 3312(a)(2)(C)(i), would not be able to avail themselves of the clearly erroneous process. Another member firm that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. PHLX believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, PHLX believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rules 3312(a)(2)(C)(i)–(iii).

Applying the clearly erroneous process under Rules 3312(a)(2)(C)(i)–(iii) to the Phase III Securities would allow PHLX to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, A [sic] member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant Rule 3312(a)(2)(C)(i). Should trading in that same stock trigger a trading pause at a

[4] Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex– 2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010– 025).

[5] *See e.g.*, Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[6] Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[7] Pursuant to Rule 3312(a)(2)(C)(i), a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[8] Rule 3312(a)(2)(C)(iv).

[9] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

[10] *Id.*

price of 30 or 50 percent greater than the prior day's close, the member firm would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member firms that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 3312(a)(2)(C)(i) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member firms would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference. PHLX believes a better outcome is to afford all members transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. PHLX believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, PHLX is proposing to amend Rules 3312(a)(2)(C)(i)–(iv) to specify that Rule 3312(a)(2)(C)(iv) applies only to the current securities of Pause Pilot, and not to Phase III Securities.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. PHLX believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. PHLX notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–114 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–2011–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[11] PHLX notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 PHLX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–114 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20907 Filed 8–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65108; File No. SR–ISE–2011–53]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2128

August 11, 2011.

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 August 10, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2128, governing clearly erroneous executions, so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchanges[3] and FINRA, in consultation with the Securities and Exchange Commission (''Commission''), have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500® Index stocks (''Pause Pilot''), approved by the Commission on June 10, 2010.[4] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified ETPs to the Pause Pilot.[5] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[6] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 2128, ISE replaced existing Rule 2128(c)(4) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 2128(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 2128(c)(1).[7] The Reference Price, for purposes of Rule 11.13(c)(4) [sic], is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on ISE would be broken by the Exchange pursuant to Rule 2128(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[8]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining National Market System (''NMS'') stocks (''Phase III Securities'').[9] The new pilot rules,

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc. and NASDAQ OMX PHLX LLC.

[4] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX– 2010–01; SR–BX–2010–037; SR–ISE– 2010–48; SR–NYSE–2010–39; SR– NYSEAmex– 2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR– CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[5] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR– CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR– ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010),75 FR 56608 (September 16, 2010) (SR– FINRA–2010–033).

[6] *See* Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR– CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR– NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[7] Pursuant to Rule 2128(c)(1), a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[8] Rule 2128(c)(4).

[9] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File

which were implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. Specifically, the rules of the listing markets were amended so that a pause in a Phase III Security with a closing price on the previous trading day of $1 or more is triggered by a 30 percent price move within a five minute period. A pause in a Phase III Security with closing price on the previous trading day of less than $1 is triggered by a 50 percent price move within a five minute period. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rule 2128(c)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[10] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five-minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five-minute period. As a result, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail itself of a clearly erroneous review. A similarly situated member firm that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 2128(c)(1), would not be able to avail itself of the clearly erroneous process. Another member firm that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. ISE believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, ISE believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rule 2128(c)(1)–(3).

Applying the clearly erroneous process under Rule 2128(c)(1)–(3) to the Phase III Securities would allow ISE to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant to Rule 2128(c)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member firm would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member firms that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 2128(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member firms would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference would be provided such relief. ISE believes a better outcome is to afford all members transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. ISE believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, ISE is proposing to amend Rule 2128(c)(1)–(4) to specify that Rule 2128(c)(4) applies only to the current securities of Pause Pilot, and not to Phase III Securities.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. ISE believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. ISE notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that

Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR– CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR– FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx– 2011–64).

[10] *Id.*

[11] ISE notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–53. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2011–53 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20909 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65110; File No. SR–EDGA–2011–26]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.13

August 11, 2011.

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 August 8, 2011, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.13, governing clearly erroneous executions, so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchanges [3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500® Index stocks (''Pause Pilot''), approved by the Commission on June 10, 2010.[4] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified ETPs to the Pause Pilot.[5] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[6] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 11.13, EDGA replaced existing Rule 11.13(c)(4) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 11.13(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 11.13(c)(1).[7] The Reference Price, for purposes of Rule 11.13(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on EDGA would be broken by the Exchange pursuant to Rule 11.13(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[8]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining National Market System (''NMS'') stocks (''Phase III Securities'').[9] The new pilot rules, which were implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. Specifically, the rules of the listing markets were amended so that a pause in a Phase III Security with a closing price on the previous trading day of $1 or more is triggered by a 30 percent price move within a five minute period. A pause in a Phase III Security with closing price on the previous trading day of less than $1 is triggered by a 50 percent price move within a five minute period. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rule 11.13(c)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[10] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five-minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five-minute period. As a result, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail itself of a clearly erroneous review. A similarly situated member firm that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 11.13(c)(1), would not be able to avail itself of the clearly erroneous process. Another member firm that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. EDGA believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, EDGA believes that, since the 30 and 50

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y-Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc. and NASDAQ OMX PHLX LLC.

[4] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[5] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR– EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE– 2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[6] *See* Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR– ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[7] Pursuant to Rule 11.13(c)(1), a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[8] Rule 11.13(c)(4).

[9] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR– CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR– FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx– 2011–64).

[10] *Id.*

percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rule 11.13(c)(1)–(3).

Applying the clearly erroneous process under Rule 11.13(c)(1)–(3) to the Phase III Securities would allow EDGA to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant to Rule 11.13(c)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member firm would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member firms that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 11.13(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member firms would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference would be provided such relief. EDGA believes a better outcome is to afford all members transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. EDGA believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, EDGA is proposing to amend Rule 11.13(c)(1)–(4) to specify that Rule 11.13(c)(4) applies only to the current securities of Pause Pilot, and not to Phase III Securities.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. EDGA believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. EDGA notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–26 on the subject line.

[11] EDGA notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–EDGA–2011–26. 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 EDGA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2011–26 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20911 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65119; File No. SR–OCC–2011–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise Its By-Laws and Rules To Establish a Clearing Fund Amount Intended To Support Losses Under a Defined Set of Default Scenarios

August 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on August 3, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 proposed rule change would change the method by which the size of OCC's clearing fund is determined.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change would revise OCC's By-Laws and Rules to establish the size of OCC's clearing fund as the amount that is required within a confidence level selected by OCC to sustain possible loss under a defined set of scenarios as determined by OCC. The proposed rule change replaces a previously proposed rule change which was withdrawn by OCC.[4] Currently the size of the clearing fund is calculated each month and is equal to a fixed percentage of the average total daily margin requirement for the preceding month provided that this calculation results in a clearing fund of $1 billion or more.[5]

Under the proposed formula for determining the size of the clearing fund, the amount of the fund would be equal to the larger of the amount of the charge to the fund that would result from (i) A default by the single ''clearing member group'' whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly-selected ''clearing member groups,'' in each case as calculated by OCC with a specified confidence level. Initially, the confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest ''clearing member group'' and the default of two randomly-selected ''clearing member groups'' would be 99% and 99.9%, respectively.[6] However, OCC would have the discretion to employ different confidence levels in these calculations in the future provided that OCC would not employ confidence levels of less than 99% without filing a rule change with the Commission.[7] The size of the clearing fund would continue to be recalculated monthly based on a monthly averaging of daily calculations for the previous month and subject to a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release 34–62371 (June 24, 2010), 75 FR 37864 (June 30, 2010) (SR–OCC–2010–04). OCC withdrew its proposed rule change regarding clearing fund sizing in order to submit this proposed rule change which: Incorporates the amendments that were proposed to the previous proposed rule change; discusses the adaptation of the methodology underlying the formula change made to incorporate the effects of implementing the rule changes described in Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20) (''Collateral in Margins Filing''); provides updated comparative data about the impact of the proposed clearing fund sizing formula; and makes additional changes to improve the overall readability of certain proposed rule text.

[5] If the calculation does not result in a clearing fund of $1 billion or more, the percentage that results in a fund level of at least $1 billion is applied provided that in no event will the percentage exceed 7%.

[6] ''Clearing member group'' will be defined in Article I (''Definitions'') of OCC's By-Laws to mean ''a Clearing Member and any Member Affiliates of such Clearing Member.''

[7] Proposed Interpretation and Policy .02 to OCC Rule 1001.

requirement that the total clearing fund be not less than $1 billion.[8]

The new formula is designed to more directly take into account anticipated losses resulting from the clearing member default scenarios described above and thereby establish the clearing fund at a size that is sufficient to cover such losses without relying on any rights of OCC to require clearing members to replenish the clearing fund. The formula is generally consistent with the current ''Recommendations for Central Counterparties'' published by the Bank for International Settlements and the International Organization of Securities Commissioners. Among the recommendations in the publication are that a clearing organization ''maintain sufficient financial resources to withstand, at a minimum, a default by the clearing member to which it has the largest exposure in extreme but plausible market conditions.'' The publication further advises clearing organizations to plan for the possibility of a default by two or more clearing members in a short time frame.[9]

In considering whether to revise the formula for determining the size of the clearing fund, OCC compared the size of the clearing fund that would have resulted from application of the revised formula to the actual size of the clearing fund for each month from February 2008 through September 2009. This analysis revealed that for this time period the size of the clearing fund under the revised formula would have been on average 10% larger than under the current formula. In September and October 2008, which were two months of extreme volatility in the U.S. securities markets, the revised formula would have resulted in a clearing fund size of approximately 31% and 27% greater than under the current formula. The average monthly change in the size of the clearing fund and the standard deviation of clearing fund size from month to month for this time period under the two formulas were broadly similar.[10]

Since deciding in September 2009 that it wished to adopt the revised formula, OCC has continued to compare the size of the clearing fund under the revised formula with the size under the current formula. During 2010 the methodology underlying the revised formula was adapted to incorporate the effects of the implementation of the rule changes described in the Collateral in Margins Filing.[11] Under those changes, certain types of securities accepted as collateral are analyzed for margin purposes together with positions in cleared products as a single portfolio, affording a more accurate measurement of risk. During the period February 2008 through January 2010 (*i.e.,* prior to the implementation of the Collateral in Margins Filing) for which comparative data is available, the size of the clearing fund under the revised formula would have been on average 3% larger than under the current formula. Including also the further months of July, 2010 through June, 2011 (*i.e.,* since the implementation of the Collateral in Margins Filing) for which comparative data is available, the corresponding percentage increase is 2%.

The existing formula for determining the size of the clearing fund was intended to establish the fund at a level reasonably designed to cover losses resulting from one or more clearing member defaults, and OCC believes that it has served that purpose adequately. Nevertheless, OCC believes that the proposed amended formula is a better predictor of the actual losses that would be likely to result from such defaults. The existing formula takes potential losses into account only indirectly by setting the size of the clearing fund as a percentage of average margin requirements. The revised formula would directly take into account various types of default scenarios and therefore in OCC's view would be more likely to result in a level for the clearing fund that is adequate in the event such scenarios occur. The new formula would therefore more closely align the size of the clearing fund with its intended purpose of absorbing losses resulting from clearing member defaults and would thereby avoid a disruption of the clearance process even during extreme market conditions.

Article VIII, Section 6 of OCC's By-Laws, which obligates clearing members to make good deficiencies in their clearing fund deposits resulting from pro rata charges or otherwise (subject to a cap equal to 100% of a clearing member's then required deposit if it promptly withdraws from membership and closes out or transfers its open positions) would remain unchanged.

The specific amendments proposed to OCC's By-Laws and Rules to facilitate the proposed changes to its clearing fund calculation can be found at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_11_10.pdf.*

If approved by the Commission, OCC would implement the revised formula for determining the size of its clearing fund sixty days after notice to its clearing members.

2. Statutory Basis

OCC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder because the proposed rule changes would facilitate prompt and accurate clearance and settlement of securities transactions by creating a more direct correlation between the clearing fund size and estimated losses from a defined set of default scenarios.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

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

[8] Proposed Interpretation and Policy .01 to OCC Rule 1001.

[9] *See* Bank for International Settlements and International Organization of Securities Commissions, Recommendations for Central Counterparties (November 2004), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD176.pdf* (the''2004 Recommendations''). OCC notes that in December 2009 the Committee on Payment and Settlement Systems of the Bank for International Settlements (''CPSS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') began a comprehensive review of the 2004 Recommendations in order to strengthen and clarify such recommendations based on experience and lessons learned from the recent financial crisis. In March 2011, the CPSS and IOSCO published for comment the results of such review with comments requested by July 29, 2011. *See* Bank for International Settlements and International Organization of Securities Commissions, Principles for financial market infrastructures (March 2011), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf.*

[10] Note the comparative data described in this paragraph was obtained using confidence levels set at 99% and above. OCC estimates that using only a 99% confidence level for the months referenced would have lowered by an average of approximately ½% the total size of the clearing fund as determined by the proposed methodology.

[11] Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20). *See supra* note 4.

[12] 15 U.S.C. 78q–1.

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–OCC–2011–10 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2011–10. 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/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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_03.pdf.* 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–OCC–2011–10 and should be submitted on or before September 7, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary .

[FR Doc. 2011–20955 Filed 8–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65113; File No. SR–BATS–2011–028]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend BATS Rule 11.17, Entitled ''Clearly Erroneous Executions''

August 11, 2011.

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 August 8, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 is proposing to amend BATS Rule 11.17, entitled ''Clearly Erroneous Executions,'' so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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

Background

The Exchanges[3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500® Index stocks (''Pause Pilot'')[4], approved by the Commission on June 10, 2010.[5] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000® Index and specified Exchange Traded Products (''ETPs'') to the Pause Pilot.[6] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAX [sic] OMX PHLX LLC.

[4] *See* Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18.

[5] Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE– 2010–48; SR–NYSE–2010–39; SR–NYSEAmex– 2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010– 025).

[6] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

erroneous trades.[7] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 11.17, the Exchange adopted new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 11.17(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 11.17(c)(1).[8] The Reference Price, for purposes of Rule 11.17(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on the Exchange would be broken by the Exchange pursuant to 11.17(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[9]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[10] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. The primary listing exchanges, which will continue to calculate trading pauses under the Pause Pilot and disseminate messages when a trading pause has been issued, amended their Pause Pilot rules by adding new subparagraphs to address the treatment of the Phase III Securities in different categories. The primary listing markets continue to treat the original Pause Pilot securities, the S&P 500® Index, the Russell 1000® Index, as well as a pilot list of ETPs, as one category of securities for purposes of imposing trading pauses. All remaining NMS stocks have been categorized in two other groups, one for stocks that had a closing price on the previous trading day of $1 or more and the other for stocks that had a closing price on the previous trading day of less than $1.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rules 11.17(c)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[11] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, an Exchange User that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated User that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 11.17(c)(1), would not be able to avail themselves of the clearly erroneous process. Another User that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. The Exchange believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, the Exchange believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rules 11.17(c)(1)–(3).

Applying the clearly erroneous process under Rules 11.17(c)(1)–(3) to the Phase III Securities would allow the Exchange to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a User that trades in a security subject to Rule 11.18 that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant Rule 11.17(c)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the User would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of Users that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 11.17(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such Users would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other Users with transactions that occur at the same rolling five minute percentage difference. The Exchange believes a better outcome is to afford all Users transacting in Phase III Securities the

[7] Securities Exchange Act Release No. 62886 (September 16, 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[8] Pursuant to Rule 11.17(c)(1), a security with a Reference Price of greater than zero and up to and including $25.00 is subject to a 10% threshold; a security with a Reference Price of greater than $25.00 and up to and including $50.00 is subject to a 5% threshold; and a security with a Reference Price of greater than $50.00 is subject to a 3% threshold.

[9] Rule 11.17(c)(4).

[10] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

[11] *Id.*

opportunity of having such trades reviewed.

When rule proposal to expand the Pause Pilot to the Phase III Securities becomes operative, the Exchange will no longer defines [sic] the original Pause Pilot securities within its rules. Accordingly, in order to achieve the objectives of this proposal, the Exchange proposes to adopt a definition of ''Subject Securities'', to be included in Rule 11.17(c)(4), which will mean the S&P 500® Index, the Russell 1000® Index, as well as a pilot list of ETPs.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. The Exchange believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, the Exchange is proposing to amend Rules 11.17(c)(1)–(4) to specify that Rule 11.17(c)(4) applies only to the current securities of Pause Pilot, or Subject Securities.[12]

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[15] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions. The Exchange notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated market participants are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–028 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–BATS–2011–028. 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

[12] BATS notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2011–028 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20954 Filed 8–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65112; File No. SR–BYX–2011–019]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend BYX Rule 11.17, Entitled ''Clearly Erroneous Executions''

August 11, 2011.

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 August 8, 2011, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 is proposing to amend BYX Rule 11.17, entitled ''Clearly Erroneous Executions,'' so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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

Background

The Exchanges [3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500® Index stocks (''Pause Pilot''),[4] approved by the Commission on June 10, 2010.[5] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000® Index and specified Exchange Traded Products (''ETPs'') to the Pause Pilot.[6] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[7] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 11.17, the Exchange adopted new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 11.17(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 11.17(c)(1).[8] The Reference Price, for purposes of Rule 11.17(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on the Exchange would be broken by the Exchange pursuant to 11.17(c)(4) if the transaction occurred at either three, five, or ten percent above the Trading Pause Trigger Price.[9]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAX [sic] OMX PHLX LLC.

[4] *See* Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18.

[5] Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010)(File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE– 2010–48; SR–NYSE–2010–39; SR–NYSEAmex– 2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010– 025).

[6] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[7] Securities Exchange Act Release No. 62886 (September 16, 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[8] Pursuant to Rule 11.17(c)(1), a security with a Reference Price of greater than zero and up to and including $25.00 is subject to a 10% threshold; a security with a Reference Price of greater than $25.00 and up to and including $50.00 is subject to a 5% threshold; and a security with a Reference Price of greater than $50.00 is subject to a 3% threshold.

[9] Rule 11.17(c)(4).

Securities'').[10] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. The primary listing exchanges, which will continue to calculate trading pauses under the Pause Pilot and disseminate messages when a trading pause has been issued, amended their Pause Pilot rules by adding new subparagraphs to address the treatment of the Phase III Securities in different categories. The primary listing markets continue to treat the original Pause Pilot securities, the S&P 500® Index, the Russell 1000® Index, as well as a pilot list of ETPs, as one category of securities for purposes of imposing trading pauses. All remaining NMS stocks have been categorized in two other groups, one for stocks that had a closing price on the previous trading day of $1 or more and the other for stocks that had a closing price on the previous trading day of less than $1.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rules 11.17(c)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[11] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, an Exchange User that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated User that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 11.17(c)(1), would not be able to avail themselves of the clearly erroneous process. Another User that transacts in the same security as a Latency Trade that exceeds three, five, or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. The Exchange believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, the Exchange believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rules 11.17(c)(1)–(3).

Applying the clearly erroneous process under Rules 11.17(c)(1)–(3) to the Phase III Securities would allow the Exchange to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a User that trades in a security subject to Rule 11.18 that triggers a clearly erroneous threshold of three, five, or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant Rule 11.17(c)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the User would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five, or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of Users that have transactions in the Phase III Securities falling between the three, five, and ten percent thresholds from the Reference Price under the normal Rule 11.17(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such Users would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other Users with transactions that occur at the same rolling five minute percentage difference. The Exchange believes a better outcome is to afford all Users transacting in Phase III Securities the opportunity of having such trades reviewed.

When the rule proposal to expand the Pause Pilot to the Phase III Securities becomes operative, the Exchange will no longer defines [sic] the original Pause Pilot securities within its rules. Accordingly, in order to achieve the objectives of this proposal, the Exchange proposes to adopt a definition of ''Subject Securities'', to be included in Rule 11.17(c)(4), which will mean the S&P 500® Index, the Russell 1000® Index, as well as a pilot list of ETPs.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. The Exchange believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, the Exchange is proposing to amend Rules 11.17(c)(1)–(4) to specify that Rule 11.17(c)(4) applies only to the current securities of Pause Pilot, or Subject Securities.[12]

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular,

[10] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

[11] *Id.*

[12] BATS [sic] notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[13] 15 U.S.C. 78f(b).

the proposed change is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[15] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions. The Exchange notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated market participants are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BYX–2011–019 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–BYX–2011–019. 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 publicly available. All submissions should refer to File Number SR–BYX–2011–019 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20953 Filed 8–16–11; 8:45 am]

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[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65103; File No. SR–CBOE–2011–078]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the CBSX Clearly Erroneous Policy Pilot Program

August 11, 2011.

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 August 8, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a clearly erroneous policy pilot program pertaining to the CBOE Stock Exchange (''CBSX'', the CBOE's stock trading facility). In particular, the Exchange is seeking to amend Rule 52.4 so that the rule will continue to operate in the same manner after changes to the individual stock trading pause pilot are effective. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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

Background

The Exchanges [5] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''), approved by the Commission on June 10, 2010.[6] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified exchange trading products (''ETPs'') to the Pause Pilot.[7] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[8] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 52.4, *Clearly Erroneous Policy*, the Exchange replaced existing Rule 52.4(c)(4) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 52.4(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 52.4(c)(1).[9] The Reference Price, for purposes of Rule 52.4(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on the Exchange would be broken by the Exchange pursuant to Rule 52.4(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[10]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[11] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. The Exchange amended its Pause Pilot rule, Rule 6.3C, by adding three new subparagraphs to address the treatment of the Phase III Securities. The rule applicable to the original Pause Pilot securities was placed in new Rule 6.3C.03(a). The rules applicable to the Phase III Securities were placed in new Rules 6.3C(b) [sic] and (c). A pause under Rule 6.3C.03(b) is triggered by a 30 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of $1 or more. A pause under Rule 6.3C.03(c) is triggered by a 50 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of less than $1. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAX [sic] OMX PHLX LLC.

[6] Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010– 01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[7] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[8] Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[9] Pursuant to Rule 52.4(c)(1), a security with a Reference Price of greater than zero and up to an including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[10] Rule 52.4(c)(4).

[11] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rules 52.4(c)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[12] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, a Trading Permit Holder that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated Trading Permit Holder that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 52.4(c)(1), would not be able to avail themselves of the clearly erroneous process. Another Trading Permit Holder that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. The Exchange believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, the Exchange believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rules 52.4(c)(1)–(3).

Applying the clearly erroneous process under Rules 52.4(c)(1)–(3) to the Phase III Securities would allow the Exchange to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a Trading Permit Holder that trades in a security subject to Rule 6.3C.03(b) or (c) that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant Rule 52.4(c)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the Trading Permit Holder would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of Trading Permit Holders that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 52.4(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such Trading Permit Holders would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference. The Exchange believes a better outcome is to afford all Trading Permit Holders transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. The Exchange believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, the Exchange is proposing to amend Rules 52.4(c)(1)–(4) to specify that Rule 52.4(c)(4) applies only to the current securities of Pause Pilot, as found under Rule 6.3C.03(a), and not to Phase III Securities.[13]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[14] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[15] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated Trading Permit Holders are provided the same opportunity of a clearly erroneous review. The Exchange notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[12] *Id.*

[13] The Exchange is also proposing to amend Rule 52.4 to remove outdated references to the term ''Circuit Breaker Stocks,'' which was previously defined in Rule 6.3C.03. Through August 5, 2011, the term ''Circuit Breaker Stocks'' is defined to mean the stocks included in the S&P 500 Index, the Russell 1000 Index, as well as the pilot list of ETPs. As discussed above, beginning August 8, 2011, the individual stock trading pause pilot will be expanded to include all NMS stocks and Rule 6.3C.03 will be revised accordingly. As revised, use of the term ''Circuit Breaker Stocks'' will no longer be necessary and it is therefore being removed from the Exchange Rules. *See* Interpretation and Policy .03 to Rule 6.3C and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–CBOE–2011–049) (order approving expansion of the individual stock trading pause pilot to include all NMS stocks effective August 8, 2011). In that regard, the Exchange is herein proposing to amend Rule 52.4 to remove two references to the term ''Circuit Breaker Stocks'' and to replace them with a cross-reference to Rule 6.3C.03(a).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated Trading Permit Holders are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–078 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–CBOE–2011–078. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2011–078 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20904 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65101; File No. SR–FINRA–2011–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

August 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) so that the rule will continue to operate in the same manner as it did prior to the expansion of the trading pause pilot.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing modifications to FINRA Rule 11892 in light of the recent expansion of the trading pause pilot [4] by FINRA and the other SROs to cover additional securities.[5] As described in more detail below, the primary listing markets have filed rule changes to amend their clearly erroneous rules to revert back to the non-trading pause clearly erroneous framework for Phase III securities and FINRA is proposing changes to align its clearly erroneous process with the exchanges.[6]

Effective August 8, 2011, the scope of the trading pause pilot was extended beyond the securities included in the S&P 500® Index, the Russell 1000® Index and the pilot list of Exchange Traded Products (''Phase I & II securities'') to all other NMS stocks (''Phase III securities''). In addition to widening the scope of the securities included in the trading pause pilot, the Phase III amendments apply a significantly higher percentage price move to trigger a trading pause for Phase III securities than is applicable to the Phase I & II securities. Specifically, while a ten percent price move within a five-minute period continues to apply to the Phase I & II securities, the Phase III securities are subject to a thirty percent price move where the security had a closing price the previous trading day of $1.00 or more, and a fifty percent price move where the security had a closing price the previous trading day of less than $1.00.[7]

Rule 11892(b)(4) (Individual Stock Trading Pauses) provides that clearly erroneous reviews of securities subject to the trading pause pilot use the ''trading pause trigger price'' [8] as the reference price rather than using the consolidated last sale, which generally is applicable to clearly erroneous reviews of non-trading pause pilot securities. Because the trading pause trigger price percentages for the Phase III securities are substantially greater than the ten percent threshold applicable to the Phase I & II securities, applying paragraph (b)(4)'s requirement to use the trading pause trigger price for Phase III securities would overly limit the SROs' abilities to deem certain trades in Phase III securities clearly erroneous.

For example, assume a Phase III security is trading at $100.00 during a five-minute period before a $130.00 trade triggers a trading pause. Under the regular clearly erroneous review framework of FINRA Rule 11892 (1) [sic] through (3), a clearly erroneous review of a trigger trade or latency trade [9] would apply a clearly erroneous price of $103.00 (at and beyond which trades may be broken).[10] However, under the framework set forth in paragraph (b)(4), the clearly erroneous price would jump to $133.90—making it impossible to deem the $130.00 trade clearly erroneous. This result occurs under paragraph (b)(4) because the trigger trade of $130.00, rather than the consolidated last sale of $100.00, must be used as the reference price to determine the price at which trades are eligible to be deemed clearly erroneous. Because of the lower trigger trade threshold for Phase I & II securities, the paragraph (b)(4) framework continues to be reasonable for these securities but is less workable and reasonable for Phase III securities given the greater percentages that apply.

As a result, FINRA, along with the other SROs, is amending Rule 11892 to revert back to the regular clearly erroneous calculation standards of paragraphs (1) through (3) for the Phase III securities, which generally re-establishes the consolidated last sale as the reference price and provides further flexibility in making clearly erroneous determinations in those securities.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break clearly erroneous trades, yet also ensures fair application of the process so that similarly situated members are provided the same treatment under the rule. FINRA notes that the changes proposed herein will in no way interfere with the operation of the trading pause pilot, as amended, and notes that the proposed rule change is consistent with the clearly erroneous rules of other SROs.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant

[4] In consultation with other self-regulatory organizations (''SROs'') and the Commission, FINRA implemented a trading pause pilot, which was approved by the Commission on June 10, 2010, as part of a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. *See* Securities Exchange Act Release No. 62252 [sic] (June 10, 2010), 75 FR 34186 [sic] (June 16, 2010). (''trading pause pilot'').

[5] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving File No. SR–FINRA–2011–023) (''Phase III'').

[6] *See e.g.*, SR–NASDAQ–2011–116 (August 8, 2011).

[7] If no prior day closing price is available, the last sale reported to the consolidated tape on the previous trading day is used.

[8] Pursuant to Rule 11892, the phrase ''trading pause trigger price'' means the price that triggered a trading pause on a primary listing market under its rules. The trading pause trigger price reflects a price calculated by the primary listing market over a rolling five minute period and may differ from the execution price of a transaction that triggered a trading pause. *See* Rule 11892(b)(4).

[9] A ''latency trade'' is a trade that occurs subsequent to a trigger trade but prior to the trading pause taking effect.

[10] FINRA Rule 11892 (b)(1) provides a numerical guideline of 3% for clearly erroneous calculations where the reference price is greater than $50.00.

[11] 15 U.S.C. 78*o*–3(b)(6).

burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13] FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to align its clearly erroneous rules, with respect to Phase III securities, to those of the exchanges. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2011–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–039. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–039 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20902 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that FINRA has satisfied this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65116; File No. SR–CBOE–2011–055]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change to Trade Options on the CBOE Silver ETF Volatility Index

August 11, 2011.

I. Introduction

On June 15, 2011, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] a proposed rule change to trade options on the CBOE Silver ETF Volatility Index (''VXSLV''). The proposed rule change was published for comment in the **Federal Register** on June 28, 2011.[2] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to amend certain of its rules to allow the listing and trading of cash-settled, European-style options on VXSLV.

The Exchange has previously received approval orders to trade options on other volatility indexes that are calculated using certain individual stock and exchange-traded fund (''ETF'') options listed on CBOE.[3] In the most recent approval order, the Exchange genericized certain of its rules to collectively refer to these indexes as ''Individual Stock Based Volatility Indexes,'' ''ETF Based Volatility Indexes,'' and ''Volatility Indexes,'' as applicable.[4] The specific Individual Stock Based Volatility Indexes and ETF Based Volatility Indexes that have been approved for options trading are listed in Rule 24.1(bb). This filing layers VXSLV into CBOE's existing rule framework for ''ETF Based Volatility

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 64722 (June 22, 2011), 76 FR 37868.

[3] *See* Securities Exchange Act Release Nos. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010) (order approving proposal to list and trade CBOE Gold ETF Volatility Index (''GVZ'') options on CBOE) and 64551 (May 26, 2011), 76 FR 32000 (June 2, 2011) (order approving proposal to list and trade options on certain individual stock based volatility indexes and ETF based volatility indexes).

[4] *See* Rules 12.3, 24.1(bb), 24.4C, 24.5.04, 24.6, 24.9, 24A.7, 24A.8, 24B.7 and 24B.8.

Indexes'' and ''Volatility Indexes,'' since VXSLV is comprised of ETF options.

Index Design and Calculation

The calculation of VXSLV is based on the VIX methodology applied to options on the iShares Silver Trust (''SLV''). The VXSLV index was introduced by CBOE on March 16, 2011 and has been disseminated in real-time on every trading day since that time.[5]

VXSLV is an up-to-the-minute market estimate of the expected volatility of SLV calculated by using real-time bid/ask quotes of CBOE listed SLV options. VXSLV uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.[6]

CBOE will compute values for VXSLV underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (Chicago time).[7] VXSLV levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

Options Trading

VXSLV options will trade pursuant to the existing trading rules for other Volatility Index options. VXSLV options will be quoted in index points and fractions and one point will equal $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10.00). Initially, the Exchange will list in-, at- and out-of-the-money strike prices and the procedures for adding additional series are provided in Rule 5.5.[8] Dollar strikes (or greater) will be permitted for VXSLV options where the strike price is $200 or less and $5 or greater strikes will be permitted where the strike price is greater than $200. The Exchange will not be permitted to list LEAPS on VXSLV options at strike price intervals less than $1.[9]

Transactions in VXSLV may be effected on the Exchange between the hours of 8:30 a.m. (Chicago time) and 3 p.m. (Chicago time). The Exchange proposes to close trading at 3 p.m. (Chicago time) for VXSLV options because trading in SLV options on CBOE closes at 3 p.m. (Chicago time).[10]

Exercise and Settlement

The proposed options will typically expire on the Wednesday that is 30 days prior to the third Friday of the calendar month immediately following the expiration month (the expiration date of the options used in the calculation of the index). If the third Friday of the calendar month immediately following the expiring month is a CBOE holiday, the expiration date will be 30 days prior to the CBOE business day immediately preceding that Friday.[11] For example, November 2011 Vol VXSLV options would expire on Wednesday, November 16, 2011, exactly 30 days prior to the third Friday of the calendar month immediately following the expiring month.

Trading in the expiring contract month will normally cease at 3 p.m. (Chicago time) on the business day immediately preceding the expiration date. Exercise will result in delivery of cash on the business day following expiration. VXSLV options will be A.M.-settled.[12] The exercise settlement value will be determined by a Special Opening Quotations (''SOQ'') of VXSLV calculated from the sequence of opening prices of a single strip of options expiring 30 days after the settlement date. The opening price for any series in which there is no trade shall be the average of that options' bid price and ask price as determined at the opening of trading.[13]

The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of a CBOE holiday, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Position and Exercise Limits

The Exchange proposes that the existing position limits for ETF Based Volatility Index options apply to VXSLV options.[14] For regular options trading, the position limit for VXSLV options will be 50,000 contracts on either side of the market and no more than 30,000 contracts in the nearest expiration month. CBOE believes that a 50,000 contract position limit is appropriate due to the fact that SLV options, which are the underlying components for VXSLV, are among the most actively traded option classes currently listed. In determining compliance with these proposed position limits, VXSLV options will not be aggregated with the SLV options.[15] Positions in Short Term Options Series, Quarterly Options Series, and Delayed Start Options Series will be aggregated with position in options contracts in the same VXSLV class.[16] Exercise limits will be

[5] CBOE maintains a micro-site for VXSLV: *http://www.cboe.com/micro/VIXETF/VXSLV/*.

[6] *See* proposed amendment to Interpretation and Policy .01 to Rule 24.1 (designating CBOE as the reporting authority for VXSLV).

[7] Trading in SLV options (the index components of VXSLV) on CBOE closes at 3 p.m. (Chicago time). *See* Rule 24.6.02. The Exchange proposes to make non-substantive changes to this rule.

[8] *See* Rule 5.5(c). ''Additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying * * * moves substantially from the initial exercise price or prices.'' For purposes of this rule, ''market price'' shall mean the implied forward level based on any corresponding futures price or the calculated forward value of VXSLV.

[9] *See* Rule 24.9.01(l). The Exchange proposes to amend Rule 24.9.01(l) by expressly providing that ''[t]he Exchange shall not list LEAPS on Volatility Index options at strike price intervals less than $1.'' The Exchange notes that when GVZ options were approved for trading, a substantially similar provision regarding the strike price intervals for LEAPS was adopted. *See* Securities Exchange Act Release No. 62139 (May 19, 2010) 75 FR 29597 (May 26, 2010). However, when the Exchange filed to list options on certain individual stock based volatility indexes and ETF based volatility indexes, the Exchange revised the strike setting parameters for Volatility Index options to permit $1 strikes where the strike price is $200 or less. The LEAPS strike setting provision was inadvertently not carried forward at the time Rule 24.9.01(l) was adopted, but should have been.

[10] *See* Rule 24.6.02.

[11] *See* Rule 24.9(a)(5).

[12] *See* proposed amendment to Rule 24.9(a)(4) (adding VXSLV to the list of A.M.-settled index options approved for trading on the Exchange).

[13] *See* Rule 24.9(a)(5).

[14] *See* Rule 24.4C (Position Limits for Individual Stock or ETF Based Volatility Index Options).

[15] *See* Rule 24.4C(b).

[16] *See* proposed new subparagraph (c) to Rule 24.4C. The Exchange proposes to add new subparagraph (c) regarding aggregation to Rule 24.4C. The Exchange notes that when GVZ options were approved for trading, the position limits for GVZ options were layered into existing Rule 24.4 (Position Limits for Broad-Based Index Options). Rule 24.4(e) sets forth an aggregation requirement substantially similar to proposed new subparagraph (c) to Rule 24.4C. *See* Securities Exchange Act Release No. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010). When the Exchange filed to list options on certain individual stock based volatility indexes and ETF based volatility indexes, the Exchange removed GVZ from Rule 24.4 and proposed a new rule setting forth positions limits for these products. The aggregation requirement from Rule 24.4(e) was inadvertently not carried

equivalent to the proposed position limits.[17] VXSLV options will be subject to the same reporting requirements triggered for other options dealt in on the Exchange.

The Exchange proposes that the existing position limits for FLEX ETF Based Volatility Index options apply to VXSLV options. Specifically, the position limits for FLEX VXSLV options will be equal to the position limits for Non-FLEX VXSLV options.[18] Similarly, the exercise limits for FLEX VXSLV options will be equivalent to the position limits set forth in Rule 24.4C. As provided for in Rules 24A.7(d) and 24B.7(d), as long as the options positions remain open, positions in FLEX VXSLV options that expire on the same day as Non-FLEX VXSLV Index options, as determined pursuant to Rule 24.9(a)(5), shall be aggregated with positions in Non-FLEX VXSLV options and shall be subject to the position limits set forth in Rules 4.11, 24.4, 24.4A, 24.4B, and 24.4C, and the exercise limits set forth in Rules 4.12 and 24.5.

The Exchange proposes that the existing Hedge Exemption for ETF Based Volatility Index options apply to VXSLV options, which would be in addition to the standard limit and other exemptions available under Exchange rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for an ETF Based Volatility Index hedge exemption:

- The account in which the exempt option positions are held (''hedge exemption account'') has received prior Exchange approval for the hedge exemption specifying the maximum number of contracts which may be exempt. The hedge exemption account has provided all information required on Exchange-approved forms and has kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two (2) business days or such other time period designated by the Department of Market Regulation furnish the Department of Market Regulation with appropriate forms and documentation substantiating the basis for the exemption. The hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.
- A hedge exemption account that is not carried by a CBOE member organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group.
- The hedge exemption account maintains a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time as the execution of the exempt options positions, of a net long or short position in ETF Based Volatility Index futures contracts or in options on ETF Based Volatility Index futures contracts, or long or short positions in ETF Based Volatility Index options, for which the underlying ETF Based Volatility Index is included in the same margin or cross-margin product group cleared at the Clearing Corporation as the ETF Based Volatility Index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.
- The exemption applies to positions in ETF Based Volatility Index options dealt in on the Exchange and is applicable to the unhedged value of the qualified portfolio. The unhedged value will be determined as follows: (1) The values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (a) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (b) of any opposite side of the market positions in ETF Based Volatility Index futures, options on ETF Based Volatility Index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows—the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.
- Only the following qualified hedging transactions and positions will be eligible for purposes of hedging a qualified portfolio (*i.e.,* futures and options) pursuant to Interpretation .01 to Rule 24.4C:
  - Long put(s) used to hedge the holdings of a qualified portfolio;
  - Long call(s) used to hedge a short position in a qualified portfolio;
  - Short call(s) used to hedge the holdings of a qualified portfolio; and
  - Short put(s) used to hedge a short position in a qualified portfolio.
- The following strategies may be effected only in conjunction with a qualified stock portfolio:
  - A short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a ''collar''). Neither side of the collar transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 4.11 and Rule 24.4C, a collar position will be treated as one (1) contract;
  - A long put position coupled with a short put position overlying the same ETF Based Volatility Index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s) (a ''debit put spread position''); and
  - A short call position accompanied by a debit put spread position, where the short call(s) expires with the put(s) and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Neither side of the short call, long put transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 4.11 and Rule 24.4C, the short call and long put positions will be treated as one (1) contract.
- The hedge exemption account shall:
  - liquidate and establish options, their equivalent or other qualified portfolio products in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.
  - liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.
  - promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.
- If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to VXSLV options.

The Exchange proposes that the margin requirements for VXSLV options be set at the same levels that apply to ETF Based Volatility Index options

forward at the time Rule 24.4C was adopted, but should have been.

[17] *See* Rule 24.5.

[18] *See* Rules 24A.7(a)(5) and 24B.7(a)(5).

under Exchange Rule 12.3. Margin of up to 100% of the current market value of the option, plus 20% of the underlying volatility index value must be deposited and maintained. Additional margin may be required pursuant to Exchange Rule 12.10.

As with other ETF Based Volatility Index options, the Exchange designates VXSLV options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System). The Exchange notes that FLEX VXSLV options will only expire on business days that non-FLEX VXSLV options expire. This is because the term ''exercise settlement value'' in Rules 24A.4(b)(3) and 24B.4(b)(3), *Special Terms for FLEX Index Options,* has the same meaning set forth in Rule 24.9(a)(5). As is described earlier, Rule 24.9(a)(5) provides that the exercise settlement value of VXSLV options for all purposes under CBOE Rules will be calculated as the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which a VXSLV option expires.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of VXSLV options.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other Volatility Index and index options to monitor trading in VXSLV options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in VXSLV options. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

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.[19] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 notes that it has previously approved the listing and trading of options on volatility indexes that are calculated using certain individual stock and ETF options listed on CBOE, and CBOE has genericized certain of its rules to collectively refer to these indexes as ''Individual Stock Based Volatility Indexes,'' ''ETF Volatility Based Indexes,'' and ''Volatility Indexes.'' [21] The Commission notes that this filing layers VXSLV into CBOE's existing framework for ''ETF Volatility Based Indexes'' and ''Volatility Indexes,'' since VXSLV is comprised of ETF options.

As a national securities exchange, CBOE is required under Section 6(b)(1) of the Act [22] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade VXSLV options will also be subject to best execution obligations and FINRA rules.[23] Applicable Exchange rules also require that customers receive appropriate disclosure before trading VXSLV options.[24] Furthermore, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[25]

VXSLV options will trade pursuant to the existing rules for other Volatility Index options. The Commission believes that the listing rules proposed by CBOE for VXSLV options are consistent with the Act. Dollar or greater strikes for VXSLV options where the strike price is $200 or less and $5 or greater strikes when the strike price is greater than $200 should provide investors with greater flexibility in the trading of VXSLV options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives.

The Commission notes that CBOE will compute values for VXSLV underlying option series on a real-time basis throughout each trading day, and that VXSLV levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

The Commission believes that the Exchange's proposed position limits and exercise limits for VXSLV options are appropriate and consistent with the Act. The Commission notes that the Exchange proposed that the existing position limits for ETF Based Volatility Index options will apply to VXSLV options. The Commission also notes the Exchange stated that SLV options, which are the underlying components for VXSLV, are among the most actively traded option classes currently listed. In addition, the Commission notes that the existing position limits for FLEX ETF Based Volatility Index options will apply to VXSLV options, and the position and exercise limits for FLEX VXSLV options will be equal to the position and exercise limits for Non-FLEX VXSLV options. Further, positions in FLEX VXSLV options that expire on the same day as Non-FLEX VXSLV options will be aggregated with positions in Non-FLEX VXSLV options.

The Commission also notes that the margin requirements for ETF Based Volatility Index options will apply to options on VXSLV. The Commission finds this to be reasonable and consistent with the Act.

Further, the Commission believes that the Exchange's proposal to allow VXSLV options to be eligible for trading as FLEX options is consistent with the Act. The Commission previously approved rules relating to the listing and trading of FLEX options on CBOE, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.[26] The Commission has also previously approved the listing and trading of FLEX options on ETF Based Volatility Indexes. The current proposal incorporates VXSLV options that trade as FLEX options into these existing rules and regulatory framework.

The Commission notes that CBOE represented that it has an adequate surveillance program to monitor trading of VXSLV options and intends to apply its existing surveillance program to support the trading of these options. Finally, in approving the proposed rule change, the Commission has relied upon the Exchange's representation that it has the necessary systems capacity to

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[20] 15 U.S.C. 78f(b)(5).

[21] *See supra* note 3.

[22] 15 U.S.C. 78f(b)(1).

[23] *See* NASD Rule 2320.

[24] *See* CBOE Rule 9.15.

[25] *See* FINRA Rule 2360(b) and CBOE Rules 9.7 and 9.9.

[26] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993).

support new options series that will result from this proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–2011–055) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20912 Filed 8–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65109; File No. SR–EDGX–2011–25]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.13

August 11, 2011.

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 August 8, 2011, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.13, governing clearly erroneous executions, so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchanges [3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500® Index stocks (''Pause Pilot''), approved by the Commission on June 10, 2010.[4] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified ETPs to the Pause Pilot.[5] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[6] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 11.13, EDGX replaced existing Rule 11.13(c)(4) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 11.13(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 11.13(c)(1).[7] The Reference Price, for purposes of Rule 11.13(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on EDGX would be broken by the Exchange pursuant to Rule 11.13(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[8]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining National Market System (''NMS'') stocks (''Phase III Securities'').[9] The new pilot rules, which were implemented on August 8, 2011, not only expand the application of

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc. and NASDAQ OMX PHLX LLC.

[4] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR– BX–2010–037; SR–ISE– 2010–48; SR–NYSE–2010–39; SR–NYSEAmex– 2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR–CHX–2010–10; SR–NSX– 2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[5] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR– CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR– ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[6] *See* Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR– CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR– NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[7] Pursuant to Rule 11.13(c)(1), a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[8] Rule 11.13(c)(4).

[9] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. Specifically, the rules of the listing markets were amended so that a pause in a Phase III Security with a closing price on the previous trading day of $1 or more is triggered by a 30 percent price move within a five minute period. A pause in a Phase III Security with closing price on the previous trading day of less than $1 is triggered by a 50 percent price move within a five minute period. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rule 11.13(c)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[10] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five-minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five-minute period. As a result, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail itself of a clearly erroneous review. A similarly situated member firm that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 11.13(c)(1), would not be able to avail itself of the clearly erroneous process. Another member firm that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. EDGX believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, EDGX believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rule 11.13(c)(1)–(3).

Applying the clearly erroneous process under Rule 11.13(c)(1)–(3) to the Phase III Securities would allow EDGX to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant to Rule 11.13(c)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member firm would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member firms that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 11.13(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member firms would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference would be provided such relief. EDGX believes a better outcome is to afford all members transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. EDGX believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, EDGX is proposing to amend Rule 11.13(c)(1)–(4) to specify that Rule 11.13(c)(4) applies only to the current securities of Pause Pilot, and not to Phase III Securities.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. EDGX believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. EDGX notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[10] *Id.*

[11] EDGX notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[16]

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] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2011–25 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–EDGX–2011–25. 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 EDGX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2011–25 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20910 Filed 8–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65107; File No. SR–NYSEArca–2011–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.10 So That Clearly Erroneous Executions Involving Securities Recently Added to the Individual Security Trading Pause Pilot Under NYSE Arca Equities Rule 7.11 Continue To Be Resolved in the Same Manner Before Being Added to the Pilot

August 11, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19–4 thereunder,[3] notice is hereby given that, on August 9, 2011, 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 amend NYSE Arca Equities Rule 7.10 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under NYSE Arca Equities Rule 7.11 continue to be resolved in the same manner as they were before being added to the pilot. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.199–4.

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 amend NYSE Arca Equities Rule 7.10 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under NYSE Arca Equities Rule 7.11 continue to be resolved in the same manner as they were before being added to the pilot.

Background

The Exchanges [4] and the Financial Industry Regulatory Authority, Inc. (''FINRA''), in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''),[5] approved by the Commission on June 10, 2010.[6] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified Exchange-Traded Products (''ETPs'') to the Pause Pilot.[7] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[8] The changes, among other things, provided for uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the primary listing market and those transactions that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under NYSE Arca Equities Rule 7.10, NYSE Arca added new text to NYSE Arca Equities Rule 7.10(c)(4) to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to NYSE Arca Equities Rule 7.10(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under NYSE Arca Equities Rule 7.10(c)(1).[9] The Reference Price, for purposes of Rule 7.10(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on the Exchange would be broken by the Exchange pursuant to NYSE Arca Equities Rule 7.10(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[10]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[11] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. The Exchange amended its Pause Pilot rule, NYSE Arca Equities Rule 7.11, by adding three new subparagraphs to Rule 7.11(a) to address the treatment of the Phase III Securities. The rule applicable to the original Pause Pilot securities was placed in new NYSE Arca Equities Rule 7.11(a)(i). The rules applicable to the Phase III Securities were placed in new NYSE Arca Equities Rule 7.11(a)(ii) and (iii). A pause under NYSE Arca Equities Rule 7.11(a)(ii) is triggered by a 30 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of $1 or more. A pause under NYSE Arca Equities Rule 7.11(a)(iii) is triggered by a 50 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of less than $1. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Exchange has submitted immediately effective proposed rule changes to the Commission to extend both the Pause Pilot under NYSE Arca Equities Rule 7.11 and the clearly erroneous execution process pilot under NYSE Arca Equities Rule 7.10 until January 31, 2012.[12]

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III

[4] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAQ OMX PHLX LLC.

[5] *See* NYSE Arca Equities Rule 7.11. The pauses under NYSE Arca Equities Rule 7.11 occur when a security's price moves by the applicable percentage within a five minute period between 6:45 a.m. and 12:35 p.m. Pacific Time, or in the case of an early scheduled close, 25 minutes before the close of trading. Such pauses last for five minutes. At the conclusion of the pause period, the security is opened pursuant to NYSE Arca Equities Rule 7.11(b).

[6] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08) and 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[8] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[9] Pursuant to NYSE Arca Equities Rule 7.10(c)(1), during the Core Trading Session a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[10] *See* NYSE Arca Equities Rule 7.10(c)(4).

[11] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[12] *See* SR–NYSEArca–2011–55 (extending NYSE Arca Equities Rule 7.11 pilot until January 31, 2012) and SR–NYSEArca–2011–56 (extending NYSE Arca Equities Rule 7.10 pilot until January 31, 2012).

Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under NYSE Arca Equities Rule 7.10(c)(1)–(3), which applies to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[13] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the amended Pause Pilot rule, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, an ETP Holder that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated ETP Holder that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under NYSE Arca Equities Rule 7.10(c)(1), would not be able to avail themselves of the clearly erroneous process. Another ETP Holder that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. The Exchange believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, the Exchange believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of NYSE Arca Equities Rule 7.10(c)(1)–(3).

[13] *See supra* note 9.

Applying the clearly erroneous process under NYSE Arca Equities Rule 7.10(c)(1)–(3) to the Phase III Securities would allow the Exchange to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, an ETP Holder that trades in a security subject to NYSE Arca Equities Rule 7.11(a)(ii) and (iii) that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant NYSE Arca Equities Rule 7.10(c)(1). Should trading in that same security trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the ETP Holder would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of ETP Holders that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal NYSE Arca Equities Rule 7.10(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such ETP Holders would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other ETP Holders with transactions that occur at the same rolling five minute percentage difference. The Exchange believes a better outcome is to afford all ETP Holders transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. The Exchange believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, the Exchange is proposing to amend NYSE Arca Equities Rule 7.10(c)(1)–(4) to specify that NYSE Arca Equities Rule 7.10(c)(4) applies only to the current securities of the Pause Pilot, as found under NYSE Arca Equities Rule 7.11(a)(i).[14]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[15] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[16] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated ETP Holders are provided the same opportunity of a clearly erroneous review. The Exchange notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

[14] NYSE Arca notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)(iii) thereunder.[18] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated ETP Holders are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–58 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–2011–58. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2011–58 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20908 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65105; File No. SR–BX–2011–056]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearly Erroneous Rule in Light of Changes to the Single Stock Trading Pause Process

August 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2011, NASDAQ OMX BX, Inc. (''BX''), 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 BX. 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 the Substance of the Proposed Rule Change

BX proposes to amend Rule 11890, governing clearly erroneous executions, so that the rule will continue to operate in the same manner after changes to the single stock trading pause process are effective.

The text of the proposed rule change is available from BX's Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchanges [3] and FINRA, in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''), approved by the Commission on June 10, 2010.[4] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified ETPs to the Pause Pilot.[5] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[6] The changes, among other things, provided uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the listing market and those that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under Rule 11890, BX replaced existing Rule 11890(a)(2)(C)(4) with all new text to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to Rule 11890(a)(2)(C)(4), Latency Trades will be broken by the exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under Rule 11890(a)(2)(C)(1).[7] The Reference Price, for purposes of Rule 11890(a)(2)(C)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on BX would be broken by the exchange pursuant to Rule 11890(a)(2)(C)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[8]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[9] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. Specifically, the rules of the listing markets were amended so that a pause in a Phase III Security with a closing price on the previous trading day of $1 or more is triggered by a 30 percent price move within a five minute period. A pause in a Phase III Security with closing price on the previous trading day of less than $1 is triggered by a 50 percent price move within a five minute period. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under Rules 11890(a)(2)(C)(1)–(3), which apply to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[10] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the new Pause Pilot rules, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated member firm that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under Rule 11890(a)(2)(C)(1), would not be able to avail themselves of the clearly erroneous process. Another member firm that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. BX believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, BX believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the

[3] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAX [sic] OMX PHLX LLC.

[4] Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE– 2010–48; SR–NYSE–2010–39; SR–NYSEAmex– 2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[5] *See e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[6] Securities Exchange Act Release No. 62886 (September 16 [sic], 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[7] Pursuant to Rule 11890(a)(2)(C)(1), a security with a Reference Price of greater than zero and up to and including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[8] Rule 11890(a)(2)(C)(4).

[9] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

[10] *Id.*

original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of Rules 11890(a)(2)(C)(1)–(3).

Applying the clearly erroneous process under Rules 11890(a)(2)(C)(1)–(3) to the Phase III Securities would allow BX to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a member firm that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant to Rule 11890(a)(2)(C)(1). Should trading in that same stock trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member firm would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member firms that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal Rule 11890(a)(2)(C)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member firms would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member firms with transactions that occur at the same rolling five minute percentage difference. BX believes a better outcome is to afford all members transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. BX believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, BX is proposing to amend Rules 11890(a)(2)(C)(1)–(4) to specify that Rule 11890(a)(2)(C)(4) applies only to the current securities of Pause Pilot, and not to Phase III Securities.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. BX believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. BX notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member firms are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–056 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.

[11] BX notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–BX–2011–056. 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 BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2011–056 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65102; File No. SR–NYSE Amex–2011–60]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 128 so That Clearly Erroneous Executions Involving Securities Recently Added to the Individual Security Trading Pause Pilot Under NYSE Amex Equities Rule 80C Continue To Be Resolved in the Same Manner Before Being Added to the Pilot

August 11, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 9, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 amend NYSE Amex Equities Rule 128 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under NYSE Amex Equities Rule 80C continue to be resolved in the same manner as they were before being added to the pilot. 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 amend NYSE Amex Equities Rule 128 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under NYSE Amex Equities Rule 80C continue to be resolved in the same manner as they were before being added to the pilot.

Background

The Exchanges[4] and the Financial Industry Regulatory Authority, Inc. (''FINRA''), in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''),[5] approved by the Commission on June 10, 2010.[6] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified Exchange-Traded Products (''ETPs'') to the Pause Pilot.[7] On September 10,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAQ OMX PHLX LLC.

[5] *See* NYSE Amex Equities Rule 80C. The pauses under NYSE Amex Equities Rule 80C occur when a security's price moves by the applicable percentage within a five minute period between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading. Such pauses last for five minutes. At the conclusion of the pause period, the security is opened pursuant to NYSE Amex Equities Rule 80C(b).

[6] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ– 2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–

Continued

2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[8] The changes, among other things, provided for uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the primary listing market and those transactions that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under NYSE Amex Equities Rule 128, the Exchange added new text to NYSE Amex Equities Rule 128(c)(4) to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to NYSE Amex Equities Rule 128(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under NYSE Amex Equities Rule 128(c)(1).[9] The Reference Price, for purposes of NYSE Amex Equities Rule 128(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on the Exchange would be broken by the Exchange pursuant to NYSE Amex Equities Rule 128(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[10]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[11] The new pilot rules, which will be implemented on August 8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. The Exchange amended its Pause Pilot rule, NYSE Amex Equities Rule 80C, by adding three new subparagraphs to NYSE Amex Equities Rule 80C(a) to address the treatment of the Phase III Securities. The rule applicable to the original Pause Pilot securities was placed in new NYSE Amex Equities Rule 80C(a)(i). The rules applicable to the Phase III Securities were placed in new NYSE Amex Equities Rule 80C(a)(ii) and (iii). A pause under NYSE Amex Equities Rule 80C(a)(ii) is triggered by a 30 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of $1 or more. A pause under NYSE Amex Equities Rule 80C(a)(iii) is triggered by a 50 percent price move within a five minute period in a Phase III Security that had a closing price on the previous trading day of less than $1. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Exchange has submitted immediately effective proposed rule changes to the Commission to extend both the Pause Pilot under NYSE Amex Equities Rule 80C and the clearly erroneous execution process pilot under NYSE Amex Equities Rule 128 until January 31, 2012.[12]

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under NYSE Amex Equities Rule 128(c)(1)–(3), which applies to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[13] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five minute period.

Under the amended Pause Pilot rule, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five minute period. As a result, a member organization that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated member organization that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under NYSE Amex Equities Rule 128(c)(1), would not be able to avail themselves of the clearly erroneous process. Another member organization that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. The Exchange believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, the Exchange believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of NYSE Rule 128(c)(1)–(3).

Applying the clearly erroneous process under NYSE Amex Equities Rule 128(c)(1)–(3) to the Phase III Securities would allow the Exchange to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five minute period. For example, a member organization that trades in a

2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08) and 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[8] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[9] Pursuant to NYSE Amex Equities Rule 128(c)(1), during regular trading hours a security with a Reference Price of greater than zero and up to an including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[10] *See* NYSE Amex Equities Rule 128(c)(4).

[11] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[12] *See* NYSEAmex–2011–57 (extending NYSE Amex Equities Rule 80C pilot until January 31, 2012) and NYSEAmex–2011–58 (extending NYSE Amex Equities Rule 128 pilot until January 31, 2012).

[13] *See supra* note 9.

security subject to NYSE Amex Equities Rule 80C(a)(ii) and (iii) that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant NYSE Amex Equities Rule 128(c)(1). Should trading in that same security trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member organization would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member organizations that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal NYSE Amex Equities Rule 128(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member organizations would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member organizations with transactions that occur at the same rolling five minute percentage difference. The Exchange believes a better outcome is to afford all member organizations transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. The Exchange believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, the Exchange is proposing to amend NYSE Amex Equities Rule 128(c)(1)–(4) to specify that NYSE Amex Equities Rule 128(c)(4) applies only to the current securities of the Pause Pilot, as found under NYSE Amex Equities Rule 80C(a)(i).[14]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[15] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[16] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member organizations are provided the same opportunity of a clearly erroneous review. The Exchange notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)(iii) thereunder.[18] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member organizations are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–60 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.

[14] NYSE Amex notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NYSEAmex–2011–60. 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 NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–60 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20903 Filed 8–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65099; File No. SR–NASDAQ–2011–109]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on ETFS Gold Trust

August 11, 2011.

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 August 2, 2011, the NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to list and trade options on the ETFS Gold Trust.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the 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. 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 amend certain rules to enable the listing and trading on the Exchange of options on the ETFS Gold Trust (''SGOL'').[3] Specifically, the Exchange proposes to amend Chapter IV, entitled ''Securities Traded on NOM,'' at Sec. 3 entitled ''Criteria for Underlying Securities'' to add SGOL to the list of products deemed appropriate for options trading.

Exchange Rules at Chapter IV, Section 3 list the securities deemed appropriate for options trading, which shall include shares or other securities (''Exchange-Traded Fund Shares'' or ''ETFS''), including but not limited to Partnership Units, as defined in Section 3, that are principally traded on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, and that (i) Represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (''Funds'') and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (ii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs'') or (iii) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (''Currency Trust Shares''), or (iv) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust or iShares Silver Trust. This rule change proposes to expand the types of ETFs that may be approved for options trading to include SGOL.

Apart from allowing SGOL to be an underlying for options traded in the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange Rules. ETFs on which options may be listed and traded must still be listed and traded on a national

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ETFS is physically-backed by gold bullion which are held in Switzerland.

securities exchange and must satisfy other listing standards.[4]

The Exchange notes that the current continued listing standards for options on Exchange-Traded Fund Shares would also apply to options on SGOL. Specifically, under Chapter IV, Section 4(h) of the NASDAQ Options Rules, Fund Shares approved for options trading pursuant to Section 3 of Chapter IV will not be deemed to meet the requirements for continued approval, and Nasdaq shall not open for trading any additional series of option contracts of the class covering such Fund Shares if the security is delisted from trading as provided in subparagraph (b)(v) of Section [sic]. In addition, Nasdaq Regulation shall consider the suspension of opening transactions in any series of options of the class covering Fund Shares in any of the following circumstances:

(i) In the case of options covering Fund Shares approved pursuant to Section 3(i)(iv)(1), in accordance with the terms of subparagraphs (b)(i), (ii) and (iii) of Section 4;

(ii) In the case of options covering Fund Shares approved pursuant to Section 3(i)(iv)(2) of Chapter IV, following the initial twelve-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 consecutive days;

(iii) The value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments or Money Market Instruments, or portfolio of securities on which the Fund Shares are based is no longer calculated or available; or

(iv) Such other event occurs or condition exists that in the opinion of Nasdaq Regulation makes further dealing in such options on NOM inadvisable.[5]

The addition of SGOL to Exchange Rules at Chapter IV, Section 3 will not have any effect on the rules pertaining to position and exercise limits or margin.[6] Further, the Exchange represents that its surveillance procedures applicable to trading in options on SGOL will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. The Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. The Exchange may also obtain trading information from various commodity futures exchanges worldwide that have entered into comprehensive surveillance sharing agreements with the Exchange. In connection with SGOL, the Exchange represents that it may obtain information from the New York Mercantile Exchange, Inc. (''NYMEX''), pursuant to a comprehensive surveillance sharing agreement, related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold. Prior to listing and trading options on SGOL, the Exchange represents that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the underlying gold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by amending its rules to accommodate the listing and trading of options on SGOL, which will benefit investors by providing them with valuable risk management tools.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on ETFS Gold Trust immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission notes the proposal is substantively identical to proposals previously approved by the Commission, and does not raise any new regulatory issues.[12] For these reasons, the Commission designates the proposed rule change as operative upon filing.

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.

[4] The ETFS must meet the criteria and guidelines for underlying securities as set forth in Chapter IV, Section 3(a), (b) and (i) of the NASDAQ Options Rules.

[5] *See* Chapter IV, Section 4.

[6] *See* NASDAQ Options Rules, Chapter III, Sections 7 (Position Limits), and 9 (Exercise Limits) and Chapter XIII, Section 3 (Margin Requirements).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] *See* Securities Exchange Act Release Nos. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR–CBOE–2010–007, SR–ISE–2009–106, SR–NYSEAmex-2009–86, and SR–NYSEArca-2009–110), 62464 (July 7, 2010), 75 FR 40007 (July 13, 2010) (SR–BX–2010–045) (rule filings to enable the listing and trading of options on ETFS Gold Trust on CBOE, ISE, NYSE Amex, NYSE Arca and BOX).

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–NASDAQ–2011–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–109. 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 the filing also will be available for inspection and copying at the principal office of the Exchange.[13] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–109 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20900 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65098; File No. SR–Phlx-2011–102]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on ETFS Gold Trust

August 11, 2011.

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 August 2, 2011, 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 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 options on the ETFS Gold Trust.

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 amend certain rules to enable the listing and trading on the Exchange of options on the ETFS Gold Trust (''SGOL'').[3] Specifically, the Exchange proposes to amend Exchange Rule 1009, entitled ''Criteria for Underlying Securities,'' to amend Commentary .06 (iv) to add SGOL to the list of products deemed appropriate for options trading.

Currently Exchange Rule 1009 lists the securities deemed appropriate for options trading, which includes shares or other securities (''Exchange-Traded Fund Shares'' or ''ETFS''), including but not limited to Partnership Units, as defined in Commentary .08, that are principally traded on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, and that (i) Represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (ii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs'') or (iii) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ETFS is physically-backed by gold bullion which are held in Switzerland.

currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (''Currency Trust Shares''), or (iv) are SPDR Gold Shares or are issued by the iShares COMEX Gold Trust or the iShares Silver Trust. This rule change proposes to expand the types of ETFs that may be approved for options trading to include SGOL.

Apart from allowing SGOL to be an underlying for options traded in the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange Rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy other listing standards.[4]

The Exchange notes that the current continued listing standards for options on Exchange-Traded Fund Shares would also apply to options on SGOL. Specifically, under the applicable continued listing standards in Rule 1010, Commentary .08, absent exceptional circumstances, options on Exchange-Traded Fund Shares shall not be deemed to meet the Exchange's requirements for continued approval, and the exchange shall not open for trading any additional series of option contracts of the class covering such Exchange-Traded Fund Shares, whenever the Exchange-Traded Fund Shares are delisted and trading in the Shares is suspended on a national securities exchange, or the Exchange-Traded Fund Shares cease to be an ''NMS stock.'' In addition, the exchange shall consider the suspension of opening transactions in any series of options of the class covering Exchange-Traded Fund Shares in any of the following circumstances: (1) In accordance with the terms of paragraphs 1, through 7, of Commentary .01 of Rule 1010 in the case of options covering Exchange-Traded Fund Shares when such options were approved pursuant to paragraph (a)(i) of Commentary .06 of Rule 1009; (2) following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, there are fewer than 50 record and/or beneficial holders of Exchange-Traded Fund Shares for 30 or more consecutive trading day; (3) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments or Money Market Instruments, or portfolio of securities on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.[5]

The addition of SGOL to Exchange Rule 1009, Commentary .06 will not have any effect on the rules pertaining to position and exercise limits or margin.[6] Further, the Exchange represents that its surveillance procedures applicable to trading in options on SGOL will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. The Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. The Exchange may also obtain trading information from various commodity futures exchanges worldwide that have entered into comprehensive surveillance sharing agreements with the Exchange. In connection with SGOL, the Exchange represents that it may obtain information from the New York Mercantile Exchange, Inc. (''NYMEX''), pursuant to a comprehensive surveillance sharing agreement, related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold. Prior to listing and trading options on SGOL, the Exchange represents that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the underlying gold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by amending its rules to accommodate the listing and trading of options on SGOL, which will benefit investors by providing them with valuable risk management tools.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on ETFS Gold Trust immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission notes

[4] The ETFS must meet the criteria and guidelines for underlying securities as set forth in Commentary .01 to Exchange Rule 1009 and must meet other criteria specified in Commentary .06 (a) and (b) to Exchange Rule 1009.

[5] *See* Exchange Rule 1010, Commentary .08.

[6] *See* Exchange Rules 1001 (Position Limits), 1002 (Exercise Limits) and 721 (Proper and Adequate Margin).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also

Continued

the proposal is substantively identical to proposals previously approved by the Commission, and does not raise any new regulatory issues.[12] For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–102 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–2011–102. 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 the filing also will be available for inspection and copying at the principal office of the Exchange.[13] 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–2011–102 and should be submitted on or before September 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20899 Filed 8–16–11; 8:45 am]

BILLING CODE 8011–01–P

considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] *See* Securities Exchange Act Release Nos. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR–CBOE–2010–007, SR–ISE–2009–106, SR–NYSEAmex–2009–86, and SR–NYSEArca–2009–110), 62464 (July 7, 2010), 75 FR 40007 (July 13, 2010) (SR–BX–2010–045) (rule filings to enable the listing and trading of options on ETFS Gold Trust on CBOE, ISE, NYSE Amex, NYSE Arca and BOX).

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12653 and #12654]

North Dakota Disaster Number ND–00024

AGENCY: U.S. Small Business Administration.

ACTION: ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Dakota (FEMA—1981—DR), dated 06/24/2011.

Incident: Flooding.

Incident Period: 02/14/2011 through 07/20/2011.

Effective Date: 08/10/2011.

Physical Loan Application Deadline Date: 09/22/2011.

EIDL Loan Application Deadline Date: 03/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Dakota, dated 06/24/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 09/22/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–20924 Filed 8–16–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Emergence Capital Partners SBIC, L.P. License No. 09/79–0454]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide bridge financing to TouchCommerce, Inc., 30501 Agoura Road, Suite 203, Agoura Hills, CA 91301. The financing is contemplated for working capital and general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of TouchCommerce, Inc. Therefore, TouchCommerce, Inc. is considered an Associate of Emergence Capital Partners SBIC, L.P. and this transaction is considered Financing an Associate, requiring SBA's prior approval.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

July 18, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–20837 Filed 8–16–11; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 7545]

U.S. Department of State Advisory Committee on Private International Law: Notice of Annual Meeting

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold its annual meeting on developments in private international law on Thursday, September 22 and Friday, September 23, 2011, in Washington, DC. The meeting will be held at the Gewirz Student Center, Georgetown University Law Center, 600 New Jersey Avenue, NW., Washington, DC 20001. The program is scheduled to run from 9:30 a.m. to 5 p.m. on Thursday and from 9 a.m. to 2 p.m. on Friday.

Time permitting, we expect that the discussion will focus on developments in a number of areas, *e.g.,* international family law; electronic commerce; regional inter-American issues; U.S. federalism issues in implementing private international law conventions; and current activities relating to private international law in various international and domestic organizations. We also intend to solicit proposals for new work in the PIL field. We encourage active participation by all those attending.

Documents on these subjects are available at *http://www.hcch.net; http://www.uncitral.org; http://www.unidroit.org; http://www.oas.org,* and *http://www.nccusl.org.* We may, by e-mail, supplement those with additional documents.

Please advise as early as possible if you plan to attend. The meeting is open to the public up to the capacity of the conference facility, and space will be reserved on a first come, first served basis. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance. Those who are unable to attend are also encouraged to submit written views. Comments should be sent electronically to *smeltzertk@state.gov.* Those planning to attend should provide name, affiliation and contact information to Trisha Smeltzer at 202–776–8423 and Niesha Toms at 202–776–8420, or by e-mail to *tomsnn@state.gov* and *smeltzertk@state.gov.* You may also use those contacts to obtain additional information. A member of the public needing reasonable accommodation should advise those same contacts not later than September 13th. Requests made after that date will be considered, but might not be able to be fulfilled.

Dated: August 4, 2011.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2011–20970 Filed 8–16–11; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of California-Palomar Airlines, Inc.; D/B/A California Pacific Airlines for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2011–8–15); Docket DOT–OST–2010–0126.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding California-Palomar Airlines, Inc. d/b/a California Pacific Airlines fit, willing, and able, and awarding to it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 24, 2011.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0126 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division (X–56, Room W86–465), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–7785.

Robert A. Letteney,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–20948 Filed 8–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–37]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before September 6, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0125 using any of the following methods:

- *Government-wide rulemaking Web site*: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail*: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax*: Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery*: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver, ARM–200, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 12, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0125.
Petitioner: Pennsylvania State Police.
Section of 14 CFR Affected: § 43.3.
Description of Relief Sought: Pennsylvania State Police requests relief from § 43.3. If granted, would allow Pennsylvania State Police to remove and reinstall the Gyrocam camera on its Cessna 206H airplane, N193P, in the absence of a FAA licensed technician.

[FR Doc. 2011–21007 Filed 8–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Release of Federally Obligated Property at Hartsfield-Jackson Atlanta International Airport, College Park, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Atlanta, Department of Aviation to waive the requirement that a 4.5-acre parcel of federally obligated property, located at the Hartsfield-Jackson Atlanta International Airport; be used for aeronautical purposes.

DATES: Comments must be received on or before September 16, 2011.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Aimee A. McCormick, Program Manager, 1701 Columbia Ave., Campus Building, Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Louis Miller, Aviation General Manager at Hartsfield-Jackson Atlanta International Airport to the following address: City of Atlanta, Department of Aviation, P.O. Box 20509, College Park, GA 30320–2509.

FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Atlanta, Department of Aviation to release 4.50 acres of federally obligated property at Hartsfield-Jackson Atlanta International Airport. The property will be released from federal . obligation so that it may be purchased and developed for compatible land uses. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the City of Atlanta, Department of Aviation:

Issued in Atlanta, Georgia, on August 10, 2011.

Scott L. Seritt,

Manager, Atlanta Airports, District Office Southern Region.

[FR Doc. 2011–20749 Filed 8–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of motor vehicle defect petition.

SUMMARY: This document denies a March 2, 2010 petition from Fred and Susan Maynard of Williamsburg, Virginia, requesting that the agency open an investigation into the ''air bag systems failure'' that they experienced in their model year (MY) 2008 Toyota Corolla. After reviewing the petition and other information, NHTSA has concluded that further investigation of MY 2008 Toyota Corolla vehicles is unlikely to result in a determination that a safety-related defect exists. The agency accordingly denies the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lee, Vehicle Integrity Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–5236.

SUPPLEMENTARY INFORMATION:

Alleged Problem

The petitioners allege that the frontal air bags in their Toyota Corolla failed to deploy during a crash into a deer, while the vehicle was traveling at 55 mph. The petitioners believe the vehicle is defective because the air bags did not deploy during the crash. As described by the petitioners, neither the driver nor the front passenger sustained a significant injury in the crash. It appears that the deer impacted the front left area of the vehicle, causing the hood and left front fender to be displaced rearward.[1] This resulted in deformation to the soft structural material (sheet metal) above the vehicle sub-frame.

Air Bag Deployments

There are a number of important aspects to vehicle design. One is the vehicle structure, including crush zones. Another is the vehicle's air bag system, which by design discriminates between crashes that warrant air bag deployment and those that do not. To do this, current air bag systems sense vehicle deceleration, defined as the change in vehicle speed over a given period of time, then through the use of a microprocessor makes a careful assessment of the deceleration.[2] Overall, the objective of the air bag system is to prevent injuries and deaths in crashes. In a minor crash, an air bag deployment may not be warranted, and in fact, may present an additional hazard to the occupants. Therefore, the system may not initiate air bag deployments in minor crashes.

Due to the very low mass of a deer relative to a Toyota Corolla and the fact that the impact occurred above the vehicle's sub-frame, it appears that in this case, the deer impact did not slow

[1] This is based on an assessment of the vehicle damage shown in a photograph provided by the petitioners.

[2] For each model of light vehicle, the decision of whether or not to deploy the front air bags is based on two deceleration thresholds; a lower threshold below which the air bags must not deploy, and a slightly higher threshold above which the air bags must deploy. This results in a narrow range of deceleration between the lower and upper thresholds where the air bags, by design, may or may not deploy. This range is carefully chosen by the vehicle manufacturer so as to meet all regulatory requirements as well as minimize occupant hazard due to air bag deployment.

or decelerate the vehicle sufficiently to deploy the air bags. Moreover, neither the driver nor the front passenger was seriously injured. The level of injury reported in this crash is not indicative of the type of crash in which air bag deployment is expected.

Subject Vehicle Complaints

Aside from the petitioners' complaint, the Office of Defects Investigation's (ODI) consumer complaint database contains a handful of other complaints of air bag non-deployment for the subject vehicles. As of March 31, 2011, out of a population of 170,356 vehicles,[3] NHTSA received 9 consumer complaints (including the petitioners' complaint) of air bag non-deployment in crashes involving MY 2008 Toyota Corollas. This translates to a rate of 5.3 reported non-deployments for every 100,000 vehicles. Eight of those were frontal crashes. ODI reviewed and analyzed the 8 crashes. This included an evaluation of the reported travel speed, object impacted, vehicle damage, level of occupant injury, and any other available information that would assist in assessing whether the air bags should have deployed. ODI's review did not uncover any defect trend of non-deployment of the subject vehicles' frontal air bags in moderate to severe frontal crashes.

ODI also analyzed Early Warning Reporting (EWR) data. Manufacturers are required to provide the agency with quarterly submissions of EWR data, which includes reports on incidents involving death(s) or injury(ies) identified in a claim or notice alleging the death or injury was caused by a possible defect in the vehicle. As of March 31, 2011, ODI received one injury report on a subject vehicle in Toyota's EWR data. This report states that the frontal air bags did not deploy during a pole impact. The report also indicates that the passenger compartment was not deformed and the occupant injuries were minor in nature. Based on the available information, while NHTSA has not reached a definitive conclusion, this does not appear to be the type of crash that necessarily warrants air bag deployment.

Peer Vehicle Complaints

The Toyota Corolla is not the only vehicle that is the subject of allegations regarding air bag non-deployments. The ODI database contains many reports alleging air bag non-deployment in other compact vehicles. ODI reviewed and analyzed consumer complaints of air bag non-deployment in comparable MY 2008 compact vehicles: the Chevrolet Cobalt, Ford Focus, Honda Civic, and Hyundai Elantra vehicles. In doing so, we were cognizant that historically there have been assertions that in specific crashes an air bag should have deployed, which were not always well-founded, or based on any technical analysis. There were 5 reports of non-deployment in a population of 176,471[4] Chevrolet Cobalt vehicles, translating to a rate of 2.8 non-deployments for every 100,000 vehicles. There were 6 reports of non-deployment in a population of 180,724 Ford Focus vehicles, translating to a rate of 3.3 non-deployments for every 100,000 vehicles. There were 6 reports of non-deployment in a population of 355,611 Honda Civic vehicles, translating to a rate of 1.7 non-deployments for every 100,000 vehicles. There were 6 reports of non-deployment in a population of 110,355 Hyundai Elantra vehicles, translating to a rate of 5.4 non-deployments for every 100,000 vehicles. Thus, air bag non-deployment complaints for the MY 2008 Toyota Corolla are not substantive when compared against peer vehicles and do not indicate a significant trend of non-deployment.

Crash Data

NHTSA's review of crash data indicates that the air bag in the MY 2008 Toyota Corolla generally deploys in moderate, severe, and fatal crashes.

FARS

NHTSA's Fatality Analysis Reporting System (FARS) tracks all fatal crashes involving motor vehicles in the United States. An analysis of fatal crashes of 4-door compact vehicles, where the vehicle did not roll over, and the occupants wore their seat belts, generally indicates that air bags in MY 2008 Toyota Corollas deploy in fatal crashes. Specifically, ODI reviewed fatalities of belted drivers in the MY 2008 Toyota Corolla, Ford Focus, Honda Civic, Chevrolet Cobalt, and Hyundai Elantra. Among these vehicles, the Corolla had the least number of fatal crashes when compared against other compact vehicles. The FARS database contains one report of a driver fatality in which the driver air bag did not deploy in each of a MY 2008 Corolla, Civic, and Focus. The Elantra and Cobalt reported no driver fatalities in situations where the air bag did not deploy. However, these two vehicles have the smallest populations among the peer compact vehicles compared.

NASS

NHTSA's National Automotive Sampling System (NASS) has records of a sampling of crashes and an analysis that may include, among other things, a computation of the change in velocity of the vehicle during the crash impact. A review of this data shows no trend of non-deployment of the frontal air bags in MY 2008 Toyota Corolla vehicles. The NASS records contain 26 reports on the subject vehicles. Of the 26 cases, 15 were involved in frontal impact crashes. The remaining cases were corner, side, or rear impact crashes. Of the 15 frontal crashes, the frontal air bags deployed in 9 crashes, did not deploy in 5, and in one crash, information on air bag deployment was not available. In the 5 cases of non-deployment, the change in velocity[5] did not appear to be great enough to deploy the air bag, and there were no known moderate or serious injuries.[6]

Crash Testing

NHTSA's crash tests of the subject vehicles resulted in air bag deployment in all of the tests.

FMVSS 208

All new passenger cars and lights trucks must comply with Federal Motor Vehicle Safety Standard (FMVSS) 208, ''Occupant Crash Protection.'' 49 CFR 571.208. This standard specifies minimum occupant protection performance levels for the restraint systems in vehicles. In 2005, NHTSA conducted FMVSS 208 compliance tests on five MY 2005 Toyota Corolla vehicles, which are of the same generation as MY 2008 Corolla vehicles, and contain the same air bag system design.[7] These were full frontal crash tests conducted with test vehicles carrying unbelted test dummies. The vehicles impacted a fixed barrier at 25 mph. The frontal air bags deployed in a

[3] From NHTSA Early Warning Reporting data: number of vehicles sold in the U.S.

[4] All vehicle population counts in this section are taken from NHTSA Early Warning Reporting data: number of vehicles sold in the U.S.

[5] In the NASS database, change in velocity is calculated using an algorithm that takes into account vehicle crush measurements, weights, vehicle stiffness and other parameters. If crush and/or overlapping vehicle damage prevents accurate inputs to the automated program, change in velocity is estimated based on collision deformation classification (CDC) inputs into the algorithm. In cases where no change in velocity figure was available in NASS, NHTSA based its analysis on a visual inspection of photographs of the vehicle.

[6] Injuries in vehicle crashes are commonly characterized on the Abbreviated Injury Scale (AIS). For example, an ''AIS 1'' injury is specified as a minor injury, ''AIS 2'' as a moderate injury, ''AIS 3'' as a serious injury, etc.

[7] For purposes of evaluating occupant protection, the results of crash tests of MY 2005–2008 Toyota Corolla vehicles are representative for any included model year Corolla.

similar time and in a similar way in all five tests.[8]

NCAP

NHTSA conducts the frontal New Car Assessment Program (NCAP) to provide consumers with information on the crash performance of vehicles. The test dummies in NCAP tests are restrained with seat belts and the vehicles crash into a barrier at 35 mph. There are no specific criteria which must be met in connection with NCAP tests. Rather, vehicles are given a safety rating of up to 5 stars in a frontal crash, side crash, and rollover. The driver's side and passenger's side are evaluated separately in each of those crashes. In a frontal crash, the MY 2005–2008 Toyota Corolla received 5-star safety ratings on both the driver's and passenger's side, which is the highest rating given for frontal impact crashes.

Conclusion

Based on the information available at the present time, NHTSA does not believe that a safety-related defect currently exists for air bag non-deployment in the model year 2008 Toyota Corolla vehicles. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. However, the agency will continue to monitor this event and will take further action if warranted by changing future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: August 12, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–20989 Filed 8–16–11; 8:45 am]

BILLING CODE 4910–59–P

[8] FMVSS 208 uses instrumented test dummies and calculates the values of certain injury criteria. The injury criteria NHTSA measures for the upper body include ''Head Injury Criterion'' (''HIC''), chest acceleration, chest deflection, and several neck related performance requirements. In the first test of the MY 2005 Corolla by NHTSA, there were test procedural issues that raised issues whether certain MY 2005 Corollas manufactured at a specific assembly plant in Japan might have been in marginal compliance with FMVSS 208. However, after the test procedural issues were resolved, all four subsequent test vehicles complied with all FMVSS 208 requirements.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0115]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

Title: National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting.

ACTION: Meeting Notice—National Emergency Medical Services Advisory Council.

SUMMARY: NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The meeting will be held on September 7, 2011, from 1 p.m. to 5 p.m. E.D.T., and on September 8, 2011, from 8 a.m. to 12 Noon E.D.T. A public comment period will take place on September 7, 2011, between 3:15 p.m. and 4:15 p.m. E.D.T. Written comments or requests to make oral presentations must be received by September 2, 2011.

ADDRESSES: The meeting will be held at the Hyatt Arlington, 1325 Wilson Boulevard, Arlington, Virginia 22209. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below and should be received by September 2, 2011. All submissions received may be submitted by either one of the following methods: (1) You may submit comments by *e-mail: drew.dawson@dot.gov* or *noah.smith@dot.gov* or (2) you may submit comments by *fax:* (202) 366–7149.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, U.S Department of Transportation, Office of Emergency Medical Services, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, telephone number (202) 366–9966; e-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) The NEMSAC will meet on Wednesday and Thursday, September 7–8, 2011, at the Hyatt Arlington, 1325 Wilson Boulevard, Arlington, Virginia 22209.

Agenda of National EMS Advisory Council Meeting, September 7–8, 2011

The tentative agenda includes the following:

Wednesday, September 7, 2011

(1) Opening Remarks.

(2) Introduction of Members and all in attendance.

(3) Review and Approval of Minutes of last Meeting.

(4) Update from NHTSA Office of EMS.

(5) Presentation of the Draft Culture of Safety Strategy.

(6) Update from the NASEMSO Highway Incident and Transportation Systems Committee.

(7) Public Comment Period.

(8) Business of the Council.

Thursday, September 8, 2011

(1) Presentations from NEMSAC Committees.

(2) Deliberations of Committee Documents.

(3) Federal Partner Update.

(4) Discussion of New and Emerging Issues.

(5) Unfinished Business/Continued Discussion from Previous Day.

(6) Next Steps and Adjourn.

A public comment period will take place on September 7, 2011, between 3:15 p.m. and 4:15 p.m. Public Attendance: This meeting will be open to the public. There will not be a teleconference option for this meeting. Individuals wishing to attend must provide their name, affiliation, phone number, and e-mail address to Noah Smith by e-mail at *Noah.Smith@dot.gov* or by telephone at (202) 366–5030 no later than September 2, 2011.

Members of the public who wish to make comments on Wednesday, September 7 between 3:15 p.m. and 4:15 p.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Minutes of the NEMSAC Meeting will be available to the public online through *http://www.ems.gov.*

Issued on: August 12, 2011.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2011–20943 Filed 8–16–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974, as Amended

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of amendment to system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Management Service gives notice of a proposed alteration to the Privacy Act system of records entitled ''Treasury/FMS .008—Mailing List Records.''

DATES: Comments must be received no later than September 16, 2011. The altered system of records will become effective September 16, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to Peter Genova, Deputy Chief Information Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday. You may send your comments by electronic mail to *peter.genova@fms.treas.gov* or *http://regulations.gov.* All comments, including attachments and other supporting materials, received are subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Peter Genova, Deputy Chief Information Officer, (202) 874–1736.

SUPPLEMENTARY INFORMATION: On December 16, 2010, the Financial Management Service (FMS), a bureau within the U.S. Department of the Treasury (Treasury), established a new system of records entitled ''Mailing List Records—Treasury/FMS .008'' by publishing a new system of records notice at 75 FR 78802, pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. FMS proposes to amend that system of records by adding to the ''categories of individuals covered by the system,'' and the ''categories of records in the system.''

Under the existing system of records, FMS may obtain and maintain identifying information (names and addresses) of low-to-moderate income individuals who are more likely to be unbanked or underbanked, who could potentially receive Federal tax refund payments, and whose names and addresses are included on mailing lists purchased from commercial providers. These records are maintained in order for the bureau to send letters to these individuals to inform them of the benefits of electronic payments and Treasury-recommended account options for receiving payments electronically. The information may also be used to study the effectiveness of offering account options to individuals to receive Federal payments. To study program efficacy, FMS may use the mailing list records to collect aggregate statistical information on the success and benefits of direct mail and the use of commercial database providers.

FMS proposes to broaden the ''categories of records in the system'' to include demographic information about these individuals, in addition to identifying information. Further, FMS proposes to expand the ''categories of individuals covered by the system'' to include not only individuals whose records were purchased from commercial providers, but also those individuals whose information was obtained from other sources, such as people who have previously been mailed a paper check by FMS. The proposed amendments to the system would allow FMS to obtain and use information such as income range, likelihood of being unbanked, and gender in determining what types of account options best meet the needs of low- to moderate-income individuals for the purpose of receiving their Federal payments. The addition of these data elements to the system will give FMS access to information which will allow the bureau to better understand the needs of the specific population that could benefit from electronic payment of tax refunds. In this way, FMS will be able to more effectively serve the public.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000. For the reasons described in the preamble, FMS proposes to alter its system of records Treasury/FMS .008—Mailing List Records, as set forth below.

Treasury/FMS .008

SYSTEM NAME:

Mailing List Records—Treasury/Financial Management Service.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of change: At the end of the first sentence following the word ''providers'' add the phrase ''or acquired from other sources.'' The paragraph is revised to read: ''Low- to moderate-income individuals who are more likely to be unbanked or underbanked, who could potentially receive Federal tax refund payments, and whose names and addresses are included on mailing lists purchased from commercial providers or acquired from other sources.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of change: At the end of the sentence following the word ''address'' add the phrase ''as well as demographic data, such as income range, gender or other characteristics.'' The paragraph is revised to read:

''The records may contain identifying information, such as an individual's name(s) and address, as well as demographic data, such as income range, gender or other characteristics.''

* * * * *

Dated: August 8, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2011–20951 Filed 8–16–11; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities; Submission for OMB Review and Approval; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the

FDIC, (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies, as part of their 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.

On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act transfers the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the Office of the Comptroller of the Currency (OCC), on the ''transfer date.'' The transfer date is one year after the date of enactment of the Dodd-Frank Act, July 21, 2011. The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date. As a result of the Dodd-Frank Act, OTS transferred this information collection to the OCC.

Notice is hereby given of the final approval of proposed information collection by the Board under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The OCC and FDIC are also giving notice that they have sent the collection to OMB for review and approval.

DATES: Comments must be received by September 16, 2011.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies. Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0242, 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.

Board: You may submit comments, identified by FR 4199, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Basel II Supervisory Guidance'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.
- OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

OCC: Mary H. Gottlieb or Ira L. Mills, OCC Clearance Officers, (202) 874–5090 or (202) 874–6055, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Leneta Gregorie, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Title of Information Collection: Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2).

OMB Control Numbers:
OCC: 1557–0242.
Board: 7100–0320.
FDIC: 3064–0165.
Frequency of Response: Event-generated.

Affected Public

OCC: National banks and savings associations, and certain subsidiaries of these entities.

Board: State member banks and bank holding companies.

FDIC: Insured state nonmember banks, state savings associations, and certain subsidiaries of these entities.

Abstract: The agencies issued a supervisory guidance document for implementing the supervisory review process (Pillar 2). The guidance was issued on July 31, 2008 (73 FR 44620).

Sections 37, 41, 43, and 46 of the guidance impose information collection requirements. Section 37 states that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 requires banks to maintain thorough documentation of ICAAP. Section 43 specifies that boards of directors must approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of

directors also are required under section 46 to periodically review the assessment of overall capital adequacy and to analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

The agencies' burden estimates for these information collection requirements are summarized below. Note that the estimated number of respondents listed below include both institutions for which the Basel II risk-based capital requirements are mandatory and institutions that may be considering opting-in to Basel II (despite the lack of any formal commitment by most of these latter institutions).

Estimated Burden

OCC

Number of Respondents: 51.
Estimated Burden per Respondent: 140 hours.
Total Estimated Annual Burden: 7,140 hours.

Board

Number of Respondents: 18.
Estimated Burden per Respondent: 420 hours.
Total Estimated Annual Burden: 7,560 hours.

FDIC

Number of Respondents: 19.
Estimated Burden per Respondent: 420 hours.
Total Estimated Annual Burden: 7,980 hours.

Current Actions: On April 21, 2011, the agencies published a notice in the **Federal Register** requesting public comment for 60 days on the extension, without revision, of the information collection (76 FR 22450). The comment period for this notice expired on June 20, 2011. The agencies did not receive any comments.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: August 11, 2011.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, August 9, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 11th day of August, 2011.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–20885 Filed 8–16–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to Executive Order 13581of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations.''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing additional identifying information associated with the four entities listed in the Annex to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations.''

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation Office of Foreign Assets Control Department of the Treasury, 1500 Pennsylvania Avenue, NW., (Treasury Annex), Washington, DC 20220, *Tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On July 24, 2011, the President issued Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations'' (the ''Order''), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). The Order was effective at 12:01 a.m. eastern daylight time on July 25, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to satisfy certain criteria set forth in the Order.

The Annex to the Order lists four entities whose property and interests in property are blocked pursuant to the Order. OFAC is publishing additional identifying information associated with these entities. Property and interests in property of one of those entities, identified below by the code ''[SDNTK]'', also are blocked pursuant to another OFAC sanctions program.

The listings for these entities on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Entities

1. THE BROTHERS' CIRCLE (a.k.a. ''MOSCOW CENTER''; f.k.a. ''FAMILY OF ELEVEN''; f.k.a. ''THE TWENTY'') [TCO]

2. CAMORRA, Naples, Italy; Campania, Italy [TCO]

3. YAKUZA (a.k.a. BORYOKUDAN; a.k.a. GOKUDO), Japan [TCO]

4. LOS ZETAS, Mexico [SDNTK] [TCO]

Dated: August 11, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–20956 Filed 8–16–11; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice; Notice

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to notification requirement for transfer of partnership interest in electing investment partnership (EIP).

DATES: Written comments should be received on or before October 17, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notification requirement for transfer of partnership interest in Electing Investment Partnership (EIP).

OMB Number: 1545–1939.

Notice Number: Notice 2005–32.

Abstract: The American Jobs Creation Act of 2004 amended §§ 734, 743, and 6031 of the Internal Revenue Code. The amendment necessitated the creation of new reporting requirements and procedures for the mandatory basis adjustment provisions of §§ 734 and 743, the procedures for making an electing investment partnership election under § 743(e), and the reporting requirements for electing investment partnerships and their partners. This notice provides interim procedures for partnerships and partners to comply with the mandatory basis adjustment provisions of §§ 734 and 743. This notice also provides interim procedures for electing investment partnerships and their partners to comply with §§ 743(e) and 6031(f).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization, individuals, or households.

Estimated Number of Respondents: 266,400.

Estimated Time per Respondent: 2 Hours, 4 minutes.

Estimated Total Annual Burden Hours: 522,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 28, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20988 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning collection requirements related to disclosure of relative values of optional forms of benefit.

DATES: Written comments should be received on or before October 17, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Relative Values of Optional Forms of Benefit.

OMB Number: 1545–0928.

Regulation Project Number: T.D. 9099.

Abstract: This document contains final regulations that consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified joint and survivor annuity. These regulations affect plan sponsors and administrators, and participants in and beneficiaries of, certain retirement plans.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Responses: 3,000,000.

Estimated Total Annual Reporting Burden: 385,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 28, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20981 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for a Notice

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c collection)(2)(A)). The IRS is soliciting comments concerning information requirements related to preparation instructions for media labels.

DATES: Written comments should be received on or before October 17, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Preparation Instructions for Media Labels.

OMB Number: 1545–0295.

Notice Number: Notice 210.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Average Time per Respondent: 5 min.

Estimated Total Annual Burden Hours: 12,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2011.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 2011–20983 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to diesel fuel and kerosene excise tax; dye injection.

DATES: Written comments should be received on or before October 17, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111

Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Diesel Fuel and Kerosene Excise Tax; Dye Injection.

OMB Number: 1545–1418.

Regulation Project Number: REG–154000–04 (T.D. 9199).

Abstract: In order for diesel fuel and kerosene that is used in a nontaxable use to be exempt from tax under section 4082(a), it must be indelibly dyed by use of a mechanical dye injection system that satisfies the requirements in the regulations.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 1,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20985 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–LTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–LTC, Long-term Care and Accelerated Death Benefits.

DATES: Written comments should be received on or before October 17, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: 1099–LTC.

Abstract: File Form 1099–LTC, Long-Term Care and Accelerated Death Benefits, if you pay any long-term care benefits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, and State, local or tribal governments.

Estimated Number of Responses: 79,047.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 18,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–20980 Filed 8–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Privacy Act of 1974; Systems of Records

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of the Public Debt, Treasury, is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C.

552a) and the Office of Management and Budget (OMB), Circular No. A–130, the Bureau of the Public Debt (BPD) has completed a review of its Privacy Act systems of records notices to identify changes that will more accurately describe these records. Such changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses, and revisions to organizational titles.

In addition, BPD has deleted a routine use from BPD.001—Human Resources and Administrative Records, under which over-the-phone verification of certain employment information had been made for the benefit of BPD employees. The bureau has changed the process to require a written request from the employee as a best practice and to better protect BPD employees.

This publication also incorporates the alterations made to BPD.004—Controlled Access Security System, as published on July 17, 2009, at 74 FR 34867. The systems of records were last published in their entirety on July 23, 2008, at 73 FR 42904–42921.

Systems Covered by this Notice

This notice covers all systems of records adopted by the Bureau of the Public Debt up to April 1, 2011. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: August 11, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

Table of Contents

TREASURY/BPD.001

SYSTEM NAME:

Human Resources and Administrative Records—Treasury/BPD.

SYSTEM LOCATION(S):

Records are maintained at the following Bureau of the Public Debt locations: 200 Third Street, Parkersburg, WV; 320 Avery Street, Parkersburg, WV; Second and Avery Streets, Parkersburg, WV; and 799 9th Street, NW., Washington, DC. Copies of some documents have been duplicated for maintenance by supervisors for employees or programs under their supervision. These duplicates are also covered by this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover present and former employees, applicants for employment, contractors, vendors, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records is limited to those records the Bureau of the Public Debt needs to function in an efficient manner and does not cover those records reported under another system of records notice.

(A) Human Resources Records: These records relate to categories such as disciplinary and adverse actions; leave and hours of duty; alternate work schedules, standards of conduct and ethics programs; indebtedness; employee suitability and security determinations; grievances; performance problems; bargaining unit matters; Federal labor relations issues; relocation notices; outside employment; recruitment; placement; merit promotion; special hiring programs, including veterans recruitment, employment of people with disabilities, Student Employment Programs; position classification and management; special areas of pay administration, including grade and pay retention, premium pay, scheduling of work, performance management and recognition; training and employee development programs; incentive awards; benefits and retirement programs; personnel and payroll actions; insurance; worker's and unemployment compensation; employee orientation; retirement; accident reports; and consolidation of personnel/program efforts among offices.

(B) Equal Employment Opportunity Records: These are records of informal EEO complaints and discussions that have not reached the level of formal complaints. After 30 days these records are destroyed or incorporated in a formal complaint file. Formal complaints are handled by the Treasury Department's Regional Complaints Center. Copies of formal complaint documents are sometimes maintained by the Bureau of the Public Debt's EEO Office.

(C) Administrative Services Records: These records relate to administrative support functions including motor vehicle operation, safety and security, access to exterior and interior areas, contract guard records, offense/incident reports, accident reports, and security determinations.

(D) Procurement Records: These records relate to contractors/vendors if they are individuals; purchase card holders, including the name, social security number and credit card number for employees who hold Government-use cards; procurement integrity certificates, containing certifications by procurement officials that they are familiar with the Federal Procurement Policy Act.

(E) Financial Management Records: These records relate to government travel, vendor accounts, other employee reimbursements, interagency transactions, employee pay records, vendor registration data, purchase card accounts and transactions, and program payment agreements.

(F) Retiree Mailing Records: These records contain the name and address furnished by Bureau of the Public Debt retirees requesting mailings of newsletters and other special mailings.

(G) Travel Records: These records relate to employee relocation travel authorizations, reimbursements, and related vendor invoices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

PURPOSE(S):

These records are collected and maintained to document various aspects of a person's employment with the Bureau of the Public Debt and to assure the orderly processing of administrative actions within the Bureau.

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

These records may be disclosed to:

(1) The Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority upon authorized request;

(2) Other Federal, State, or local agencies, such as a State employment compensation board or housing administration agency, so that the agency may adjudicate an individual's eligibility for a benefit, or liability in such matters as child support;

(3) Next-of-kin, voluntary guardians, and other representative or successor in interest of a deceased or incapacitated employee or former employee;

(4) Unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, arbitrators, and other parties responsible for the administration of the Federal labor-

management program if needed in the performance of their authorized duties;

(5) Private creditors for the purpose of garnishing wages of an employee if a debt has been reduced to a judgment;

(6) Authorized Federal and non-Federal entities for use in approved computer matching efforts, limited to those data elements considered necessary in making a determination of eligibility under particular benefit programs administered by those agencies or entities, to improve program integrity, and to collect debts and other monies owed to those agencies or entities or to the Bureau of the Public Debt;

(7) Contractors of the Bureau of the Public Debt for the purpose of processing personnel and administrative records;

(8) Other Federal, State, or local agencies in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the issuance of a license, contract, grant, or other benefit;

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

(10) Other Federal agencies to effect salary or administrative offset for the purpose of collecting a debt, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies;

(11) Consumer reporting agencies, including mailing addresses obtained from the Internal Revenue Service to obtain credit reports;

(12) Debt collection agencies, including mailing addresses obtained from the Internal Revenue Service, for debt collection services;

(13) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(14) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(15) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

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

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

In accordance with the Privacy Act (5 U.S.C. 552a(b)(12)), disclosures may be made from this system of records to ''consumer reporting agencies'' as defined in 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government. After the prerequisites of 31 U.S.C. 3711 have been followed, the Bureau of the Public Debt may disclose information necessary to establish the identity of the individual responsible for the claim, including name, address, and taxpayer identification number; the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, microform, or in electronic media.

RETRIEVABILITY:

By name, social security number, or other assigned identifier.

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols that are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

(A) Human Resources Records: Assistant Commissioner, Office of Management Services, Human Resources Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312 and Executive Director, Administrative Resource Center, Human Resources Operations Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(B) Equal Employment Opportunity Records: Assistant Commissioner, Office of Management Services, Equal Employment Opportunity, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(C) Administrative Services Records: Assistant Commissioner, Office of Management Services, Division of Administrative Services and Division of Security and Emergency Preparedness, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(D) Procurement Records: Executive Director, Administrative Resource Center, Division of Procurement, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(E) Financial Management Records: Executive Director, Administrative Resource Center, Accounting Services Division, 200 Third Street, Parkersburg, WV 26106–5312.

(F) Retiree Mailing Records: Assistant Commissioner, Office of Management Services, Division of Administrative Services, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(G) Travel Records: Executive Director, Administrative Resource Center, Travel Services Division, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply

fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Bureau of the Public Debt or the delegate of such officer. Appeals must be mailed or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the subject of the record, authorized representatives, supervisor, employers, medical personnel, other employees, other Federal, State, or local agencies, and commercial entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BPD.002

SYSTEM NAME:

United States Savings-Type Securities—Treasury/BPD.

SYSTEM LOCATION(S):

Bureau of the Public Debt, 200 Third Street, Parkersburg, WV; Bureau of the Public Debt, 799 9th Street, NW., Washington, DC; and Federal Reserve Banks and Branches in Minneapolis, MN and Pittsburgh, PA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former owners of, claimants to, persons entitled to, and inquirers concerning United States savings-type securities and interest on securities, including without limitation United States Savings Bonds, Savings Notes, Retirement Plan Bonds, and Individual Retirement Bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Issuance: Records relating to registration, issuance, and correspondence in connection with issuance of savings-type securities. This category includes records of current income savings bonds processed under an automated system that will permit access by selected Federal Reserve Banks and Branches.

(2) Holdings: Records documenting ownership, status, payments by date and account numbers, and inscription information; interest activity; correspondence in connection with notice of change of name and address; non-receipt or over- or underpayments of interest and principal; and numerical registers of ownership. Such records include information relating to savings-type securities held in safekeeping in conjunction with the Department's program to deliver such securities to the owners or persons entitled. This category includes records of current income savings bonds processed under an automated system that will permit access by selected Federal Reserve Banks and Branches.

(3) Transactions (redemptions, payments, and reissues): Records, which include securities transaction requests; interest activity; legal papers supporting transactions; applications for disposition or payment of securities and/or interest thereon of deceased or incapacitated owners; records of retired securities; and payment records. This category includes records of current income savings bonds processed under an automated system that will permit access by selected Federal Reserve Banks and Branches.

(4) Claims: Records including correspondence concerning lost, stolen,

destroyed, or mutilated savings-type securities; bonds of indemnity; legal documents supporting claims for relief; and records of caveats entered.

(5) Inquiries: Records of correspondence with individuals who have requested information concerning savings-type securities and/or interest thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 3101, *et seq.*

PURPOSES:

Information in this system of records is collected and maintained to enable the Bureau of the Public Debt and its agents to issue savings bonds, to process transactions, to make payments, and to identify owners and their accounts.

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

These records may be disclosed to:

(1) Agents or contractors of the Department for the purpose of administering the public debt of the United States;

(2) Next-of-kin, voluntary guardian, legal representative or successor in interest of a deceased or incapacitated owner of securities and others entitled to the reissue, distribution, or payment for the purpose of assuring equitable and lawful disposition of securities and interest;

(3) Either co-owner for bonds registered in that form or to the beneficiary for bonds registered in that form, provided that acceptable proof of death of the owner is submitted;

(4) The Internal Revenue Service for the purpose of facilitating collection of the tax revenues of the United States;

(5) The Department of Justice when seeking legal advice or when

(a) The Department of the Treasury (agency) or

(b) The Bureau of the Public Debt, or

(c) Any employee of the agency in his or her official capacity, or

(d) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(e) The United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) The Department of Veterans Affairs and selected veterans' publications for the purpose of locating owners or other persons entitled to undeliverable bonds held in safekeeping by the Department;

(7) Other Federal agencies to effect salary or administrative offset for the purpose of collecting debts;

(8) A consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports;

(9) A debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services;

(10) Contractors conducting Treasury-sponsored surveys, polls, or statistical analyses relating to the marketing or administration of the public debt of the United States;

(11) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(12) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(13) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(14) Disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments that may be used to collect the debt through administrative or salary offset;

(15) Disclose through computer matching information on holdings of savings-type securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies;

(16) Disclose through computer matching, information on individuals with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured, unredeemed securities; and

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

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

In accordance with the Privacy Act (5 U.S.C. 552a(b)(12)), disclosures may be made from this system of records to ''consumer reporting agencies'' as defined in 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government. After the prerequisites of 31 U.S.C. 3711 have been followed, the Bureau of the Public Debt may disclose information necessary to establish the identity of the individual responsible for the claim, including name, address, and taxpayer identification number; the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, microform, or in electronic media.

RETRIEVABILITY:

Information can be retrieved alphabetically by name, address, and period of time the security was issued, by bond serial numbers, other assigned identifier, or, in some cases, numerically by social security number. In the case of securities, except Series G savings bonds, registered in more than one name, information relating to those securities can be retrieved only by the names, or, in some cases, the social security number of the registrants, primarily the registered owners or first-named co-owners. In the case of gift bonds inscribed with the social security number of the purchaser, bonds are retrieved under that number, or by bond serial number.

SAFEGUARDS:

Information is contained in secure buildings or in areas which are

occupied either by officers and responsible employees of the Bureau of the Public Debt who are subject to personnel screening procedures and to the Treasury Department Code of Conduct or by agents of the Bureau of the Public Debt who are required to maintain proper control over records while in their custody. Additionally, since in most cases, numerous steps are involved in the retrieval process, unauthorized persons would be unable to retrieve information in meaningful form. Information stored in electronic media is safeguarded by automatic data processing security procedures in addition to physical security measures. Additionally, for those categories of records stored in computers with online terminal access, the information cannot be accessed without proper passwords and preauthorized functional capability.

RETENTION AND DISPOSAL:

Records of holdings, forms, documents, and other legal papers which constitute the basis for transactions subsequent to original issue are maintained for such time as is necessary to protect the legal rights and interests of the United States Government and the persons affected, or otherwise until they are no longer historically significant. Other records are disposed of at varying intervals in accordance with records retention schedules reviewed and approved by the National Archives and Records Administration (NARA). Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

(3) Requests by individuals about securities they own:

(a) For current income savings bonds: Individuals may contact the nearest Treasury Retail Securities Site as listed in the Appendix to this system of records or the Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312. If the Treasury Retail Securities Site cannot access the particular record, the individual will be advised to contact Retail Securities at the Bureau of the Public Debt. Individuals must provide sufficient information, including their address and social security number, to identify themselves as owner or co-owner of the securities. They should provide the complete bond serial numbers, including alphabetic prefixes and suffixes, if known. Otherwise, the series, approximate date, form of registration, and, except for Series G Savings Bonds registered in co-ownership form, the names and social security numbers of all persons named in the registration should be provided. If a Case Identification Number is known, that should be provided.

(b) For all other types of securities covered by this system of records: Individuals should contact the following: Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312. Individuals should provide sufficient information, including their address and social security number, to identify themselves as owner or co-owner of the securities. Individuals must provide sufficient information to identify the securities, such as type or series of security, approximate date of issue, serial number, form of registration, and the name and social security number of the first-named co-owner, or in the case of gift bonds the social security number of the purchaser if that number was used.

(4) Requests by anyone other than individuals named on securities must contain sufficient information to identify the securities; this would include type or series of securities, approximate date of issue, serial number, and form of registration. These requests will be honored only if the identity and right of the requester to the information have been established. Send requests to the addresses shown in (3)(a) or (3)(b) above, depending on the type of security involved.

(a) Requests by a beneficiary for information concerning securities registered in beneficiary form must be accompanied by the name and social security number of the owner and by proof of death of the registered owner.

(b) Requests for records of holdings or other information concerning a deceased or incapacitated individual must be accompanied either by evidence of the requester's appointment as legal representative of the estate of the individual or by a statement attesting that no such representative has been appointed and giving the nature of the relationship between the requester and the individual.

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals must be mailed or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information on records in this system is furnished by the individuals or their authorized representatives as listed in ''Categories of Individuals'' and issuing agents for securities or is generated within the system itself.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

APPENDIX OF TREASURY RETAIL SECURITIES SITES:

This appendix provides individuals contact information for inquiring about their securities.

Federal Reserve Bank, Pittsburgh Branch, P.O. Box 299, Pittsburgh, PA 15230–0299; Telephone 1–800–245–2804.

Federal Reserve Bank, Minneapolis Branch, P.O. Box 214, Minneapolis, MN 55480–0214; Telephone 1–800–553–2663.

Bureau of the Public Debt, Retail Securities, Parkersburg, WV 26106–5312.

TREASURY/BPD.003

SYSTEM NAME:

United States Securities (Other than Savings-Type Securities)—Treasury/BPD.

SYSTEM LOCATION(S):

Bureau of the Public Debt, 200 Third Street, Parkersburg, WV; Bureau of the Public Debt, 799 9th Street, NW., Washington, DC; and Federal Reserve Banks and Branches in Minneapolis, MN; Philadelphia, PA; and Pittsburgh, PA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former owners of, subscribers to, claimants to, persons entitled to, and inquirers concerning United States Treasury securities (except savings-type securities) and interest on securities and such securities for which the Treasury acts as agents, including without limitation, Treasury Bonds, Notes, and Bills; Adjusted Service Bonds; Armed Forces Leave Bonds; and Federal Housing Administration Debentures.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Issuance: Records relating to tenders, bids, subscriptions, advices of shipment, requests (applications) for original issue, and correspondence concerning erroneous issue and nonreceipt of securities.

(2) Holdings: Records of ownership and interest activity on registered or recorded United States securities (other than savings-type securities); records about fees for Legacy TreasuryDirect accounts exceeding a stipulated amount; change of name and address notices; correspondence concerning errors in registration or recordation; nonreceipt or over- and underpayments of interest and principal; records of interest activity; records of unclaimed accounts; and letters concerning the New York State tax exemption for veterans of World War I.

(3) Transactions (redemptions, payments, reissues, transfers, and exchanges): Records which include securities transaction requests; records about fees for definitive securities issued; legal papers supporting transactions; applications for transfer, disposition, or payment of securities of deceased or incompetent owners; records of Federal estate tax transactions; certificates of ownership covering paid overdue bearer securities; records of erroneous redemption transactions; records of retired securities; and payment records.

(4) Claims: Records including correspondence concerning lost, stolen, destroyed, or mutilated United States securities (other than savings-type securities) or securities for which the Treasury acts as agent and interest coupons thereon; bonds of indemnity; legal documents supporting claims for relief; and records of caveats entered.

(5) Inquiries: Records of correspondence with individuals who have requested information concerning United States Treasury securities (other than savings-type securities) or securities for which the Treasury acts as agent.

(6) All of the above categories of records except ''(4) Claims'' include records of Treasury bills, notes, and bonds in the TreasuryDirect Book-entry Securities System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 3101 *et seq.*

PURPOSE(S):

Information in this system of records is collected and maintained to enable the Bureau of the Public Debt and its agents to issue United States securities (other than savings-type securities), to process transactions, to make payments, and to identify owners and their accounts.

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

These records may be disclosed to:

(1) Agents or contractors of the Department for the purpose of administering the public debt of the United States;

(2) Next-of-kin, voluntary guardian, legal representative or successor in interest of a deceased or incapacitated owner of securities and others entitled upon transfer, exchange, distribution, or payment for the purpose of assuring equitable and lawful disposition of securities and interest;

(3) Any of the owners if the related securities are registered or recorded in the names of two or more owners;

(4) The Internal Revenue Service for the purpose of facilitating the collection of the tax revenues of the United States;

(5) The Department of Justice when seeking legal advice or when:

(a) The Department of the Treasury (agency) or

(b) The Bureau of the Public Debt, or

(c) Any employee of the agency in his or her official capacity, or

(d) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(e) The United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) The Department of Veterans Affairs when it relates to the holdings of Armed Forces Leave Bonds to facilitate the redemption or disposition of these securities;

(7) Other Federal agencies to effect salary or administrative offset for the purpose of collecting debts;

(8) A consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports;

(9) A debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services;

(10) Contractors conducting Treasury-sponsored surveys, polls, or statistical analyses relating to marketing or administration of the public debt of the United States;

(11) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(12) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(13) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(14) Disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments that may be used to collect the debt through administrative or salary offset;

(15) Disclose through computer matching information on holdings of Treasury securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies;

(16) Disclose through computer matching, information on individuals with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter-forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities; and

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

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

In accordance with the Privacy Act (5 U.S.C. 552a(b)(12)), disclosures may be made from this system of records to ''consumer reporting agencies'' as defined in 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government. After the prerequisites of 31 U.S.C. 3711 have been followed, the Bureau of the Public Debt may disclose information necessary to establish the identity of the individual responsible for the claim, including name, address, and taxpayer identification number; the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, microform, or in electronic media.

RETRIEVABILITY:

Information can be retrieved by social security account number, other assigned identifier, or, in some cases, alphabetically by name or numerically by security serial number. In the case of securities registered in more than one name, information relating to those securities generally can be retrieved only by social security number or by the name of the first-named owner.

SAFEGUARDS:

Information is contained in secure buildings, Federal Records Centers, or in areas which are occupied either by officers and responsible employees of the Department who are subject to personnel screening procedures and to the Executive Branch and Treasury Department Standards of Conduct or by agents of the Department who are required by the Department to maintain proper control over records while in their custody. Additionally, since in most cases, numerous steps are involved in the retrieval process, unauthorized persons would be unable to retrieve information in a meaningful form. Information stored in electronic media is safeguarded by automatic data processing security procedures in addition to physical security measures. Additionally, for those categories of records stored in computers with terminal access, the information cannot be obtained or modified without proper passwords and preauthorized functional capability.

RETENTION AND DISPOSAL:

Records of holdings, forms, documents, and other legal papers which constitute the basis for transactions subsequent to original issue are maintained for such time as is necessary to protect the legal rights and interests of the U.S. Government and the persons affected, or otherwise until they are no longer historically significant. Other records are disposed of at varying intervals in accordance with records retention schedules reviewed and approved by the National Archives and Records Administration (NARA). Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 FR 1.26(d)(2)(ii).

(3) Requests by individuals about securities they own:

(a) For Treasury bills, notes, or bonds held in the Legacy Treasury Direct Book-entry Securities System: Individuals may contact the nearest Treasury Retail Securities Site listed in the Appendix to this system of records or contact Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312. Individuals should provide sufficient information, including their social security number, to identify themselves as owners of securities and sufficient information, including account number, to identify their TreasuryDirect account.

(b) For all other categories of records in this system of records: Individual owners should contact: Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312. Requests must contain information to identify themselves including name, address, and social security number; the type of security involved such as a registered note or bond, an Armed Forces Leave Bond, etc.; and, to the extent possible specify the loan, issue date, denomination, exact form of registration, and other information about the securities.

(4) Requests by individuals who are representatives of owners or their estates require appropriate authority papers. Write to: Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312, to obtain information on these requirements.

(5) In all cases: The request for information will be honored only if the identity and right of the requester to the information have been established.

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals must be mailed to or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information contained in records in the system is furnished by the individuals or their authorized representatives as listed in ''Categories of Individuals,'' or is generated within the system itself.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

APPENDIX OF TREASURY RETAIL SECURITIES SITES:

This appendix lists the mailing addresses and telephone number of the places that individuals may contact to inquire about their securities accounts maintained in Legacy Treasury Direct. The toll-free telephone number 1–800–722–2678 is used to reach all the locations.

Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

Treasury Retail Securities Site, P.O. Box 567, Pittsburgh, PA 15230–0567.

Treasury Retail Securities Site, P.O. Box 9150, Minneapolis, MN 55480–9150.

TREASURY/BPD.004

SYSTEM NAME:

Controlled Access Security System—Treasury/BPD.

SYSTEM LOCATION(S):

Bureau of the Public Debt, Parkersburg, WV.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of the Public Debt employees, employees of contractors or service companies, and official visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record is created for each physical access to designated areas and includes card number, work shift, access level, and the time, date and location of each use of the access card at a card reader. The access record also includes the individual's biographic information (full legal name, date of birth, and Social Security Number) and biometric information (fingerprints, digital color photograph, height, weight, and eye/hair color).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. Sec. 321; 41 CFR 101–20.103.

PURPOSE(S):

Information in this system of records is collected and maintained to allow the Bureau of the Public Debt to control and verify access to all Parkersburg, West Virginia Public Debt facilities.

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

These records may be disclosed to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license;

(2) A Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, or in response to a subpoena;

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

(5) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, arbitrators and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties; and

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, microform, or in electronic media.

RETRIEVABILITY:

Information on individuals can be retrieved by name or card number or other assigned identifier such as biometric or biographic information.

SAFEGUARDS:

Both the central system and the peripheral system will have limited accessibility. Paper records and magnetic disks are maintained in locked file cabinets with access limited to those personnel whose official duties require access, such as the systems manager, Bureau security officials, and employee relations specialists. Access to terminals is limited through the use of passwords to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The retention period is for five years. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Management Services, Division of Security and Emergency Programs, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved,

identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Bureau of the Public Debt or the delegate of such officer. Appeals must be mailed to or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

The individual concerned, his/her supervisor, or an official of the individual's firm or agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BPD.005

SYSTEM NAME:

Employee Assistance Records—Treasury/BPD.

SYSTEM LOCATION(S):

This system covers Bureau of the Public Debt employee assistance records that are maintained by another Federal, State, or local government, or contractor under an agreement with the Bureau of the Public Debt directly or through another entity to provide the Employee Assistance Program (EAP) functions. The address of the other agency or contractor may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of the Public Debt employees and former employees who will be or have been counseled, either by self-referral or supervisory-referral regarding alcohol or drug abuse, emotional health, or other personal problems. Where applicable, this system also covers family members of these employees when the family member utilizes the services of the EAP as part of the employee's counseling or treatment process.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of each employee and, in some cases, family members of the employee who have utilized the Employee Assistance Program for an alcohol, drug, emotional, or personal problem. Examples of information which may be found in each record are the individual's name, social security number, date of birth, grade, job title, home address, telephone numbers, supervisor's name and telephone number, assessment of problem, and referrals to treatment facilities and outcomes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7361, 7362, 7904; 44 U.S.C. 3101.

PURPOSE(S):

To provide a history and record of the employee counseling session.

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

These records may be disclosed to:

(1) An entity under contract with the Bureau of the Public Debt for the purpose of providing the EAP function;

(2) Medical personnel to the extent necessary to meet a bona fide medical emergency in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2);

(3) Qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, provided individual identifiers are not disclosed in any manner, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2);

(4) A third party upon authorization by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2);

(5) The Department of Justice or other appropriate Federal agency in defending claims against the United States when the records are not covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR part 2; and

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, microform, or in electronic media.

RETRIEVABILITY:

These records are retrieved by the name and social security number or other assigned identifier of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secure room in a locked file cabinet, safe, or similar container when not in use. Automated records are protected by restricted access procedures. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records. When the Bureau of the Public Debt contracts with an entity for the purpose of providing the EAP functions, the contractor shall be required to maintain Privacy Act safeguards with respect to such records.

RETENTION AND DISPOSAL:

The retention period is three years after termination of counseling or until any litigation is resolved, after which the records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Executive Director, Administrative Resource Center, Human Resources Operations Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

After you contact the contractor, following are the steps that will be required:

(1) Submit requests to the contractor. For information about how to contact the contractor, write to the appropriate office as shown under ''System Manager and Address'' above.

(2) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The contractor reserves the right to require additional verification of an individual's identity.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

Initial amendment requests: After you contact the contractor, following are the steps that will be required:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The contractor reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the contractor. For information about how to contact the contractor, write to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Bureau of the Public Debt or the delegate of such officer. Appeals must be mailed to or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, or the contractor's staff member who records the counseling session.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BPD.006

SYSTEM NAME:

Health Service Program Records—Treasury/BPD.

SYSTEM LOCATION(S):

Bureau of the Public Debt locations at 200 Third Street, Parkersburg, WV; and Avery Street Building, 320 Avery Street, Parkersburg, WV.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Bureau of the Public Debt employees who receive services under the Federal Employee Health Services Program from the Bureau of the Public Debt Health Unit in Parkersburg, West Virginia.

(2) Federal employees of other organizations in the Parkersburg, West Virginia vicinity who receive services under the Federal Employee Health Services Program from the Bureau of the Public Debt Health Unit in Parkersburg, West Virginia.

(3) Non-Federal individuals working in or visiting the buildings, who may receive emergency treatment from the Bureau of the Public Debt Health Unit in Parkersburg, West Virginia.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of an individual's utilization of services provided under the Federal Government's Health Service Program. These records contain information such as: Examination, diagnostic, assessment and treatment data; laboratory findings; nutrition and dietetic files; nursing notes; immunization records; blood donor records; CPR training; First Aider; names, Social Security number, date of birth, handicap code, addresses, and telephone numbers of individual; name, address, and telephone number of individual's physician; name, address, and telephone number of hospital; name, address, and telephone number of emergency contact; and information obtained from the individual's physician; and record of requested accesses by any Bureau of the Public Debt employee (other than Health Unit personnel) who has an official need for the information.

Note:

This system does not cover records related to counseling for drug, alcohol, or other problems covered by System No. Treasury/BPD.005–Employee Assistance Records. Medical records relating to a condition of employment or an on-the-job occurrence are covered by the Office of Personnel Management's System of Records No. OPM/GOVT–10–Employee Medical File System Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE(S):

These records document an individual's utilization on a voluntary basis of health services provided under the Federal Government's Health Service Program at the Health Unit at the Bureau of the Public Debt in Parkersburg, West Virginia. Data is necessary to ensure proper evaluation, diagnosis, treatment, and referral to maintain continuity of care; a medical history of care received by the individual; planning for further care of the individual; a means of communication among health care members who contribute to the individual's care; a legal document of health care rendered; a tool for evaluating the quality of health care rendered.

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

These records may be disclosed to:

(1) Medical personnel under a contract agreement with the Bureau of the Public Debt;

(2) A Federal, State, or local public health service agency as required by applicable law, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition;

(3) Appropriate Federal, State, or local agencies responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority;

(4) The Department of Justice when seeking legal advice or when

(a) The Department of the Treasury (agency) or

(b) The Bureau of the Public Debt, or

(c) Any employee of the agency in his or her official capacity, or

(d) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(e) The United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(5) A Federal agency responsible for administering benefits programs in connection with a claim for benefits filed by an employee;

(6) A Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

(7) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena or in connection with criminal law proceedings; and

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, or in electronic media.

RETRIEVABILITY:

These records are retrieved by the name or other assigned identifier of the individual to whom they pertain.

SAFEGUARDS:

These records are maintained in a secured room with access limited to Health Unit personnel whose duties require access. Medical personnel under a contract agreement who have access to these records are required to maintain adequate safeguards with respect to such records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Management Services, Division of Security and Emergency Programs, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1,

subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii). An individual who requests access to a Health Service Program Record shall, at the time the request is made, designate in writing the name of a responsible representative who will be willing to review the record and inform the subject individual of its content. This does not permit the representative to withhold the records from the requester. Rather, the representative is expected to provide access to the records while explaining sensitive or complex information contained in the records.

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Bureau of the Public Debt or the delegate of such officer. Appeals must be mailed to or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; laboratory reports and test results; Health Unit physicians, nurses, and other medical technicians who have examined, tested, or treated the individual; the individual's personal physician; other Federal employee health units; and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BPD.007

SYSTEM NAME:

Gifts to Reduce the Public Debt—Treasury/BPD.

SYSTEM LOCATION(S):

Bureau of the Public Debt, 200 Third Street, Parkersburg, WV.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of gifts to reduce the public debt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence; copies of checks, money orders, or other payments; copies of wills and other legal documents; and other material related to gifts to reduce the public debt received on or after October 1, 1984, by the Bureau of the Public Debt either directly from the donor, through the donor's Congressional or other representative, or, since January 14, 2010, from the Financial Management Service.

NOTE:

This system does not cover gifts to reduce the public debt received prior to October 1, 1984, when the Financial Management Service handled this function. This system of records does not cover gifts sent to other agencies, such as gifts sent with one's Federal income tax return to the Internal Revenue Service. This system does not include any other gifts to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3113.

PURPOSE(S):

These records document the receipt from donors of gifts to reduce the public debt. They provide a record of correspondence acknowledging receipt, information concerning any legal matters, and a record of depositing the gift and accounting for it.

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

These records may be disclosed to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

(3) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Agents or contractors of the Department for the purpose of administering the public debt of the United States;

(5) A legal representative of a deceased donor for the purpose of properly administering the estate of the deceased;

(6) The Internal Revenue Service for the purpose of confirming whether a tax-deductible event has occurred;

(7) The Department of Justice when seeking legal advice or when

(a) The Department of the Treasury (agency) or

(b) The Bureau of the Public Debt, or

(c) Any employee of the agency in his or her official capacity, or

(d) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(e) The United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, microform, or in electronic media.

RETRIEVABILITY:

These records are retrieved by the name of the donor; amount of gift; type of gift; date of gift; social security number of donor, if provided; control number; check number; State code; or other assigned identifier.

SAFEGUARDS:

These records are maintained in controlled access areas. Automated records are protected by restricted access procedures. Checks and other payments are stored in locked safes with access limited to personnel whose duties require access.

RETENTION AND DISPOSAL:

Records of gifts to reduce the public debt are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESSES:

(A) Customer Service Records: Assistant Commissioner, Office of Retail Securities, Division of Accounting and Risk Management, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(B) Accounting Records: Assistant Commissioner, Office of Public Debt Accounting, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Bureau of the Public Debt or the delegate of such officer. Appeals must be mailed to or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, executors, administrators, and other involved persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BPD.008

SYSTEM NAME:

Retail Treasury Securities Access Application—Treasury/BPD.

SYSTEM LOCATION(S):

Bureau of the Public Debt locations at 200 Third Street, Parkersburg, WV; and 799 9th Street, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover those individuals who provide information to create an account in TreasuryDirect for the purchase of United States Treasury securities through the Internet.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system collects and uses personal information to ensure the accurate identification of individuals who have an account in TreasuryDirect or to provide personalized service to these individuals. The types of personal information presently include or potentially could include the following:

(a) Personal identifiers (name, including previous name used; social security number; date of birth; physical and electronic addresses; telephone, fax, and pager numbers);

(b) Authentication aids (personal identification number, password, account number, shared-secret identifier, digitized signature, or other unique identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 3101, *et seq.*

PURPOSE(S):

Information in this system of records is collected and maintained to identify the individuals doing electronic business with the Bureau of the Public Debt. The information is required for individuals who invest in Treasury securities by using the Internet to purchase securities and conduct related transactions. The records are also used to improve service to those individuals.

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

These records may be disclosed to:

(1) Appropriate Federal, State, local, or foreign agencies or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order or license where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a court-ordered subpoena, or in connection with criminal law proceedings where relevant or potentially relevant to a proceeding;

(3) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Agents or contractors who have been engaged to assist the Bureau of the Public Debt in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(5) The Department of Justice when seeking legal advice or when

(a) The Department of the Treasury (agency) or

(b) The Bureau of the Public Debt, or

(c) Any employee of the agency in his or her official capacity, or

(d) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(e) The United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; and

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, multiple client-server platforms that are backed up to magnetic tape, microform, or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by name, alias names, social security number, account number, or other unique identifier.

SAFEGUARDS:

The Bureau of the Public Debt has Internet firewall security via hardware and software configurations as well as specific monitoring tools. Records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords, sign-on protocols, and user authentication that are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Records are disposed of at varying intervals in accordance with records retention schedules reviewed and approved by the National Archives and Records Administration (NARA). Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Retail Securities, Bureau of the Public Debt, 200 3rd Street, Parkersburg, WV 26106–5312

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under ''Records Access Procedures.'' Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests that do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

Initial amendment requests:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Submit requests to the appropriate office as shown under ''System Manager and Address'' above.

(3) The request must specify:

(a) The dates of records in question,

(b) The specific records alleged to be incorrect,

(c) The correction requested, and

(d) The reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without a photograph, but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Bureau of the Public Debt or the delegate of such officer. Appeals must be mailed to or delivered personally to: Chief Counsel, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked ''Privacy Act Amendment Appeal'' and specify:

(a) The records to which the appeal relates,

(b) The date of the initial request made for correction of the records, and

(c) The date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information is provided by the individual covered by this system of records or, with their authorization, is derived from other systems of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BPD.009

SYSTEM NAME:

U.S. Treasury Securities Fraud Information System—Treasury/BPD.

SYSTEM LOCATION(S):

The system of records is located at the Bureau of the Public Debt in Parkersburg, WV and Washington, DC as well as the Federal Reserve Banks of Philadelphia, Pittsburgh, and Minneapolis. This system also covers the Bureau of the Public Debt records that are maintained by contractor(s) under agreement. The system manager(s) maintain(s) the system location of these records. The address(es) of the contractor(s) may be obtained from the system manager(s) below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under investigation or who make inquiries or report fraudulent

or suspicious activities related to Treasury securities and other U.S. obligations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected/used by this system are necessary to ensure the accurate identification of individuals who report or make fraudulent transactions involving Treasury securities and other U.S. obligations. The types of personal information potentially could include the following:

(1) Personal identifiers (name, including previous name used, and aliases; social security number; tax identification number; physical and electronic addresses; telephone, fax, and pager numbers); and

(2) Authentication aids (personal identification number, password, account number, credit card number, shared-secret identifier, digitized signature, or other unique identifier).

Supporting records may contain correspondence between the Bureau of the Public Debt and the entity or individual submitting a complaint or inquiry, correspondence between the Bureau of the Public Debt and the Department of the Treasury, or correspondence between the Bureau of the Public Debt and law enforcement, regulatory bodies, or other third parties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321(a)(5), 31 U.S.C. 333, 31 U.S.C. 3101, *et seq.* 31 U.S.C. 5318, and 5 U.S.C. 301.

PURPOSE(S):

Records in this system are used to: (1) Identify and monitor fraudulent and suspicious activity related to Treasury securities and other U.S. obligations; (2) ensure that the Bureau of the Public Debt provides a timely and appropriate notification of a possible violation of law to law enforcement and regulatory agencies; (3) protect the Government and individuals from fraud and loss; (4) prevent the misuse of Treasury names and symbols on fraudulent instruments; and, (5) compile summary reports that conform with the spirit of the USA Patriot Act's anti-terrorism financing provisions and the Bank Secrecy Act's anti-money laundering provisions, and submit the reports to the Financial Crimes Enforcement Network (FinCEN).

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

These records may be disclosed to:

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

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(4) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Agents or contractors who have been engaged to assist the Bureau of the Public Debt in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(6) The Department of Justice when seeking legal advice or when

(a) The Department of the Treasury (agency) or

(b) The Bureau of the Public Debt, or

(c) Any employee of the agency in his or her official capacity, or

(d) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(e) The United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; and

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, multiple client-server platforms that are backed-up to magnetic tape or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by (name, alias name, social security number, tax identification number, account number, or other unique identifier).

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols that are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS(ES):

(1) Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312.

(2) Assistant Commissioner, Office of Retail Securities, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312

(3) Office of the Chief Counsel, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312

NOTIFICATION PROCEDURE:

This system of records is exempt from the Privacy Act provision on notification procedures. (See ''Exemptions Claimed for the System,'' below.) An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer. See 31 CFR part 1, Subpart C, appendix I.

IDENTIFICATION REQUIREMENTS:

An individual seeking notification through the mail must establish his or her identity by providing a signature

and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature. Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses. Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

This system of records is exempt from the Privacy Act provision on record access procedures. (See ''Notification Procedure'' above.)

CONTESTING RECORD PROCEDURES:

This system of records is exempt from the Privacy Act provision on contesting record procedures. (See ''Notification Procedure'' above.)

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision that requires that record source categories be reported. (See ''Exemptions Claimed for the System,'' below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

[FR Doc. 2011–20949 Filed 8–16–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, 435, et al.
Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, 435, and 457

[CMS–2349–P]

RIN 0938–AQ62

Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act). The Affordable Care Act expands access to health insurance through improvements in Medicaid, the establishment of Affordable Insurance Exchanges (''Exchanges''), and coordination between Medicaid, the Children's Health Insurance Program (CHIP), and Exchanges. This proposed rule would implement sections of the Affordable Care Act related to Medicaid and CHIP eligibility, enrollment simplification, and coordination.

In addition, this proposed rule also sets out the increased Federal Medical Assistance Percentage (FMAP) rates and the related conditions and requirements that will be available for State medical assistance expenditures relating to ''newly eligible'' individuals and certain medical assistance expenditures in ''expansion States'' beginning January 1, 2014, including a proposal of three alternative methodologies to use for purposes of applying the appropriate FMAP for expenditures in accordance with section 2001 of the Affordable Care Act.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 31, 2011.

ADDRESSES: In commenting, please refer to file code CMS–2349–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2349–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2349–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Sarah Delone, (410) 786–0615.

Stephanie Kaminsky, (410) 786–4653.

SUPPLEMENTARY INFORMATION: A detailed Preliminary Regulatory Impact Analysis associated with this proposed rule is available at *http://www.cms.gov/MedicaidEligibility/downloads/CMS-2349-P-PreliminaryRegulatoryImpactAnalysis.pdf.* A summary of the aforementioned analysis is included as part of this proposed rule.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

Acronyms

Because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

Act Social Security Act
AFDC Aid to Families with Dependent Children
BBA Balanced Budget Act of 1997
CHIP Children's Health Insurance Program
CMS Centers for Medicare & Medicaid Services
DHS Department of Homeland Security
EITC Earned Income Tax Credit
EPSDT Early and periodic screening, diagnosis, and treatment
FFP Federal financial participation
FMAP Federal medical assistance percentage
FPL Federal poverty level
HCERA Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted March 30, 2010)
HHS [U.S.] Department of] Health and Human Services
IRA Individual Retirement Account
IRC Internal Revenue Code of 1986
IRS Internal Revenue Service
LEP Limited English Proficient
MAGI Modified adjusted gross income
MSA Medical Savings Account
PRWORA Personal Responsibility and Work Opportunity Reconciliation Act of 1996
QI Qualifying Individuals
QMB Qualified Medicare Beneficiaries
SHO State Health Official
SLMB Specified Low-Income Medicare Beneficiaries
SMD State Medicaid Director
SNAP Supplemental Nutrition Assistance Program
SPA State Plan Amendment
SSA Social Security Administration
SSI Supplemental Security Income
SSN Social Security number
TANF Temporary Assistance for Needy Families

I. Background

A. Introduction

The Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), was amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010), and together these laws are referred to as the Affordable Care Act. In addition, section 205 of the Medicare & Medicaid Extenders Act of 2010 (Pub. L. 111–309, enacted December 15, 2010) made technical corrections to the Social Security Act (the Act) to implement the Affordable Care Act. This proposed rule addresses changes to Medicaid and CHIP eligibility in the Affordable Care Act.

Prior to the implementation of the Affordable Care Act in 2014, individuals who fall into certain ''categories'' or ''categorical groups'' are eligible for Medicaid, including low-income children, pregnant women, parents and other caretaker relatives, seniors, and people with disabilities. Federal minimum income eligibility standards vary by category. All States currently cover pregnant women and children under age 6 at or below 133 percent of the Federal poverty level (FPL) (in some States the minimum eligibility level is 185 percent FPL for pregnant women and children under one), and children age 6 through age 18 with family incomes at or below 100 percent of the FPL, though many States have implemented higher standards for pregnant women and children. The Federally specified minimum eligibility levels for parents, people with disabilities and the elderly are significantly lower, although States have the option to expand coverage to people within these categories at higher income levels. Prior to the Affordable Care Act, States could not cover non-disabled, non-elderly adults who do not have dependent children, regardless of their income level, except through a Medicaid demonstration under Section 1115 of the Act. As a result of the varying Federal minimum standards and State options, eligibility for Medicaid is complicated and significant gaps continue to exist even among the lowest income Americans.

The Affordable Care Act extends and simplifies Medicaid eligibility. Starting in calendar year (CY) 2014, it replaces the complex categorical groupings and limitations to provide Medicaid eligibility to all individuals under age 65 with income at or below 133 percent FPL, provided that the individual meets certain non-financial eligibility criteria, such as citizenship or satisfactory immigration status. Children and, in some States, pregnant women will be eligible at income levels equal to or higher than the 133 percent level, depending on existing State-established

income eligibility standards. In addition, States will have a new option to expand eligibility beyond the new simplified Federal minimums.

In addition, starting January 1, 2014, eligibility for Medicaid for most individuals, as well as for CHIP, will be determined using methodologies that are based on modified adjusted gross income (MAGI), as defined in the Internal Revenue Code of 1986 (IRC). Per the Affordable Care Act, eligibility for advance payments of premium tax credits for the purchase of private coverage through the Exchange will use MAGI as it is defined in the IRC to determine eligibility as well. Medicaid, CHIP and the Exchanges will use common income methodologies and will align the rules and methodologies used to evaluate eligibility for most individuals under all three programs.

The alignment of the methods for determining eligibility is one part of an overall system established by the Affordable Care Act that allows for real-time eligibility determinations of most applicants and allows for prompt enrollment of individuals in the ''insurance affordability program'' for which they qualify. In this proposed rule, insurance affordability programs include Medicaid, CHIP, advance payments of premium tax credits and cost-sharing reductions through the Exchange, and any State-established Basic Health Program, if applicable.

Individuals will not have to apply to multiple programs nor will they be sent from one program to another if they initially apply to a program for which they are not ultimately eligible. To achieve coordination, this proposed rule for Medicaid and CHIP eligibility is aligned with the applicable provisions in the proposed rule establishing the Exchanges published in the July 15, 2011 **Federal Register** (76 FR 41866) (''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans''), as well as in the accompanying proposed rule published elsewhere in this **Federal Register** implementing the Affordable Care Act provisions related to the eligibility for advance payments of premium tax credits and cost-sharing reductions and enrollment in a qualified health plan through the Exchanges (referred to hereinafter as the ''Exchange proposed rule'') as well as the proposed rule developed by the Department of the Treasury regarding the health insurance premium assistance tax credit (''the Treasury proposed rule''), also published elsewhere in this **Federal Register**.

Section 2001 of the Affordable Care Act ensures that States will receive an increased FMAP for all newly eligible individuals, defined as those who would not have been eligible in the State in December 2009. The FMAP for these newly eligible individuals will be 100 percent for Calendar Year (CY) 2014—2016, gradually declining to 90 percent in 2020 where it remains indefinitely. In addition, some States that had expanded coverage to adults (parents and adults without children) prior to December 2009, referred to as ''expansion States,'' shall also receive an increased FMAP that begins in 2014 between the regular FMAP and the FMAP for newly eligible individuals and equalizing with the newly eligible FMAP in 2019 and beyond. The proposed rule sets forth the definitions of newly eligible individuals and expansion States as well as the applicable FMAPs beginning in 2014.

While the new FMAPs provide significant new federal financial support for States, they could cause States significant burden to administer if States had to evaluate all applicants under the new simplified rules for purposes of determining eligibility and under their otherwise obsolete December 2009 eligibility rules for purposes of determining the appropriate FMAP. A dual system would be inefficient and likely lead to inaccuracies. To promote States' ability to operate efficient and effective processes, this rule proposes three alternative approaches for determining the applicable FMAP. Based on the comments received through this proposed rule and the results of an upcoming CMS/HHS feasibility study, we expect to modify, narrow or combine the approaches available to States in the final rule. By establishing an alternative methodology or methodologies for use in the FMAP determination by a State, the proposed rule aims to ensure that it will not be necessary for a State to make an eligibility determination for every individual using two separate eligibility systems and thereby advancing efficient and effective operations for States, individuals, and the Federal government.

Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges. Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs. And Exchanges will give individuals and small businesses the same purchasing clout as big businesses.

The Departments of Health and Human Services, Labor, and the Treasury (the Departments) are issuing regulations implementing Exchanges in several phases. The first in this series was a Request for Comment relating to Exchanges, published in the August 3, 2010 **Federal Register** (75 FR 45584). Second, Initial Guidance to States on Exchanges was published issued on November 18, 2010. Third, a proposed rule for the application, review, and reporting process for waivers for State innovation was published in the March 14, 2011 **Federal Register** (76 FR 13553). Fourth, two proposed regulations were published in the **Federal Register** on July 15, 2011 (76 FR 41866 and 76 FR 41930) to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act. Fifth, a proposed regulation for the establishment of the Consumer Operated and Oriented Plan (CO–OP) Program under section 1322 of the Affordable Care Act was published in the **Federal Register** on July 20, 2011 (76 FR 43237). Sixth, three proposed rules, including this one, are being published in the **Federal Register** on August 17, 2011 to provide guidance on the eligibility determination process related to enrollment in a qualified health plan, advance payments of the premium tax credit, cost-sharing reductions, Medicaid, and the Children's Health Insurance Program (CHIP).

B. Legislative Overview

This proposed rule implements the Medicaid and CHIP eligibility and enrollment provisions of the Affordable Care Act including:

- Section 1413, which directs the Secretary of HHS (the ''Secretary'') to establish a streamlined system for individuals to apply for and be enrolled in an insurance affordability program if eligible.
- Section 1414, which directs the Secretary of Treasury, upon written request, to provide the Secretary with certain tax return information used in determining an individual's eligibility for all insurance affordability programs.
- Section 2001, which sets out the Medicaid eligibility changes and new optional coverage effective in CY 2014.
- Section 2002, which references the determination of financial eligibility for Medicaid for certain populations.
- Section 2101, which implements new eligibility standards for CHIP.
- Section 2201, which simplifies and coordinates eligibility and enrollment system between all insurance affordability programs.

• Section 2001(a)(3), which added a new section 1905(y) of the Act, which provides for a significant increase in the FMAP for medical assistance expenditures for individuals determined eligible under the adult group in the State and who are considered to be ''newly eligible'', as defined in section 1905(y)(2)(A) of the Act.

• Section 10201(c)(4), which added a new section 1905(z) to the Act. As discussed in section N of this rule, Section 1905(z) of the Act contains two provisions, which make available additional FMAP rates for the expansion States.

In this rule, ''CHIP'' refers to a separate child health program operated by a State under title XXI and the regulations governing such programs at 42 CFR part 457.

C. Overview of the Proposed Rule

The proposed amendments to 42 CFR parts 431, 435, and 457 in this rule propose the Federal policies and guidelines necessary to facilitate the creation of the eligibility and enrollment system established by the Affordable Care Act. Amendments to 42 CFR part 435 subparts B and C are proposed to implement the statutory changes to Medicaid eligibility. We propose amendments to subpart A to add new or revised definitions.

Amendments to 42 CFR part 435 subpart G propose that, for most individuals, financial eligibility for Medicaid will be based on MAGI, to define the new MAGI-based financial methodologies, and to identify those individuals whose eligibility will not be based on MAGI.

Proposed amendments to subpart J and the addition of a new subpart M provide Federal rules to promote the establishment by States of a seamless and coordinated system to determine eligibility of individuals seeking assistance and to enroll them in the appropriate insurance affordability program. We propose a new subpart M to delineate the responsibilities of the State Medicaid agency in the coordinated system of eligibility and enrollment established under the Affordable Care Act, and propose comparable amendments for CHIP at 42 CFR part 457.

We propose to amend 42 CFR part 433 to add new provisions at § 433.10(c) to indicate the increases to the FMAPs as available to States under the Affordable Care Act. A number of provisions in the Affordable Care Act are not included in this proposed rule, but either have been or will be addressed in separate rulemaking or other guidance. In the April 19, 2011 **Federal Register**, we published the Federal Funding for Medicaid Eligibility Determination and Enrollment Activities final rule (76 FR 21950) that provides details on enhanced Federal funding for Medicaid eligibility systems.

We also intend to issue additional proposed rules on related matters such as appeals, notices, presumptive eligibility, eligibility for former foster care children, deletion of existing regulations that have been rendered obsolete, and eligibility policy in the territories. In addition, we intend to release a Request for Information (RFI) related to State conversion of current income standards to MAGI-equivalent standards per section 2002 of the Affordable Care Act as well as a RFI related to the State flexibility to establish basic health programs for low-income individuals not eligible for Medicaid under section 1331 of the Affordable Care Act.

II. Provisions of the Proposed Rule

The following descriptions are structured to explain the provisions being proposed and do not necessarily follow the order of the regulation's text.

A. Changes to Medicaid Eligibility

1. Coverage for Individuals Age 19 or Older and Under Age 65 at or Below 133 Percent FPL (§ 435.119)

Section 2001(a) of the Affordable Care Act adds a new section 1902(a)(10)(A)(i)(VIII) of the Act (referred to as ''the adult group''), under which States will provide Medicaid coverage starting in CY 2014 to individuals under age 65 who are not otherwise mandatorily eligible for Medicaid under sections 1902(a)(10)(A)(i)(I) through (VII) or (IX) of the Act and have household income, based on the new MAGI methods described in section II.B of this proposed rule, at or below 133 percent FPL. Although the Act specifies that this new group is for individuals under age 65, individuals under age 19 are not included because such individuals with household income at or below 133 percent FPL are covered in the eligibility groups under sections 1902(a)(10)(A)(i)(IV), (VI), and (VII) of the Act.

We propose to replace the current § 435.119 (which addresses obsolete provisions for eligibility of qualified family members under section 1902(a)(10)(A)(i)(V) of the Act for which the statutory authority ended on September 30, 1998), to establish this new eligibility group.

Proposed § 435.119(a) and (b) set forth the policy, explained above. Reflected in proposed paragraph (b), financial eligibility for the adult group will be based on MAGI, as defined in section 1902(e)(14) of the Act and implemented at proposed § 435.603; there is no resource test.

Section 1902(a)(10)(A)(i)(VIII) of the Act specifies that individuals may be eligible for the adult group if they ''are not described in a previous subclause of'' section 1902(a)(10)(A)(i) of the Act. Under these proposed rules, an individual is not eligible under the new adult group if the individual is otherwise eligible under section 1902(a)(10)(A)(i) of the Act and 42 CFR 435 subpart B, but may be eligible for the adult group if the individual is described in but not eligible for Medicaid under another mandatory group. This will mean that an individual who is a recipient of Supplemental Security Income (SSI) benefits, and so potentially eligible under section 1902(a)(10)(A)(i)(II) of the Act, may be eligible for coverage under the adult group in a State that has elected in accordance with section 1902(f) of the Act and § 435.121 to use more restrictive eligibility criteria for Medicaid than SSI.

The new adult group will include parents as well as adults not living with children. It will also include individuals currently eligible under an optional coverage group (such as, for individuals with disabilities) who have household income, based on the new MAGI methods, at or below 133 percent of the FPL and otherwise meet the criteria for coverage under the new group. At proposed § 435.119(c), we codify section 1902(k)(3) of the Act, which permits coverage of parents and other caretaker relatives under the new adult group only if their children under age 19 (or higher if the State has elected to cover children under age 20 or 21 under § 435.222) are enrolled in Medicaid or ''other health insurance coverage.'' In paragraph (c)(1), we propose to define ''other health insurance coverage'' to mean minimum essential coverage, as defined in § 435.4 of this proposed rule.

2. Individuals Above 133 Percent FPL (§ 435.218)

Section 2001(e) of the Affordable Care Act adds a new section 1902(a)(10)(A)(ii)(XX) of the Act, giving States the option starting in CY 2014 to provide Medicaid coverage to individuals under age 65 (including pregnant women and children) with income above 133 percent FPL. This new eligibility group provides a simplified mechanism for States to cover individuals whose income exceeds the State's income standard for

mandatory coverage (for example, 133 percent FPL for the adult group). This option is an alternative to the use of income disregards under section 1902(r)(2) or 1931(b)(2)(C) of the Act, which have been used in the past to expand eligibility, but which will no longer be available starting in 2014.

We propose to add a new § 435.218 establishing this optional eligibility group, which covers individuals who are under 65 years old; are not eligible for and enrolled in an eligibility group under section 1902(a)(10)(A)(i) of the Act and 42 CFR 435 subpart B or under section 1902(a)(10)(A)(ii) of the Act and 42 CFR part 435 subpart C; and have household income based on MAGI that exceeds 133 percent of the FPL but does not exceed the optional income standard established by the State. The basis and basic eligibility criteria for this group are set forth in proposed § 435.218(a) and (b)(1).

Section 1902(a)(10)(A)(ii)(XX) of the Act specifies that individuals may be eligible under this category if they ''are not described in or enrolled under a previous subclause of'' section 1902(a)(10)(A)(ii) of the Act. We interpret the language ''described in or enrolled under'' to mean eligible for another optional or mandatory group under section 1902(a)(10)(A) of the Act, and we propose at § 435.218(b)(1)(ii) and (iii) that this limitation applies only if the individual is eligible for or enrolled under another eligibility group that is covered by the State.

To ease administrative burden on States and to make it easier for States to enroll eligible individuals under the simplest eligibility category, we also propose in § 435.218(b)(1)(ii) and (iii) that an individual who meets the eligibility criteria at § 435.218(b)(1)(i) and (iv) would be determined eligible under this group, unless the individual can be determined eligible under another eligibility group based on information available to the State from the application. A State is not required to make determinations regarding eligibility factors such as disability, level of care, or resources first in order to decide whether an individual would be eligible for another eligibility group, unless such determination can be made based only on the information provided on the application. However, as an exception to this, if an individual appears to be eligible as ''medically needy'' based on information provided, he or she could still be enrolled in this optional group. States would still have to determine eligibility under all possible categories if the individual is not eligible under this new optional group.

Section 1902(a)(10)(A)(ii)(XX) of the Act provides that, to be eligible under this optional group, an individual's income must ''not exceed the highest income eligibility level established under the State plan or under a waiver of the plan[.]'' We are interpreting the statute to give States flexibility in establishing the income standard for this group, provided such standard exceeds 133 percent FPL and is approved in the State plan.

Section 1902(hh)(1) of the Act provides that States ''may elect to phase-in'' coverage for this optional group ''based on the categorical group (including non-pregnant childless adults) or income, so long as the State does not extend such eligibility to individuals * * * with higher income before making individuals * * * with lower income eligible for medical assistance.'' We propose that if a State wants to phase in coverage for this group, it submit a plan for Secretarial approval.

Children are included in this new optional group for individuals above 133 percent FPL if they are not already eligible for Medicaid. Therefore, if a State covers children above 133 percent FPL under a separate CHIP and adopts coverage under this new optional group, the State ultimately must shift coverage of children with income at or below the income standard from CHIP to Medicaid under this group. The State would still be able to claim enhanced FMAP under title XXI for such children.

Section 1902(hh)(2) of the Act limits eligibility of parents and other caretaker relatives under the new optional group to individuals whose children have coverage in the same manner as eligibility is limited for parents and caretaker relatives under the new adult group per section 1902(k)(3) of the Act. At § 435.218(b)(2)(ii), we propose to implement this provision in the same manner as proposed for the new adult group at § 435.119(c).

3. Amendments to Part 435, Subparts A Through D

Determining Medicaid eligibility prior to the Affordable Care Act changes in CY 2014 is complicated due to a patchwork of multiple mandatory and optional eligibility groups for different ''categorical populations.'' Many States cover 50, 60, or more distinct eligibility groups. Financial eligibility is determined using methodologies based on other programs, such as the SSI and the former AFDC programs, adding further complexity to the eligibility determination process. In this rule, consistent with the Affordable Care Act policies, we propose to streamline and simplify current regulations governing Medicaid eligibility for children, pregnant women, parents, and other caretaker relatives whose financial eligibility, beginning in CY 2014, will be based on MAGI.

In response to the President's request, outlined in Executive Order 13563, that agencies streamline and simplify Federal regulations, we propose to use the authority of section 1902(a)(19) of the Act, which provides ''that eligibility * * * be determined * * * in a manner consistent with simplicity of administration and the best interests of recipients,'' to simplify and consolidate certain existing mandatory and optional eligibility groups into three categories starting in CY 2014, to complement the new adult group: (1) Parents and caretaker relatives (new § 435.110); (2) pregnant women (new § 435.116); and (3) children (new § 435.118).

As illustrated in Table 1, we are proposing to collapse existing Medicaid eligibility categories, with the goal of making the program significantly easier for States to administer and for the public to understand. In subsequent rulemaking, we will provide additional guidance on existing regulatory provisions that are effectively subsumed under the provisions contained in these proposed rules or have been rendered obsolete for other reasons. In proposing a simplified approach to eligibility for populations whose eligibility will be based on MAGI, it is our intent that eligibility for coverage will not change for any of the populations as a result of this proposal. We solicit comments on the implications of these proposed rules for individuals as well as States. Table 1 shows how the mandatory and optional groups in current regulations (the column on the left) are moved into the new broader groups (parents, pregnant women, and children) under this proposed rule.

TABLE 1

Social Security Act and Pre-ACA Regulations	Medicaid Proposed Rule		
	Parents/caretaker relatives (§ 435.110)	Pregnant women (§ 435.116)	Children < 19 (§ 435.118)
Mandatory Medicaid Eligibility Groups			
Low-income families—1902(a)(10)(A)(i)(I) and 1931 AFDC recipients—§ 435.110	X	X	X
Qualified Pregnant Women & Children < 19—1902(a)(10)(A)(i)(III)—§ 435.116		X	X
Poverty-level related pregnant women & infants—1902(a)(10)(A)(i)(IV)—No rule		X	X
Poverty-level related children 1–5—1902(a)(10)(A)(i)(VI)—No rule			X
Poverty-level related children 6–18—1902(a)(10)(A)(i)(VII)—No rule			X
Optional Medicaid Eligibility Groups			
Families & children financially eligible for AFDC—1902(a)(10)(A)(ii)(I)—§ 435.210	Keeps 435.210 for parents/caretaker relatives.	X	X
Families & children who would be eligible for AFDC if not institutionalized—1902(a)(10)(A)(ii)(IV)—§ 435.211.		X	X
Poverty-level related pregnant women & infants—1902(a)(10)(A)(ii)(IX)—No rule		X	X

a. Eligibility for Parents and Other Caretaker Relatives, Pregnant Women, and Children

(1) Parents and Other Caretaker Relatives (§ 435.110)

We propose to delete in its entirety § 435.110 for individuals receiving AFDC and to replace it with a new § 435.110 for existing eligibility that is continuing under sections 1902(a)(10)(A)(i)(I) and 1931(b) and (d) of the Act for parents and other caretaker relatives of dependent children (including pregnant women who are parents or caretaker relatives). These statutory provisions remain and are not superseded by the provisions of the Affordable Care Act establishing a new adult group for individuals not otherwise eligible under section 1902(a)(10)(A)(i) of the Act. While the parent/caretaker relative category continues to apply, our proposed rules simplify this category considerably and provides States flexibility to set their income eligibility standard under this category within allowable Federal parameters.

Under the proposed rule, each State will establish an income standard in its State plan for coverage of parents and other caretaker relatives under § 435.110. The Federal minimum and maximum income standards for this group are set forth in sections 1931(b)(2)(A) and 1931(b)(2)(B) of the Act. The minimum income standard for the new parent/caretaker relative group is a State's AFDC income standards for a household of the applicable family size in effect as of May 1, 1988. The maximum income standard would be established as set forth below. The maximum income standard for the parent and other caretaker relative eligibility group would be the higher of:

- The State's effective income level (including any disregard of a block of income) for section 1931 families under the State plan or waiver of such plan as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent income standard in accordance with guidance to be issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act (The conversion of current income standards to a MAGI-equivalent standard is discussed in section II.B.3.a of this proposed rule.); and
- The State's AFDC income standard in effect as of July 16, 1996, increased by no more than the percentage increase in the Consumer Price Index for all urban consumers since such date.

If a State's income standard for the parent/caretaker relative group is below 133 percent FPL, parents and other caretaker relatives with income above that income standard and at or below 133 percent FPL would qualify for Medicaid under the new adult group. The conversion of current income standards to a MAGI-equivalent standard is discussed in section II.B.3.a of this proposed rule.

States currently have the option to cover parents and other caretaker relatives at income levels above the standard for families under section 1931 of that Act. They can do so under the authority at section 1902(a)(10)(A)(ii)(I) of the Act and § 435.210 of the existing regulations. This option will continue under the Affordable Care Act for coverage of parents and other caretaker relatives who are not eligible for mandatory Medicaid coverage under § 435.110 or the new adult group at proposed § 435.119. We note that parents and other caretaker relatives who are Medicare-eligible or elderly may be covered under § 435.110 and § 435.210, even though they are excluded from coverage under the adult group at § 435.119.

We are also proposing to simplify the income methods for determining eligibility under the new parent and other caretaker relative group. Pre-Affordable Care Act, section 1931 of the Act requires a two-step process in determining income eligibility: (1) The family must have gross income at or below 185 percent of the State's consolidated standard of need under its AFDC program, in effect as of July 16, 1996; and (2) the family's net countable income after subtracting various income exclusions and disregards and expenses must be at or below the State's AFDC payment standard or a higher income standard established by the State under section 1931 of the Act. Because each State's net countable income standard converted to a MAGI-equivalent income standard will be lower than its current gross income standard, we propose to eliminate the 185 percent gross income test as unnecessary and, to simplify eligibility, base income eligibility in proposed § 435.110 only on the second prong of the income test, that is, the net countable income standard converted to a MAGI-equivalent income standard.

Consistent with section 1931 of the Act, we propose Medicaid definitions of ''caretaker relative'' and ''dependent child'' at § 435.4. A caretaker relative is defined as a parent or other relative (related by blood, adoption, or marriage) living with a dependent child for whom such individual is assuming primary responsibility. Per section 1931 of the

Act, to be ''dependent,'' the child must be ''deprived'' of at least one parent's support by reason of death, absence, or unemployment. Under the statute, a parent is considered to be unemployed if he or she is working less than 100 hours per month. However, we propose to codify in this rule the flexibility given States in a final rule amending 45 CFR 233.101 (63 FR 42270) and in a State Medicaid Director letter dated September 22, 1997 to eliminate the ''deprivation'' requirement altogether (which most States have done) or to establish a higher number of working hours as the threshold for determining unemployment.

In proposing this rule, we are retaining the minimum income standards specified in Federal statute for each eligibility group, while giving States flexibility to set new standards at a level that takes into account a State's current rules regarding how income is counted. In all cases, the income standard would be applied to an individual's MAGI-based household income. We considered whether or not States should convert the Federal minimum income standards prescribed in statute—for example, the minimum standard for pregnant women and children specified in section 1902(l) and for parents and other caretaker relatives in section 1931(b) of the Act—to a MAGI-equivalent minimum income standard based on the income exclusions and disregards currently used by the State. While doing so could result in maintaining eligibility for individuals who might otherwise lose Medicaid due to the elimination of income exclusions and disregards under MAGI, if a State were to reduce its income standard to the minimum permitted, it also would result in different minimum income eligibility standards being applied across States and reduce the amount of eligibility simplification that could be achieved. We, therefore, do not propose to require conversion of the Federal minimum income standards currently prescribed in statute to MAGI-equivalent standards.

Furthermore, we do not believe that the impact on eligibility of the proposed policy will be significant. Eligibility standards for children must be maintained through September 2019, in accordance with the maintenance of effort provisions (MOE) in section 1902(gg) of the Act, and when the MOE provision expires, eligibility for only a small number of children would be affected if a State were to drop coverage to the minimum level permitted. Parents and other caretaker relatives who could lose eligibility under section 1931 of the Act if a State were to reduce coverage to the minimum permitted under the statute would retain eligibility under the new adult group. Pregnant women would be affected if a State were to decrease its income standard to the statutory minimum level, as the MOE for pregnant women ends with the establishment of an Exchange in 2014 and there is no other coverage group to which affected pregnant women would necessarily be transferred; instead, pregnant women affected by a State's decision to reduce its Medicaid income standard for pregnant women to the minimum permitted under the Act would likely become eligible for advanced payments of the premium tax credit for enrollment through the Exchange.

(2) Pregnant Women (§ 435.116)

As is true for parents and caretaker relatives, the law retains eligibility based on pregnancy. To simplify the eligibility rules, we propose to replace the current § 435.116 for qualified pregnant women and qualified children under section 1902(a)(10)(A)(i)(III) of the Act with a new § 435.116 for pregnant women. In addition, under the authority of section 1902(a)(19) of the Act, we are consolidating many different eligibility categories for pregnant women and are proposing to include in the revised § 435.116 all mandatory and optional eligibility groups, except the medically needy, for which pregnancy status and income are the only factors of eligibility. The following sections of the Act are included under the proposed § 435.116: 1931 (low-income families); 1902(a)(10)(A)(i)(III) (qualified pregnant women); 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(ii)(IX), and 1902(l) (poverty-level related pregnant women); 1902(a)(10)(A)(ii)(I) (pregnant women who meet AFDC financial eligibility criteria); and 1902(a)(10)(A)(ii)(IV) (institutionalized pregnant women).

Under the proposed rule, paragraphs (a) through (c) set forth the basis and basic provisions for coverage of pregnant women under § 435.116. We propose at § 435.116(c) that each State will establish an income standard in its State plan for coverage of pregnant women. The minimum income standard is 133 percent FPL, unless a higher income standard, at or below 185 percent FPL, was in effect for pregnant women on December 19, 1989 (section 1902(l)(2)(A) of the Act). The maximum income standard is the higher of:

- The highest effective income level (including any disregard of a block of income), converted to a MAGI-equivalent income standard, in effect under the State plan or waiver of the State plan as of March 23, 2010 or December 31, 2013, if higher, for coverage of pregnant women under the sections of the Act identified above; and
- 185 percent FPL.

We are also codifying current law to add a definition of ''pregnant woman'' in § 435.4, incorporating the post partum period.

While we propose to consolidate various eligibility categories for pregnant women, States continue to have flexibility under the statute to provide different benefits to certain pregnant women or to provide all pregnant women with full Medicaid coverage, as many States do today. Thus, under clause (V) in the matter following section 1902(a)(10)(G) of the Act, pregnant women eligible for Medicaid under sections 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(ii)(IX), and 1902(l) of the Act are only covered for services related to pregnancy or to a condition which may complicate the pregnancy. In accordance with section 1902(a)(10)(B) of the Act, all other pregnant women eligible for coverage under the sections of the Act listed in § 435.116(a) are eligible for all services that the State covers under the State plan, regardless of whether the service is related to pregnancy or to a condition that may complicate pregnancy.

However, States currently have the flexibility to provide full Medicaid coverage as pregnancy-related services for all pregnant women. Thus, we propose at § 435.116(d) that pregnant women are covered for full Medicaid coverage, unless a State elects to provide only the pregnancy-related services described at § 435.116(d)(3) for pregnant women whose income exceeds an income limit established by the State for full coverage. States have flexibility under existing regulations at § 440.210(a)(2) to establish a policy that all services covered under the State plan are related to pregnancy or to a condition that may complicate pregnancy. Therefore, States will not have to establish an income limit for full coverage for pregnant women under § 435.116(d)(4), but may elect to provide full coverage for all pregnant women. Reflected at proposed paragraph (d)(3), States also may elect to cover certain enhanced pregnancy-related services, as specified in § 440.250(p), for pregnant women only.

(3) Infants and Children Under age 19 (§ 435.118)

Section 2001(a)(4) of the Affordable Care Act amends section 1902(l)(2)(C) of the Act to provide Medicaid to children ages 6 through 18 with household income at or below at least 133 percent

FPL. This amendment eliminates certain of the age-based differences in Federal Medicaid eligibility rules for children, which currently provide for a minimum income standard of 100 percent FPL for coverage of children ages 6 through 18 (although many States have implemented optional coverage at higher levels), and means that all children and adults under age 65 with household income at or below 133 percent FPL will be eligible for Medicaid. Section 205(b) of the Medicare and Medicaid Extenders Act of 2010 clarifies that this amendment is effective January 1, 2014. If some or all of these children are covered under a separate CHIP before this provision takes effect, these children will move to coverage under Medicaid. Such a change, however, will not affect States' ability to claim enhanced FMAP under title XXI for these children.

Currently, there are many different mandatory and optional eligibility categories for children. To simplify the eligibility rules, we propose to include under § 435.118 all mandatory and optional eligibility groups for which age under 19 and income are the only factors of eligibility. The following sections of the Act are included under proposed § 435.118: 1931 (low-income families); 1902(a)(10)(A)(i)(III) (qualified children who meet AFDC financial eligibility criteria); 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) (infants); 1902(a)(10)(A)(i)(VI) (children ages 1 through 5); 1902(a)(10)(A)(i)(VII) (children ages 6 through 18); and 1902(a)(10)(A)(ii)(IV) (institutionalized children).

Proposed § 435.118(a) through (c) set forth the basis and eligibility criteria for children, as explained above. We propose in § 435.118(c) that each State will establish income standard(s) in its State plan for coverage of children by age group. There is no resource test. The minimum income standard for all age groups is 133 percent FPL, unless, for infants per section 1902(l)(2)(A) of the Act, a higher income standard, at or below 185 percent FPL, was in effect on December 19, 1989. The maximum income standard for each age group is the higher of:

- The highest effective income level for the age group (including any disregard of a block of income)—converted to a MAGI-equivalent standard—in effect under the State plan or waiver as of March 23, 2010 or December 31, 2013; or
- For infants, 185 percent FPL.

A State may not otherwise increase its income standard above the levels specified because, effective January 1, 2014, States may no longer apply new income disregards in determining eligibility for individuals whose eligibility is based on MAGI. Coverage at higher income levels can be implemented through adoption of the new optional group at proposed § 435.218.

The maintenance of effort (MOE) provisions of the Affordable Care Act at section 2001(b) maintain the minimum income standards for children at the levels in effect on March 23, 2010; these standards are maintained for children until September 30, 2019. These proposed regulations do not address the MOE provisions specified in sections 1902(a)(74) and 1902(gg) of the Act, as added by section 2001(b) of the Affordable Care Act. As a condition of receiving Federal financial participation, States must comply with these provisions, which are being addressed through subregulatory guidance.

Other Conforming Changes to Existing Regulations

Revisions are proposed at § 435.4 to the definition of ''families and children'' to delete references to AFDC rules. Definitions are proposed for ''agency,'' ''caretaker relative,'' ''dependent child,'' and ''pregnant woman.'' Definitions related to implementation of the Affordable Care Act are proposed for ''advance payments of the premium tax credit,'' ''Affordable Insurance Exchange (Exchange),'' ''effective income level,'' ''electronic account,'' ''household income,'' ''insurance affordability program,'' ''MAGI-based income,'' ''minimum essential coverage,'' ''modified adjusted gross income (MAGI),'' ''secure electronic interface,'' and ''tax dependent''.

B. Financial Methodologies for Determining Medicaid Eligibility Based on MAGI Under the Affordable Care Act

Section 2002 of the Affordable Care Act, as amended by section 1004 of the HCERA, creates a new section 1902(e)(14) of the Act, which provides that effective January 1, 2014, financial eligibility for most individuals shall be based on MAGI and ''household income,'' as defined in section 36B(d)(2) of the IRC (hereinafter referred to as ''section 36B definitions''). In this preamble, ''MAGI-based methodologies'' refers both to the rules governing the determination of the MAGI of an individual or a married couple filing a joint tax return, as well as to the determination of total household income. Similarly, reference to the determination of income eligibility ''based on MAGI'' refers to determinations based on household income using MAGI-based methodologies.

The adoption of MAGI-based methodologies to determine income represents a significant simplification for the Medicaid program, eligibility for which has historically been linked to programs providing cash assistance to low-income populations. We are considering permitting States to convert to MAGI-based methodologies prior to 2014 through section 1115 demonstrations.

Proposed § 435.603 sets forth proposed methodologies to implement MAGI in determining Medicaid eligibility for affected individuals effective January 1, 2014. Our proposed methodologies codify the section 36B definitions of MAGI and household income, except in a very limited number of cases discussed below. At proposed § 435.603(i), we identify those populations excepted under the Affordable Care Act from application of MAGI-based methodologies; for these populations pre-Affordable Care Act Medicaid financial methodologies—generally set forth in existing regulations at § 435.601 and § 435.602—will continue to apply.

1. Point-in-Time Measurement of Income (Budget Periods) (§ 435.603(h))

Under pre-Affordable Care Act Medicaid rules, per section 402(a)(13)(A) of former title IV–A of the Act, income eligibility for Medicaid is based on current income actually available to the individual in any given month. MAGI, as defined in section 36B of the IRC, is determined on the basis of annual income. The Affordable Care Act addresses this issue by adding section 1902(e)(14)(H)(i) of the Act to provide that the use of MAGI in determining eligibility for Medicaid shall not be ''construed as affecting or limiting the application of the requirement under this title to determine an individual's income as of the point in time at which an application for medical assistance is processed.'' Moreover, section 1902(a)(17) of the Act provides that States use eligibility standards and methodologies that are ''reasonable,'' ''consistent with the objectives of [the Act],'' and take into account only such income as is ''determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient[.]''

In this proposed rule, we refer to the ''point in time'' rules referenced in the statute as the ''budget period'' (that is, monthly versus annual income) based upon which income eligibility is determined. At proposed § 435.603(h)(3), we are retaining the

current flexibility afforded States to take into account future changes in income that can be reasonably anticipated (as may be the case with certain seasonal workers or someone with a signed employment contract or layoff notice). Such anticipated changes would be determined in accordance with the verification regulations at § 435.940 *et seq.* Uncertain changes in future income (for example, someone who is looking for, but has not secured, a job) may not be considered under the option reflected at proposed § 435.603(h)(3). Actual changes in income—including deviations from reasonably anticipated fluctuations in income—must still be reported to, and acted upon by, the agency in accordance with § 435.916(c) and (d).

To promote flexibility, administrative simplification and continuity of coverage for beneficiaries already enrolled in Medicaid, we propose at § 435.603(h)(2) to give States the additional flexibility, for individuals eligible for Medicaid based on MAGI, to maintain eligibility as long as annual income based on MAGI methods for the calendar year remains at or below the Medicaid income standard. This gives States the option to align with the annual eligibility period applied in the Exchanges and to minimize the extent to which individuals experiencing relatively small fluctuations in income bounce back and forth between programs.

We believe that these flexibilities will help address some of the challenges that will arise due to the reliance on monthly income for purposes of eligibility for Medicaid versus annual income for purposes of eligibility for advance payments of premium tax credits. In particular, if a State does not opt to take into account a reasonably predictable drop in future income, someone with current monthly income above the Medicaid income standard, but projected annual income below 100 percent FPL could be determined both ineligible for Medicaid (until their monthly income actually dropped) and for advance payments of the premium tax credit for enrollment through the Exchange (because, with very limited exceptions, individuals with income below 100 percent FPL are not eligible for advance payments of the premium tax credit). We solicit comments on how best to prevent a gap in coverage, including whether to ensure that State Medicaid agencies take into account a predictable future drop in income.

2. Changes to Medicaid Financial Methods

Under pre-Affordable Care Act Medicaid rules for families and children, essentially all money received, from whatever source, is counted as income in the month in which it is received, unless explicitly excluded or disregarded under the Act, disregarded at State option, or excluded under other Federal statutes. A ''household'' (for purposes of determining family size and whose income is counted) generally consists of parents and the children with whom they are living. Other non-legally responsible relatives and unrelated individuals living together are not included, nor are spouses or parents living apart from the rest of the family, which means that the income of such individuals is not deemed available to the Medicaid applicant. Under pre-Affordable Care Act Medicaid rules, inclusion of stepparents in a stepchild's household depends on State law relating to obligations to support stepchildren. A stepparent's income is considered available to his or her spouse since spouses are legally responsible for each other.

Section 36B of the IRC, and § 1.36B–1 of the IRS proposed premium tax credit rule, define ''MAGI, '' ''household income,'' and ''family size.'' See also section 152 of the IRC and Internal Revenue Service (IRS) Publication 501 regarding rules for claiming ''qualifying children'' and ''qualifying relatives'' as tax dependents. To be eligible to receive advance payments of a premium tax credit for the purchase of coverage through an Exchange, married couples generally must file jointly.

As discussed in section II.I of this proposed rule, sections 1413 and 2201 of the Affordable Care Act direct the creation of a seamless, simplified system of coordinated eligibility and enrollment between insurance affordability programs, and in most instances, section 36B definitions of ''MAGI'' and ''household income'' are applied to Medicaid to promote seamless coordination. In some situations, the application of these new rules will have the impact of constraining Medicaid eligibility, but consistent with the statute, we have applied the 36B rules because of the impact on coordination. In a few limited situations in which the potential adverse impact of adopting the section 36B definitions could be significant (albeit for a relatively small group of individuals), and the impact on coordination minimal, we propose, consistent with the statute, retention of current Medicaid rules.

3. Provisions of Proposed Rule Implementing MAGI Methods

Proposed § 435.603(a)(1) and (2) set forth the basis and scope of this section. At proposed § 435.603(a)(3), we implement section 1902(e)(14)(D)(v) of the Act, as added by section 2002(a) of the Affordable Care Act, which specifies that, in determining ongoing eligibility of individuals enrolled in the Medicaid program as of January 1, 2014, the financial methodologies based on MAGI shall not be applied until the next regularly-scheduled redetermination of eligibility after December 31, 2013 or March 31, 2014, whichever is later, if such individual otherwise would lose eligibility as a result of the shift to MAGI-based methodologies before such date.

Consistent with the 36B definition, we propose in § 435.603(b) to define ''family size'' as equal to the number of persons in the individual's household (as defined in paragraph (f) of this section and discussed below); ''tax dependent'' is defined in proposed revisions to § 435.4, and cross referenced at proposed § 435.603(b), as an individual for whom another individual properly claims a deduction for a personal exemption under section 151 of the IRC for a taxable year. Proposed § 435.603(c) sets forth the basic rule that, except for eligibility determinations exempt from MAGI methodologies, financial eligibility for Medicaid must be based on household income as defined in § 435.603(d).

Consistent with the section 36B definition of household income, proposed § 435.603(d)(1) provides that, for purposes of determining Medicaid eligibility under § 435.603, ''household income'' is the sum of the income based on MAGI-based methods of every individual who is: (1) included in the individual's household; and (2) required to file a tax return under section 6012 of the IRC, except that, also consistent with section 36B definitions, the MAGI-based income of a child who files a tax return, but is not required to file, is not included in household income under proposed § 435.603(d)(2). The MAGI-based income of adults as well as children who are not included in the household of their parent(s) is always counted in determining the household income of the adult or such child as well as the household income of their spouse and children with whom they are living (if any).

a. Proposed Methods for Counting Income Based on MAGI (§ 435.603(e))

In general, we propose income counting rules at § 435.603(e) that are the same as the section 36B definitions

to ensure streamlined eligibility rules and avoid coverage gaps. There are some differences in the treatment of several types of income under the IRC as compared to pre-Affordable Care Act Medicaid rules, in which the changes occasioned by the adoption of the section 36B definitions would have varying effects on the Medicaid eligibility of potential beneficiaries. Given the general directive to apply the section 36B definitions and the value of alignment, these proposed rules generally codify the section 36B rules and definitions. This is the case with respect to the treatment of child support payments, depreciation of business expenses, and capital gains and losses.

Under this regulation as proposed, we also are applying the section 36B rules and definitions of Social Security benefits under title II of the Act. Such benefits count as income for the purpose of determining eligibility for Medicaid under pre-Affordable Care Act treatment of income, but certain amounts of Social Security benefits are not counted as income under the 36B definition of MAGI. The section 36B treatment of Social Security benefits may increase State Medicaid costs, as some individuals who receive Social Security benefits would gain Medicaid eligibility using the 36B definitions. The Administration is concerned about this unintended consequence and is exploring options to address it, including a modification of the section 36B treatment of Social Security benefits through regulation. We seek comment on this issue, including how any modification of the proposed regulation may affect eligibility for premium tax credits for enrollment in a qualified health plan through the Exchange and how any potential gaps in coverage that may be created by such modification could be minimized.

There are three types of income for which we propose to codify current Medicaid rules. We solicit comments on these proposed policies.

The first is lump sum payments, which consist of non-recurring income received on a one-time-only basis (for example, insurance settlements, back pay, State tax refunds, inheritance, and retroactive benefit payments). Under section 36B definitions, taxable ''lump sum'' payments are included in computing MAGI in the year the lump sum is received. Currently in Medicaid, most States count lump sum payments as income in the month received and, for any amounts retained, as a resource in months following. Because of the statutory directive to consider point-in-time (that is, current monthly) rather than annual income for determination of Medicaid eligibility, and the challenges in amortizing a lump sum payment over time to pay for coverage, we propose in § 435.603(e)(1) to count lump sum payments of taxable income as income only in the month received.

Second, certain types of educational scholarships and grants (for example, work-study arrangements and other situations in which the individual has to provide a service) are generally counted as taxable income under the IRC, but not counted as income under current Medicaid rules. To avoid low-income students having to forgo either Medicaid or this education-related aid, we propose in § 435.603(e)(2) to retain the Medicaid rules for this type of income.

Third, American Indian and Alaska Native (AI/AN) income is the subject of special treatment and protections in multiple provisions of titles XIX and XXI of the Act. Most recently, the Recovery Act added section 1902(ff) to the Act (applied also to CHIP through the addition of section 2107(e)(1)(c) of the Act) to broaden exemptions related to certain AI/AN financial interests to ensure that low-income AI/AN individuals have access to Medicaid. There are certain instances where the IRC and the section 36B definition of MAGI are identical to or more liberal than current Medicaid rules with regard to income exclusions for AI/AN populations, and therefore, are adopted in the proposed rule. However, there are several instances in which the IRC treats as taxable income distributions from AI/AN trust properties, which are excluded from income for purposes of Medicaid and CHIP eligibility under the Recovery Act and other current law. In these instances, we propose at § 435.603(e) to codify current Medicaid treatment of AI/AN income, including distributions from Alaska Native corporations and settlement trusts; distributions from any property held in trust, or otherwise under the supervision of the Secretary of the Interior; distributions resulting from certain real property ownership interests; payments from other ownership interests or usage rights that support subsistence or a traditional lifestyle; and student financial assistance provided under the Bureau of Indian Affairs education programs.

In addition, section 1902(B)(e)(14)(B) of the Act, codified at § 435.603(g), prohibits the continued use of any asset test or income or expense disregards for individuals whose financial eligibility is based on MAGI (other than a disregard of 5 percent of the FPL to be applied to every such individual under section 1902(e)(14)(I) of the Act.) In order to account for the general elimination of income disregards and to ensure continued coverage at pre-Affordable Care Act levels, per section 1902(e)(14)(A) and (E), States will convert current income standards for eligibility groups under which financial eligibility will be based on MAGI to a ''MAGI-equivalent'' income standard. Separate guidance will be issued regarding the methodologies States may employ to determine such MAGI-equivalent income standards. Application of the statutory across-the-board 5 percent disregard is reflected in proposed § 435.603(d)(1).

Detailed guidance on the treatment of all types of income under the new MAGI-based methodologies will be provided in subregulatory guidance.

b. Proposed Rules for Determining Household Composition Under MAGI–Based Methods (§ 435.603(f))

(1) Household Composition for Tax Filers (§ 435.603(f)(1)) and Their Tax Dependents (§ 435.603(f)(2))

Our proposed rules for household composition are divided into two categories: those for individuals filing taxes (§ 435.603(f)(1)) and their tax dependents (§ 435.603(f)(2)); and those for individuals who neither file a tax return nor are claimed as a tax dependent on someone else's tax return, whom we refer to as ''non-filers'' (§ 435.603(f)(3)).

After analyzing the differences between the section 36B definitions and current Medicaid rules, we believe that for most families, the section 36B definitions and current Medicaid rules yield the same household. However, there are a relatively small number of situations in which application of the section 36B definitions yields a different household than current Medicaid rules, including the following:

(1) Families in which the parents claim as tax dependents children age 21 or older.

(2) Families in which the parents claim as tax dependents children living outside of the home.

(3) Families with stepchildren/stepparents (in States without a law requiring stepparents to support their stepchildren.

(4) Families in which one or more children are required to file a tax return.

(5) Families in which one member is supporting and claiming as a tax dependent extended family members or unrelated individuals, including children other than their own biological or adopted children.

(6) Children claimed as a tax dependent by a non-custodial parent.

(7) Pregnant women.

(8) Married couples who do not file jointly.

In the first four types of households identified, consistent with the general statutory directive to apply the section 36B definitions to Medicaid, we are proposing at § 435.603(f)(1) to adopt the household composition rules embodied in the section 36B definitions. Doing so will result in some loss of Medicaid eligibility compared to pre-2014 Medicaid rules. However, maintaining different rules for the insurance affordability programs for these household types would undermine simplicity and coordination, which benefits consumers and States alike, and add to States' and potentially families' administrative burden.

For the fifth type of household identified (for example, a grandparent caring for a grandchild claimed as a tax dependent), the income of the claimed tax dependent is likely to be quite low, making them likely eligible for Medicaid based on their income alone. However, in such situations adoption of the section 36B definitions for household composition for determining the Medicaid eligibility of the tax dependent could significantly affect both the taxpayer and the relative or unrelated individual whom the taxpayer has no legal responsibility to support, putting such taxpayers in the position either of: (1) Forgoing a tax advantage (including, in some cases, an Earned Income Tax Credit) so as to enable the tax dependent to apply for Medicaid on his own; or (2) assuming financial responsibility for purchasing health care for such individual—a responsibility which they do not have under current law. Accordingly, we propose at § 435.603(f)(2)(i) to codify current Medicaid rules in determining the eligibility of qualifying relatives claimed as tax dependents by another taxpayer. MAGI-based definitions would be used in determining household composition for purposes of the taxpayer's eligibility, per proposed § 435.603(f)(1). It is also important to note that, reflected in proposed § 435.603(d)(3) and consistent with current Medicaid rules, actually available cash support provided by the non-legally responsible relative is counted as income to the claimed tax dependent. The purpose of retaining the Medicaid household rules as a backstop in these situations is to prevent the attribution of income from non-legally responsible relatives when that income is not in fact available to the tax dependent. We do not believe that this proposal would disrupt coordination or create a gap in coverage.

Regarding households in which a child is claimed as a tax dependent by a non-custodial parent, we are proposing at § 435.603(f)(2)(iii) to apply rules based on pre-Affordable Care Act Medicaid principles of parents' legal responsibility for the children with whom they are living. By applying the rules for non-filers in this situation, as proposed in these rules, these children would be treated as members of the custodial parent's household for Medicaid eligibility purposes, and the income of the custodial parent (and other members of the custodial parent's household required to file a tax return) would be counted in determining the child's Medicaid eligibility. Alternatively, the child could enroll in coverage through the Exchange in the child's State of residence as a member of the non-custodial parent's household. (See discussion in section II.A.4 (b) of the preamble for the accompanying Exchange proposed rule.) We specifically solicit comments on the proposed handling of the household composition for these children.

Under pre-2014 Medicaid rules, a pregnant woman is considered as a household of two for purposes of determining eligibility. States have the option to count a pregnant woman as two in determining the family size of other members of a pregnant woman's household (for example, her spouse or other children). Under the section 36B definition of family size, pregnant women count as one person for purposes of eligibility for advance payments of the premium tax credit, but if the child is born by the end of the calendar year, the annual premium tax credit would be for two persons. Counting the pregnant woman as a household that will be comprised of two for Medicaid eligibility purposes essentially anticipates the change in household size that will occur after the birth. Applying the 36B definitions would result in some women being enrolled, with advance payments of the premium tax credit, in a qualified health plan through the Exchange who, after giving birth, will be eligible for Medicaid. Therefore, the proposed definition of family size in § 435.603(b) retains current Medicaid rules for pregnant women to promote continuity of coverage for the family and to ease State administrative burden.

Married couples who file separately are not eligible for premium tax credits. However, there is no similar provision in title XIX of the Act with respect to Medicaid eligibility. Therefore, in such situations, we propose at § 435.603(f)(4) to codify current Medicaid rules to include each spouse in the household of the other and to count the MAGI-based income of each spouse required to file a tax return in determining the other's household income, regardless of whether the couple files a joint tax return. We recognize that at times two legally married individuals may live apart. Therefore, consistent with current Medicaid rules, the proposed rule also limits the inclusion of spouses in each other's household to those who are living together.

In some cases, a child may be living with both parents, but the parents do not file, or are not married and therefore cannot file, a joint tax return. Consistent with current Medicaid principles of legal responsibility, we propose at § 435.603(f)(2)(ii) to apply the proposed rules for non-filers in the case of children living with such parents, so that both parents, if living with the child, will be included in the child's household and their income counted in determining the child's eligibility.

(2) Household Composition for Non-Filers (§ 435.603(f)(3))

The IRC contains provisions regarding filing thresholds—ranging from $9,350 in 2010 (86 percent FPL) for a single individual to $19,800 for a married couple filing jointly with one spouse 65 or older (137 percent FPL)—below which individuals are not required to file. Individuals below these thresholds may file a tax return, but for non-filers, section 36B of the IRC does not specifically address household composition.

To be eligible for a premium tax credit, spouses must file jointly and (except in cases of divorce or separation in which the non-custodial parent is permitted to claim a child) parents who file can claim their children under 19 who are living with them (or under age 24 if a full time student) as a qualifying child. See IRS Publication 501. The current Medicaid principle that parents are legally responsible for their children and that spouses are legally responsible for each other is consistent with section 36B of the IRC. In the case of Medicaid, parents are assumed to be financially responsible for their children up to age 21; this does not vary with the child's student status.

Under either section 36B of the IRC or pre-Affordable Care Act Medicaid rules, spouses living together are considered to be part of the same household for eligibility purposes, and proposed paragraph § 435.603(f)(3) similarly specifies that spouses living together be included in the same household. We considered several alternatives regarding when children who are living with their parent(s), but are not claimed as a tax dependent on such parent's tax

return, should be included in the parent's household.

Applying pre-Affordable Care Act Medicaid rules making parents financially responsible for children who are under age 21 could result in a gap in coverage for children aged 19 and 20 who are not in school and are not claimed as dependents on their parents' tax return, but whose parents do file a tax return and have household income above the Medicaid income standard for 19 and 20 year-olds. (Coverage for 19 and 20-year olds, in most States, will be under the new group for adults with household income at or below 133 percent FPL). On the other hand, adopting the IRC rule allowing parents to claim as a qualifying child their children only until age 19, unless a full-time student, could result in an increase in Medicaid eligibility for 19 and 20-year olds who are not full-time students and are living with their parents, as compared to pre-Affordable Care Act Medicaid rules. Adopting the IRC rule with respect to adult children ages 21–23 who are full-time students could result in a decrease in Medicaid eligibility and an imposition of legal responsibility for certain adult children not consistent with current law.

In balancing these considerations, we propose at § 435.603(f)(3), to treat spouses/parents (including stepparents) and all children (including stepchildren and stepsiblings) under age 19 or, if a full-time student, under age 21, who are living together, as members of the same household. This proposed policy will avoid the gap in coverage for 19 and 20 year olds, discussed above, while limiting any unnecessary increase in Medicaid eligibility. Children who are not living with their parents, or who are over the specified age limit, would not be included in their parents' household, and as with tax filing households, individuals other than a spouse, biological, adopted, or step-parent, child or sibling would not be included in the same Medicaid household under this proposed rule. We specifically solicit comments on the proposed rule for household composition of non-filers at § 435.603(f)(3).

(3) Retention of Existing Financial Methods (§ 435.603(i))

Section 1902(e)(14)(D) of the Act provides that the financial methodologies based on MAGI will not apply in certain situations. In those cases, eligibility will be determined using the rules in effect prior to the Affordable Care Act, codified in existing regulations at § 435.601 and § 435.602. Proposed § 435.603(i) sets out six exceptions:

- Individuals *eligible for Medicaid on a basis that does not require a determination of income by the Medicaid agency.* This exception from use of MAGI-based methods includes, but is not limited to, individuals receiving or deemed to be receiving SSI, individuals receiving assistance under title IV–E of the Act, and individuals for whom the agency is relying on a finding of income made by an Express Lane Agency under section 1902(e)(13) of the Act.
- Individuals *who qualify for medical assistance on the basis of being blind or disabled.* This exception applies only to those individuals for whom the determination of eligibility is made on the basis of being blind or disabled. Individuals who are blind or who have disabilities can also be covered under the new mandatory eligibility group for adults (codified at proposed § 435.119) with MAGI-based household income at or below 133 percent of FPL. To the extent that their income exceeds that level, current financial methodologies will be used to determine their eligibility for coverage on the basis of being blind or disabled under an optional eligibility group for blind or disabled individuals.

In proposed § 435.603(i)(3), we identify the most common of the eligibility groups for blind and disabled individuals excepted from MAGI methods under the Act. We are not listing coverage provided to individuals receiving SSI in so-called ''criteria States'' because they are encompassed under proposed § 435.603(i)(1)(iii)(A). (These individuals are receiving SSI but the State does not have an agreement under section 1634 of the Act under which the Social Security Administration makes a determination of Medicaid eligibility for the State.) We also are not specifically identifying children under age 18 who were receiving SSI as of the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (August 22, 1996), who would continue to receive SSI but for the enactment of section 211 of that Act and who are eligible for Medicaid in accordance with section 1902(a)(10)(A)(i)(II) of the Act. While financial eligibility for continued coverage of these children will be excepted from MAGI, most, if not all, of the affected children will have reached age 18 as of January 1, 2014, the effective date for the transition to MAGI-based methods. We seek comment as to whether there might be children still eligible under this mandatory coverage group as of 2014, and therefore, whether they should be identified in these regulations.

- Individuals *age 65 or older* are categorically excepted from MAGI methods under section 1902(e)(14)(D)(i)(II) of the Act. We recognize that the exception of all elderly individuals from MAGI methodologies for all eligibility groups could result in States having to retain application of AFDC financial methodologies in a small number of cases in which an elderly individual is being evaluated for coverage on the basis of being a parent or caretaker relative, for which age is not a factor. We solicit comments on possible approaches we might adopt to avoid this result—for example, interpreting the exception to apply only in the case of elderly individuals when age is a condition of eligibility or of applying SSI methodologies (which will continue to be used for most MAGI-excepted groups) in determining the eligibility of elderly individuals for coverage as a caretaker relative.
- Individuals *whose eligibility is being determined on the basis of the need for long-term care services, including nursing facility services or a level of care equivalent to such services.* Similar to the exceptions from MAGI for determinations based on being blind or disabled, we propose to apply this exception in the case of individuals whose eligibility is based on the need for or receipt of such services. Individuals otherwise eligible for Medicaid under an eligibility group to which MAGI-based methods apply (for example, children eligible under proposed § 435.118) will not be excepted from application of MAGI-based methods in determining ongoing eligibility under such group simply because they may need long-term care services.
- *Individuals eligible for assistance with Medicare cost sharing under section 1902(a)(10)(E) of the Act.* We propose to interpret this exception to apply only to the determination of eligibility for Medicare cost sharing assistance.
- Medically *needy individuals eligible under section 1902(a)(10)(C) of the Act.* This exception also applies only to the determination of eligibility for medically-needy coverage. Individuals who meet the eligibility criteria for coverage under another eligibility group—for example, the new adult group—are not excepted from application of MAGI-based methods for purposes of determining their eligibility for such other groups simply because they would qualify for coverage as a

medically needy individual if not eligibility under such other group.

Section 1902(e)(14)(D)(iii) of the Act provides that MAGI-based methods shall not be used in determining eligibility for Medicare Part D premium and cost sharing subsidies under section 1860D–14 of the Act. Because such subsidies are not a form of Medicaid and determinations for Part D cost sharing subsidies are not performed under the authority of the Medicaid statute, we are not proposing to include regulations regarding this exception in these rules.

C. Residency for Medicaid Eligibility Defined

We propose to simplify Medicaid's residency rules to promote achievement of the coordinated eligibility and enrollment system established under sections 1413 and 2201 of the Affordable Care Act and discussed in section II.I of this proposed rule. We propose to redesignate and revise paragraphs § 435.403(h) and § 435.403(i) to § 435.403(i) (rules for individuals under age 21) and (h) (rules for individuals age 21 and older), which set parameters for States to determine who is a State resident. These revisions are not significantly different than the current rules. We do not propose changes to our current regulations regarding individuals living in institutions, receiving Federal foster care or adoption assistance under title IV–E of the Act, or adults who do not have the capacity to state intent. Note that policies regarding verification of residency are proposed at § 435.956(c) and discussed in section II.H.5 of this proposed rule.

1. Residency Definition for Adults (Age 21 and Over) (§ 435.403(h))

We propose to strike the term ''permanently and for an indefinite period'' from the definition for adults in redesignated § 435.403(h)(1) and (h)(4), and replace the term ''remain'' with ''reside.'' An adult's residency will be determined based upon where the individual is living and has intent to reside, including without a fixed address, or the State which the individual entered with a job commitment or seeking employment (whether or not currently employed). While proposing to remove the phrase ''permanently or for an indefinite period'' and use the term ''reside,'' we are maintaining existing policy that an individual must intend to remain living in the State in which he or she is seeking coverage. Persons visiting a State for personal pleasure or purposes of obtaining medical care are not residents of the State visited. By removing the term ''living'' in the State or replacing the term ''remain'' with ''reside,'' we do not intend to have any policy impact on State policy. Indeed, we note that section 1902(b)(2) of the Act refers to individuals who ''reside in the State''. We are removing the word ''living'' from the definition in order to simplify the language. An individual must still maintain present intent to reside in the State being claimed as the State of residence; a State would not be required to recognize an intent to reside at some future point in time. We have retained the term ''living'' for individuals who do not have the capacity to state intent, as we are not modifying the regulations for that population.

Our proposal to remove language regarding permanency and ''an indefinite period'' will help to facilitate coordination of eligibility determinations across and between programs and is also consistent with long-standing statutory requirements. Under section 1902(b)(2) of the Act, States may not exclude from coverage an individual who resides in the State ''regardless of whether or not the residence is maintained permanently or at a fixed address[.]''

2. Residency Definition for Children (Under Age 21) (§ 435.403(i))

For individuals who are emancipated or married, we propose language to align the residency rules with the proposed definition for adults. Accordingly, at redesignated § 435.403(i)(1), we propose to strike the term ''permanently and for an indefinite period'' and to replace the word ''remain'' with ''reside.''

We propose in § 435.403(i)(2) to combine and consolidate two different definitions of residency currently set forth in paragraphs (h)(2) and (h)(3) for unemancipated individuals under age 21: (1) those whose Medicaid eligibility is based on a disability and (2) those who are not disabled and not living in an institution or receiving foster care or adoption assistance under IV–E of the Act. We eliminate the cross-reference to the AFDC rules at 45 CFR 233.40 and for both groups of children we propose to apply a similar definition as that proposed for most adults, but without the ''intent'' component, as individuals under age 21 may not legally be able to express intent. Under the proposed rule, States may not determine residency of a child based solely on the residency of the parent.

Our proposal will simplify State administration and make the rules clearer to the public. Our proposal to allow children to establish residency to the same extent as adults when a parent or caretaker is seeking or has confirmed employment is intended to ensure a consistent approach for migrant, seasonal workers and other families living in a State while employed or in search of employment. The proposed definition also allows flexibility for families in which children attend school in a State other than where the parents live; such children may be considered residents of the parents' ''home State,'' if the parent expresses the requisite intent. However, we do not change States' current flexibility to determine whether students ''reside'' in a State, as long as each individual has the opportunity to provide evidence of actual residence. The proposed rule excludes children who are visitors for pleasure or for purposes of obtaining medical care. Parents, caretakers, and persons acting responsibly on behalf of a child may attest to where the child resides, under new § 435.956(c).

While we do not believe our proposed changes significantly affect Federal guidance on residency, we seek comments on the proposed modifications to § 435.403(h) and (i), particularly on the impact of this proposed rule on children eligible for Medicaid based on disability. We also seek comments on whether to change the current State residency policy with regard to individuals living in institutions and adults who do not have the capacity to express intent.

D. Application and Enrollment Procedures for Medicaid

1. Availability of Program Information (§ 435.905)

Section 2201 of the Affordable Care Act adds a new section 1943(b)(1)(A) to the Act which directs States to develop procedures that enable individuals to apply for, renew, and enroll in coverage through an Internet Web site. Section 1943(b)(4) directs States to establish a Web site (which must be linked to the Web site established by the Exchange operating in the State) that will allow individuals to obtain information regarding coverage under Medicaid and CHIP and compare such coverage to that available through the Exchange. Thus, we propose to amend § 435.905 to ensure that program information be made available electronically through a Web site in addition to providing information to applicants both orally and in writing. We propose to modify § 435.905(b) to eliminate specific requirements regarding quantity and electronic availability of bulletins and

pamphlets, as we do not believe these are necessary in regulations.

2. Applications (§ 435.907)

To support States in developing a coordinated eligibility and enrollment system for all insurance affordability programs, section 1943(b)(3) and section 1413 of the Affordable Care Act direct the Secretary to develop and provide States with a single, streamlined application. The single application, to be used for all insurance affordability programs and available through a variety of formats including on-line and phone applications, will build on the successes many States have had in developing simplified applications.

Accordingly, we propose to amend current regulations at § 435.907 to reflect use of the new single, streamlined application. The Secretary will develop the data elements for the application in collaboration with States and consumer groups. As permitted in section 1413(b)(1)(B) of the Affordable Care Act, proposed § 435.907(b)(2) provides States the option to develop and use an alternative streamlined application, subject to review and approval by the Secretary. Under the law, those who are limited English proficient (LEP) and persons with disabilities must have equal access to health care and the benefits. We intend to address the readability and accessibility of applications, forms and other communications with applicants and beneficiaries in future guidance.

In § 435.907(c), we propose two alternative approaches related to applications for individuals who may qualify for coverage on a basis other than MAGI. First, we propose that States may use supplemental forms to gather additional information, such as information pertaining to resources, needed to make an eligibility determination. This approach would permit anyone seeking coverage to begin by completing the same single, streamlined application as all other applicants. Second, we propose to permit States to develop and use an alternative single, streamlined application form designed specifically to capture information needed to determine eligibility for individuals whose eligibility is not determined based on MAGI. Under the statute and proposed 435.907(c), such supplemental and alternative forms are subject to the Secretary's approval. We seek comment on both of the proposed approaches as well as other alternatives to ensure a simple application process.

In § 435.907(d), we explain that the agency must establish procedures to allow persons seeking coverage to file an application through a variety of means including online, in person, over the phone and by mail. Applications may be submitted in person, but under this proposed rule, particularly in light of the seamless coordination process required for enrollment in Medicaid and the Exchange, in person interviews cannot be required for the individuals whose eligibility is based on MAGI.

For individuals not seeking coverage for themselves (''non-applicants''), to ensure privacy we propose in § 435.907(e)(1) to codify the long-standing policy against requiring such individuals to provide Social Security numbers (SSNs) or information regarding their citizenship, nationality, or immigration status. To promote enrollment of eligible applicants, States may request an SSN of a non-applicant on a voluntary basis. Proposed § 435.907(e)(2) codifies existing policy grounded in Title VI of the Civil Rights Act of 1964, the Privacy Act, and Medicaid confidentiality provisions at section 1902(a)(7) of the Act to allow States to request an SSN of a non-applicant only if: (1) Providing an SSN is voluntary; (2) use of a non-applicant's SSN is limited to processing the applicant's eligibility or for other functions necessary to the administration of the State's plan; and (3) the State provides notice that provision of an SSN is voluntary and indicates how the SSN will be used.

In support of the proposed rule, we note that sections 1411(g) and 1414(a)(2) of the Affordable Care Act specify that taxpayer information may only be used for eligibility determinations and other functions directly related to the administration of benefits. Section 1902(a)(7) of the Act directs States to have safeguards that restrict the ''use or disclosure of information concerning applicants and recipients only for purposes directly connected with the administration of the [State] plan * * *'' Non-applicant information used to determine an applicant's eligibility is considered to be information ''concerning'' the applicant or recipient; thus, this information must be appropriately safeguarded.

We propose to continue the current policy that Medicaid applicants and beneficiaries must provide an SSN, if the individual has one. Under our current regulations at § 435.910, if an individual does not have an SSN, the agency must assist the individual in obtaining one. For background and a detailed discussion of the current policy on the collection of SSNs, see the *Tri-Agency Guidance* issued in conjunction with the Administration for Children and Families and the Food Nutrition Service, in September 2000, at *http://www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/triagencyletter.html.*

Section 1943(b)(1)(A) of the Act directs Medicaid agencies to permit enrollment and reenrollment in the State plan or under a waiver through electronic signature. Accordingly, we propose in § 435.907(f) that States must accept applications signed through the use of electronic signature techniques, including telephonically recorded signatures, as well as handwritten signatures transmitted by fax or other electronic means. This is consistent with current practice in most States.

3. Assistance With Application and Redetermination (§ 435.908)

Some of the individuals eligible for coverage in 2014 may need assistance with the application and renewal process. Therefore, we propose to amend current § 435.908(b) to ensure that the agency provides assistance through a variety of means to any individual seeking help with the application or redetermination process. This is consistent with current State practice and is in accordance with section 1902(a)(19) of the Act.

We are proposing that States have flexibility to design the available assistance, while assuring that such assistance is provided in a manner accessible to individuals with disabilities and who are LEP. In addition, section 1943(b)(1)(F) of the Act directs States to conduct outreach to vulnerable and underserved populations eligible for Medicaid. Such outreach and assistance will be particularly important for those who are newly eligible, as well as for people with disabilities, underserved racial and ethnic minorities and other groups. We will provide technical assistance and subregulatory guidance to further address application and renewal assistance to meet the needs of the multiple populations served by the program.

E. MAGI Screen (§ 435.911)

This section of the preamble and the proposed rules at § 435.911 describe the process for applying a new simplified test for determining eligibility based on MAGI—which is facilitated by the simplified eligibility categories, including the new adult coverage group, discussed in section II.A of this proposed rule—as well as the steps States will take to ensure that individuals who do not meet the simplified test are evaluated for Medicaid eligibility on other bases and for potential eligibility for other insurance affordability programs.

Proposed § 435.911(a) sets forth the statutory basis for this section. In proposed § 435.911(b) we set forth several pertinent definitions, including ''applicable modified adjusted gross income standard,'' which will be at least 133 percent FPL, but in some States may be higher for certain individuals, including parents or other caretaker relatives, pregnant women or children.

Proposed § 435.911(c) describes the key steps in the proposed streamlined eligibility process. Under § 435.911(c)(1), for every individual who has submitted an application and who meets the non-financial criteria for eligibility (or for whom the agency is providing a reasonable opportunity to provide documentation of citizenship or immigrations status in accordance with sections 1903(x), 1902(ee) and 1137(d) of the Act), the Medicaid agency would determine whether such individual has household income at or below the applicable MAGI standard. This means that States will not need to review whether an individual who meets the applicable MAGI standard (for example, 133 percent FPL for the new adult group) is also eligible as a disabled or medically needy individual, both of which typically entail a more involved eligibility determination.

For individuals with household income at or below the applicable MAGI standard, the agency would provide Medicaid benefits promptly and without undue delay. Benefits will be addressed in subsequent guidance.

Some individuals with household income above the applicable MAGI standard may be eligible for Medicaid on another basis. In some States, for example, some individuals may be eligible based on disability or need for long-term care services, even if their income exceeds the applicable MAGI standard, and individuals eligible for Medicare may be eligible for assistance with Medicare premiums and cost sharing charges. In accordance with § 435.911(c)(2), for each individual who is not eligible for Medicaid based on MAGI under § 435.911(c)(1), the Medicaid agency shall collect additional information, consistent with proposed § 435.907(c), as may be needed to determine Medicaid eligibility on other such other bases.

We note that the MAGI screen proposed for State Medicaid agencies is the same process as that at proposed 45 CFR 155.305(c) of the Exchange Proposed Rule published elsewhere in this **Federal Register**; however, the Exchange will not be required to undertake Medicaid eligibility determinations based on factors other than MAGI. Under proposed § 435.1200(e)(2) and the Exchange Proposed Rule at 45 CFR 155.345, the Medicaid agency will retain responsibility for making such determinations, although the State can establish procedures whereby the Exchange will undertake such other determinations in certain circumstances, consistent with regulations at § 431.10 and § 431.11, as revised in and discussed in section J of this proposed rule.

Proposed § 435.911(c)(2)(iii) specifies that the agency must follow the policies of proposed § 435.1200(g) to assess individuals determined not eligible for Medicaid based on MAGI for potential eligibility for other insurance affordability programs and to facilitate seamless transfer of the individual's electronic account to these other programs. Under proposed § 435.1200(g)(2), evaluation of individuals for Medicaid eligibility based on blindness or disability in accordance with proposed § 435.911(c)(2) should occur at that same time as evaluation for potential eligibility for premium tax credits for enrollment through the Exchange.

We are not proposing specific timeliness standards for the determination of eligibility under proposed § 435.911. In collaboration with States, we will be developing performance standards and metrics for the streamlined and coordinated eligibility and enrollment system. These metrics will also support the standards and conditions described in the Federal Funding for Medicaid Eligibility Determination and Enrollment Activities final rule (76 FR 21950) published in the April 19, 2011 **Federal Register**.

F. Coverage Month

In proposed § 155.410 of the Exchange proposed rule, enrollment through the Exchange for individuals terminated from Medicaid can begin at the earliest on the 1st day of the month following the date the individual loses Medicaid and is determined eligible for enrollment through the Exchange. If the individual loses Medicaid eligibility and is determined eligible for enrollment through the Exchange after the 22nd day of the month, enrollment through the Exchange begins at the earliest on the first day of the second month following such date. To promote coordination with coverage through the Exchange, we are considering adding a provision to the regulations to extend Medicaid coverage until the end of the month that the appropriate termination notice period ends. Certain exceptions—such as the death of a beneficiary—would apply. This is the current practice in many States which now end Medicaid coverage at the end of a month for administrative convenience or to align with coverage offered by participating health plans paid on a per capita per month basis, as permitted under current regulations. We believe that providing coverage through the end of the month is similar to existing regulations at redesignated § 435.915(b), which allows States to make eligibility effective from the beginning of a month.

We invite comments on this potential approach to coverage, its likely impact on maintaining continuous coverage, whether the costs of this approach outweigh the benefits, or whether we should retain the current policy that provides State flexibility to end coverage at any time during a month.

G. Verification of Income and Other Eligibility Criteria (§ 435.940 Through § 435.956)

In this section, we discuss changes to 42 CFR part 435 subpart J to make verification processes more efficient, modernized and coordinated with the Exchange. In general, the proposed rules maximize reliance on electronic data sources, shift certain verification responsibilities to the Federal government, and provide States flexibility in how and when they verify information needed to determine Medicaid eligibility. The proposed changes draw from successful State systems and are aligned with those proposed at § 155.315 and § 155.320 of the Exchange proposed rule. The major changes are:

- In accordance with section 1413(c) of the Affordable Care Act, State Medicaid agencies will use a system established by the Secretary pursuant to her authority under sections 1411(c) and 1413(c) of such Act, through which all insurance affordability programs can corroborate or verify certain information with other Federal agencies (for example, citizenship with the Social Security Administration (SSA), immigration status through the Department of Homeland Security (DHS), and income data from the IRS.) This system will reduce administrative burden on State Medicaid agencies and Exchanges.
- Consistent with current policy, State Medicaid agencies may accept self-attestation of all eligibility criteria, with the exception of citizenship and immigration status. To ensure program integrity, States must comply with the requirements of section 1137 of the Act to request information from trusted data sources when useful to verifying financial eligibility.

• We propose that in verifying eligibility States will rely, to the maximum extent possible, on electronic data matches with trusted third party data sources. Additional information, including paper documentation, may be requested from individuals when information cannot be obtained through an electronic data source or is not ''reasonably compatible'' with information provided by the individual. These changes align eligibility verification methods for Medicaid with those used for advance payments of premium tax credits and other insurance affordability programs. This proposal would apply to the specific financial and non-financial information referenced in these rules, as well as to any additional information the agency finds it necessary to verify in order to determine eligibility, regardless of whether that information is specifically referenced in the regulation.

• A new section at § 435.956 relates to requests by the agency for information about non-financial eligibility factors.

• Finally, we have deleted a number of prescriptive provisions that are in current regulations as to when or how often States must query certain data sources, or when certain State wage agencies must provide data to the State Medicaid agency. We do not believe that this level of specificity regarding State use of data sources is necessary, nor do we believe it is appropriate to include in Medicaid regulations requirements that bind other agencies, such as State wage agencies.

These and other proposed revisions are discussed in more detail below.

1. Basis, Scope, and General Requirements (§ 435.940 and § 435.945)

At § 435.940, we add statutory citations to the basis and scope of the income and eligibility verification regulations to include, in addition to section 1137 of the Act, sections 1902(a)(4), 1902(a)(19), 1903(r)(3) and 1943 of the Act, as well as section 1413 of the Affordable Care Act.

At § 435.945(a), consistent with 42 CFR part 455, we are specifying that nothing in this proposed rule shall prevent a State from acting to ensure program integrity. Program integrity is a top priority and should be considered in commenting on the proposed rule.

Consistent with current policy, at § 435.945(b), we add language to expressly permit States to accept attestation of information related to eligibility, including income, age, birth date and State residency, without requesting paper documentation. The exceptions to this provision are citizenship and immigration status, as these are subject to separate statutory requirements. States must continue to comply with the provisions of section 1137 of the Act relating to income information in accordance with rules set out in this section.

Redesignated § 435.945(c) directs the agency to request and use information in accordance with the appropriate sections of the regulations. We modify existing cross references to reflect other changes proposed and add cross references to the new § 435.949 and § 435.956. In addition, we have deleted references in § 435.945(c) and throughout the regulation to verifying ''medical assistance payments,'' ''amount of medical assistance payments'' and ''benefit amount'' as the reference to the verification of ''eligibility'' is sufficient.

We removed the list of programs with which the State Medicaid agency must exchange information at § 435.945(d) and instead include a reference to those programs listed in 1137(b) of the Act, as well as the child support enforcement program under Part IV–D of the Act (which is also referenced in section 1137) and SSA. Pursuant to sections 1413 of the Affordable Care Act and 1943 of the Social Security Act, we have added insurance affordability programs as programs with which the agency must exchange information.

We have not changed the rules for reimbursement arrangements between agencies for data exchanges at redesignated § 435.945(e), except for an updated cross reference and citing to section 1137(a)(7) of the Act.

Redesignated § 435.945(f) specifies that before a request for information from a third-party data source is initiated, an individual must receive notice of the information being requested and its use. Consistent with current State practice, we anticipate that this notice would be provided as part of the application process. We have deleted the current exception to this notice requirement when an individual's eligibility has been determined by another agency because, under our revised rule, proper notice is required only when the agency itself will be requesting data from another agency or program. The reporting requirements at redesignated § 435.945(g) remain unchanged; however the regulatory citations relating to MEQC and documentation have been updated.

Existing § 435.945(g), regarding a State Wage Information Collection Agency (SWICA) that does not use the quarterly wages reported by employers under section 1137 of the Act, has been deleted, as we believe these requirements are not within the purview of the State Medicaid agency.

Per section 1413(c) of the Affordable Care Act, we add a new § 435.945(h) (renumbering the next paragraph) to require that data exchanged electronically under this section must be sent and received via secure electronic interfaces which, as defined in proposed § 435.4, must be consistent with 42 CFR part 433.

Redesignated § 435.945(i), pertaining to written agreements between agencies engaged in data exchanges, has been modified to eliminate specific requirements regarding the precise content of such agreements and the timing and frequency of data exchanges to provide States greater flexibility. This flexibility will facilitate coordination with Exchanges and other insurance affordability programs and allow States to take full advantage of the increased automation of electronic data matching enabled through the provision of enhanced Federal funding for the development and implementation of such systems available under 42 CFR part 433 subpart C.

2. Verification of Financial Eligibility (§ 435.948)

Under sections 1137 and 1902(a)(46) of the Act, certain Federally-funded, State-administered programs, including Medicaid, are required to conduct electronic data matches to obtain income information from the State quarterly wage reports and Unemployment Insurance Benefits, the IRS, and the SSA to verify financial eligibility for benefits, if such information may be useful in verifying eligibility for Medicaid, as determined by the Secretary.

However, not all data sources are useful in all situations and under section 1137(a)(4)(C). The use of information identified in section 1137 of the Act ''shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility * * * and no State shall be required to use such information to verify the eligibility of all recipients.'' In addition to the data sources specifically listed in section 1137 of the Act, many States also rely on other data matches, which they find useful to verify income.

We believe that States are in the best position to determine the usefulness of the available data sources in specific cases. Therefore, we propose at § 435.948(a) to delegate to the State Medicaid agency the discretion afforded to the Secretary of the HHS under section 1137(a)(2) of the Act to determine when the information

identified in section 1137 of the Act is useful to verifying financial eligibility for an individual and must be requested. The sources of data which States much check, if useful, remain unchanged, except as follows:

- For the reasons discussed above, specific references to the timing and/or frequency with which information must be requested are deleted;
- Public Assistance Reporting Information System (PARIS) is added as a new data source given the requirement in 1903(r)(3) of the Act that all eligibility determination systems must conduct data matching through PARIS;
- We eliminate reference to the former AFDC program; and
- We replace reference to ''Food Stamps'' with ''Supplemental Nutrition Assistance Program'' to reflect the new name under the Food, Conservation and Energy Act of 2008.

As noted above and discussed in more detail below in relation to proposed § 435.949, the Secretary is required to establish a system through which all insurance affordability programs can verify certain information with other Federal agencies. At new § 435.948(b), we propose that, to the extent available, States must access needed information when available through the system established by the Secretary, consistent with sections 1943(b)(3) and 1902(a)(4) of the Act.

At § 435.948(c)(1), we provide that information not available through the service established by the Secretary under § 435.949 may be obtained directly from the agency or program housing the information. At § 435.948(c)(2), we retain the current policy in paragraph (c) of the existing regulations that information be requested by SSN, but clarify that, when an SSN is not available, the agency attempt to obtain needed information using other personally identifying information otherwise available in the individual's account, as described in § 435.4. Note that when an SSN is not available, the agency must assist the individual in obtaining a SSN in accordance with § 435.910.

States may request and use alternate data sources, as permitted at proposed § 435.948(d), subject to Secretarial approval. Such alternative sources should reduce administrative costs and burdens on individuals and States, maximize accuracy, and minimize delay. Also, we make explicit existing policy that use of any such alternative data source must meet applicable requirements relating to the confidentiality, disclosure, maintenance, or use of information. Finally, consistent with section 1413 of the Affordable Care Act, we add that the use of an alternative data source facilitate coordination between all other insurance affordability programs.

3. Verification of Information From Federal Agencies (§ 435.949)

Section 1413(c) of the Affordable Care Act directs the Secretary of HHS, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security and the Commissioner of Social Security, to establish a system of verification, using secure electronic interfaces, through which all State health coverage programs can verify information needed to determine eligibility. Section 1411(c) of the Affordable Care Act specifically directs that the system enable electronic verification of household income and family size with the IRS, citizenship data with SSA, and immigration status with DHS.

By enabling access to multiple Federal sources though a single inquiry, insurance affordability programs can receive prompt, reliable data through the same service, thereby alleviating multiple data inquiries that the State might otherwise have to make. Since all of the insurance affordability programs will rely on certain common sources (that is, SSA, DHS and IRS), once such information is gathered and evaluated by one program, reevaluation or re-verification of data will not be necessary, and thus, not permitted by another program (unless an individual reports a change in circumstances).

We propose at § 435.949(a) to specify the Federal agencies from which information will be available through the Secretary, including SSA, DHS and the IRS. We propose in § 435.949(b) that, if data included in § 435.949 is available through the Secretary, States would be required to obtain such data through the service established by the Secretary. Other applicable regulations, including those set forth at § 435.948, § 435.956 and § 435.960, remain in effect for information, which cannot be requested through the Secretary.

We propose § 435.949(c) to codify section 1413(c)(3) of the Affordable Care Act, which provides that the Secretary may modify the methods used in the verification system established if she determines that modifications would reduce the administrative costs and burdens on individuals or agencies; ensure accurate and timely verification; comply with applicable requirements for the confidentiality, disclosure, program integrity, and maintenance or use of the information, including the requirements of section 6103 of the IRC; and promote coordination among insurance affordability programs. Section 435.949(c) is proposed to be consistent and coordinated with § 155.315 of the proposed Exchange rule.

4. Use of Information and Requests for Additional Information (§ 435.952)

We are proposing changes to § 435.952, which describes the appropriate use of information. We are proposing to eliminate vague language at the end of § 435.952(a) regarding the requirement to independently verify information ''* * * if determined appropriate by agency experience.'' We expect processes to occur in real time wherever possible and we will be defining more detailed standards and other performance metrics, with State and stakeholder input, in subsequent Federal guidance. Accordingly, we also are proposing to delete the specific timeliness requirements contained in the current regulation at § 435.952(c), which now requires agency action within 45 days from the date new information is received.

Under § 435.952(b), as revised, if information provided by an individual is reasonably compatible with information that the agency has obtained from other trusted sources, the agency must act on such information and may not request additional information from the individual. To establish an appropriate balance between reliance on electronic verification and paper documentation, we propose to establish a ''reasonable compatibility'' standard governing when additional information, including paper documentation, can be requested from applicants and beneficiaries. Under proposed § 435.952(c), no further information may be required from the individual unless the agency is unable to obtain information through electronic data matching or the information obtained is not reasonably compatible with that provided by the individual. In such cases, the agency may contact the individual and accept the individual's explanation without further documentation, if reasonable, or the agency may request additional information, including paper documentation. ''Reasonably compatible'' does not necessarily mean an identical match for the data, only that the information is generally consistent. Since what is ''reasonably compatible'' may vary depending on the particular circumstances, we are proposing to provide States flexibility to apply this standard. Under § 435.948(d), if the individual fails to respond to a request for additional information permitted under the proposed rule, the

agency shall proceed to deny, terminate, or reduce Medicaid only after notice and appeal rights have been provided in accordance with part 431, subpart E.

Sections 435.953 and 435.955 of the current regulations are deleted in the proposed rule. Provisions contained in § 435.953(a) and § 435.955(a) through (c) and (f) are revised and incorporated into § 435.948 and § 435.952, in accordance with the discussion above. We propose to remove the remaining requirements in § 435.953(b) through (d) (relating to detailed information the State must submit for the Secretary's approval to exclude specific data requests) and the detailed requirements in § 435.955(a) and (d), (e) and (g) (relating to the additional provisions regarding information released by a Federal agency, including State reporting requirements and requests for a waiver from the Federal agency's Data Integrity Board). We believe that the detailed nature of these provisions may unnecessarily hamper development of an efficient, modernized and coordinated system and that such details are best developed in collaboration with States and addressed through subregulatory guidance.

5. Verification of Other Non-Financial Information (§ 435.956)

We propose a new § 435.956 to address verifying non-financial information. As with financial information, to the extent non-financial information is available through the electronic service established by the Secretary, States would use that service under proposed § 435.949(b).

Under the proposed rule, at § 435.956(c), States may use attestation (including attestation of someone acting responsibly on behalf of the individual) or electronic data sources to determine State residency, in accordance with § 435.945(b) and § 435.952. Under proposed § 435.956(c), documents that provide information regarding immigration status should be used as a source of evidence to verify satisfactory immigration status, but may not, by themselves, be used to demonstrate lack of residency. For example, a temporary or time-limited immigration status, such as Temporary Protected Status (TPS), does not necessarily establish that the individual is not a State resident because TPS is routinely renewed. The proposed rule relating to residency does not diminish States' responsibility to ensure that only individuals with valid and satisfactory immigration status are determined eligible for and enrolled in Medicaid; if an individual has a temporary immigration status, the agency must ensure that the individual's Medicaid eligibility is reviewed at the appropriate time.

Proposed § 435.956(d) simply cross-references current policy at § 435.910(f) and (g) regarding issuance and verification of SSNs.

Current Federal rules regarding verification of pregnancy vary based on the woman's eligibility category, but verification of pregnancy is not required in all cases under current rules. Verification (except by self-attestation) may not be required for pregnant women eligible for pregnancy related services under section 1902(a)(10)(A)(i)(IV) or (ii)(IX) of the Act, but pregnant women must provide medical verification of pregnancy to be eligible for full Medicaid coverage as a qualified pregnant woman (with very low-income below the State's former AFDC standard) under section 1902(a)(10)(A)(i)(III) of the Act or under section 1931 of the Act, if medical verification was required under the State's AFDC program in effect on July 16, 1996.

In light of the proposed regulations at § 435.116, which combine these different eligibility categories to achieve greater simplicity in the program, we believe a verification rule for the combined group is needed. Thus, we are exercising the authority provided in section 1902(e)(14)(A)of the Act to propose application of the self-attestation verification rule under section 1902(a)(10)(A)(i)(IV) or (ii)(IX) of the Act in determining eligibility under § 435.116. Although a change in federal guidelines, we do not believe that this will have significant practical impact for States, as we believe most pregnant women today are covered under the eligibility groups for which medical verification is already not required. Proposed § 435.956(e) reflects this policy, providing that the agency must rely on the woman's attestation of pregnancy, unless the agency has other information (for example, claims history) that is not reasonably compatible with her attestation. To promote coordination of eligibility rules and procedures with the Exchange, we also propose at § 435.956(e) to codify the widespread State practice of accepting attestation of household composition unless the State has information which is not reasonably compatible with such attestation.

In proposed § 435.956(f), in the situations when age is a factor of eligibility, States may apply the same proposed verification procedures and options, as are available for other eligibility criteria verification, in accordance with § 435.945(b) and § 435.952.

When agencies obtain information regarding residency, SSN, pregnancy, age, and birth date in accordance with paragraphs (c) through (f) that is not reasonably compatible with the information or attestation provided by an individual, they must take reasonable steps to reconcile discrepancies that would affect eligibility, following the process set out in § 435.952(c) and (d).

H. Periodic Redetermination of Medicaid Eligibility (§ 435.916)

Consistent with section 1943(b)(3) of the Act and sections 1413(a) and 1413(c)(2) of the Affordable Care Act, which aim to ensure that individuals remain enrolled for as long as they meet eligibility standards, we propose to amend § 435.916 to establish simplified, data-driven renewal policies and procedures for individuals whose eligibility is based on MAGI, consistent with ensurance of program integrity.

States are increasingly re-engineering their renewal processes, recognizing that the traditional process, which involves a new application and documentation, may be unnecessary and can be burdensome for families and agencies. In addition, many eligible beneficiaries lose coverage at renewal for procedural reasons, only to reapply, and to regain eligibility, soon after losing coverage. This churning on and off of coverage is administratively costly and burdensome for the agency, health plans, and consumers, and is disruptive to continuity of care and efforts to achieve quality and efficiency in the delivery of care. This rule proposes renewal procedures that are consistent with those that will operate for the premium tax credit and that mirror the practices many States have adopted as they have sought to simplify the enrollment process and promote continuity of coverage.

Under current Federal policy, eligibility must be redetermined at least once every 12 months, and although States can have a shorter regular redetermination period, very few States do so today. According to a 2011 50-State survey by the Kaiser Family Foundation, all but two States currently have a 12-month renewal period for children and all but five also provide 12-month renewal periods to parents. Consistent with this State trend and the annual redetermination procedures for individuals eligible for tax credits to purchase coverage through the Exchange at § 155.335 of the Exchange proposed rule, we propose at § 435.916(a)(1) that States schedule regular redeterminations or renewals for beneficiaries whose eligibility is based on MAGI once every 12 months.

Consistent with current policy, eligibility should be redetermined more frequently if a beneficiary reports a change in circumstance that may affect continued eligibility, or the agency obtains information (for example, through a data match from other program records) that suggests the need for an eligibility review. States maintain authority and flexibility to establish procedures that ensure program integrity.

In recent years, States also have increasingly adopted measures to streamline the renewal process, including the use of administrative, telephone and online renewals. Consistent with this State trend, under the proposed process at § 435.916(a), States would not need a renewal form from all individuals, further streamlining the process for individuals and States. Similar to the proposed verification processes at initial application, discussed in section II.H. of this proposed rule, the proposed renewal procedures maximize the use of current third-party data matching to verify continued eligibility. Thus, at § 435.916(a)(2), we propose to codify the longstanding policy (see *http://www.cms.gov/smdl/downloads/smd040700.pdf*) that agencies renew eligibility for beneficiaries by first evaluating information available to the agency in the electronic account or from other reliable data sources. If the information available to the agency is sufficient to make a determination of continued eligibility, including information that establishes that the individual or family continues to reside in the State, coverage shall be renewed on the basis of this information and the agency would send the appropriate notice to the beneficiary without requiring any further action. This eliminates the need for and administrative burden of a renewal form or a signed returned notice and unnecessary requests for information already on hand.

State experience with this type of renewal process shows that it reduces the number of eligible beneficiaries who lose coverage for procedural reasons while maintaining program integrity. Beneficiaries must correct any inaccurate information contained in the determination notice and would be permitted to do so through a variety of means, including online, in person, by telephone, or via mail. As noted below, if any information is missing or is not reasonably compatible with ongoing eligibility, the agency must take further action to complete the renewal process.

If the agency cannot determine that the individual remains eligible through the process described above, we propose in § 435.916(a)(3) a process in which the agency would provide the individual with a pre-populated renewal form containing information that is relevant to the renewal and available to the agency. The agency would then provide the individual with a reasonable period—these rules propose at least 30 days—to furnish necessary information and to correct any inaccurate information either in person, online, by telephone, and via mail. We seek comments on this proposed process.

At § 435.916(a)(3)(ii), we propose that the agency verify the information reported by the beneficiary in accordance with § 435.945 through § 435.956, as revised in these proposed rules, including, at State option, reliance on self-attestation consistent with those sections. In § 435.916(a)(3)(iii), to avoid unnecessary reapplications for coverage, we also propose a reconsideration period for individuals who lose coverage for failure to return the renewal form. Individuals who return the form within a reasonable period after coverage is terminated would be redetermined without the need for a new application. We considered specifying a 90-day reconsideration period to align with the 3-month retroactive assistance period provided under section 1902(a)(34) of the Act, but did not specify a particular length of time in this proposed rule. We seek comments on the use and length of a specified reconsideration period.

Finally, consistent with section 1413 of the Affordable Care Act, we propose at § 435.916(a)(4) that for beneficiaries no longer eligible for Medicaid, the agency assess the individual for eligibility in other insurance affordability programs and transmit the electronic account and other pertinent data to the appropriate program for a determination of eligibility in accordance with proposed § 435.1200(g).

We have not proposed amending the renewal procedures for beneficiaries eligible on a basis other than MAGI (reflected in current regulations at redesignated § 435.916(b)), but seek comment on extending the renewal procedures proposed in § 435.916(a) to such individuals.

We propose to expand the standards under redesignated § 435.916(c) to include options for permitting all beneficiaries to report changes online, over the telephone, by mail or in person. Given the evolving reliance on methods for communication that go beyond the in-person interview, we solicit comment on whether more modernized procedures to report changes should be available to both the MAGI and MAGI-excepted populations.

We note that we will be modifying the Payment Error Rate Measurement (PERM) and Medicaid Eligibility Quality Control (MEQC) regulations to ensure that both the PERM Medicaid eligibility review and MEQC processes take into account these rules and procedures, including the use of authoritative data sources in redetermining eligibility. We also note that any State expenditures (before the end of 2015) for system changes necessary to adopt these renewal procedures should be subject to the enhanced (90 percent) match as outlined in the Federal Funding for Medicaid Eligibility Determination and Enrollment Activities final rule published in the April 19, 2011 **Federal Register** (76 FR 21950), provided these systems meet the standards and conditions set forth in that rule.

I. Coordination of Eligibility and Enrollment Among Insurance Affordability Programs—Medicaid Agency Responsibilities (§ 435.1200)

We propose to add a new subpart M, Coordination between Medicaid and other insurance affordability programs, including a new § 435.1200 to delineate the State Medicaid agency's responsibilities in effectuating such coordination. Proposed § 435.1200 also includes policies previously included in § 431.636, Coordination of Medicaid with the State CHIP. Section 435.1200(a) and (b) set forth the basis for and definitions used in the proposed section.

1. Basic Responsibilities (§ 435.1200(c))

Proposed § 435.1200(c) sets forth the basic responsibilities of the State Medicaid agency. Proposed § 435.1200(c)(1) specifies that the Medicaid agency must participate in the coordinated eligibility and enrollment system described in section 1943 of the Act. As discussed, most individuals will be evaluated for eligibility in the Exchange, Medicaid, and CHIP using a coordinated set of rules and these programs will work together to ensure that eligible applicants are enrolled in the appropriate program, no matter where their application originates. For example, an individual who directly applies for and is determined ineligible for Medicaid would be immediately assessed for eligibility for advance payment of the premium tax credit and coverage through the Exchange. That individual would not need to file a new application in order to participate in Exchange coverage, if eligible. Integration among these programs will help to avoid duplication of costs,

processes, data, and effort on the part of both the State and the individual.

We expect the use of a shared eligibility service to adjudicate placement for most individuals. The shared eligibility service would coordinate determination and renewal requirements for eligibility in each of the insurance affordability programs. It may include processes such as those used for collecting and verifying applicant information, including verification of citizenship and immigration status and certain income information as well as determining and renewing eligibility. Regardless of an applicant's point of entry (directly online at home, with a navigator or community organization/assister, through the mail, or through a consumer assistance office established by the Exchange), this shared eligibility service would be used whenever the single streamlined application for enrollment, discussed in section II.E.2 of this proposed rule, is initiated or whenever a renewal occurs.

We note that shared systems and the Medicaid functions they perform are eligible for enhanced Federal financial participation (FFP) of 90 percent for development (through December 31, 2015) and 75 percent for operations (no time limit) if certain conditions and standards are met. For additional information, see the April 19, 2011 final rule establishing enhanced funding for Medicaid eligibility and enrollment activities. Such systems are subject to cost allocation principles, per OMB Circular A–87 and guidance from CMS. In addition, the entities and agencies performing functions on behalf of one another that involve the use or disclosure of an individual's health information will be required to comply with the applicable business associate provisions of the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996.

Section 435.1200(c)(2) proposes that State Medicaid agencies enter into one or more agreements with the Exchange and other insurance affordability programs as necessary to ensure coordination of eligibility and enrollment, including coordination with a Basic Health Program if applicable. Details about the Basic Health Program will be included in forthcoming guidance. States may also use such agreements to coordinate related activities, such as health plan management.

States may design these agreements in different ways that reflect their governance structures. We see three broad options. First, one or more of the entities (the Exchange, Medicaid or CHIP agencies) could enter into an agreement whereby some or all of the responsibilities of each entity are performed by one or more of the others. Second, a State could develop a fully integrated system whereby the responsibilities of all entities are performed by a single integrated entity. Third, each entity could fulfill its responsibilities and establish strong connections to ensure the seamless exchange of information and data. We solicit public comments on these different working relationships and the best mechanisms to facilitate States' ability to coordinate eligibility and enrollment.

We note that relationships between the State Medicaid program and other insurance affordability programs must be established in accordance with section 1902(a)(5) of the Act, which specifies that a single State agency will administer or supervise the administration of the Medicaid program. When the Exchange or other entity is performing delegated functions, it must at all times conduct such business consistent with the rules adopted by the Medicaid agency. This is further discussed in section II.J of this proposed rule.

At § 435.1200(c)(3), we propose that the State Medicaid agency must certify criteria necessary for the Exchange to use in determining Medicaid eligibility based on MAGI. This includes the applicable Medicaid MAGI standard for parents and caretaker relatives, other adults, pregnant women, and children, as well as the criteria for determining satisfactory immigration status, in accordance with the Medicaid State plan. We invite public comment on other eligibility rules or criteria that should be certified by the Medicaid agency for Medicaid eligibility determinations made by the Exchange. MAGI methodologies and Medicaid eligibility based on the applicable MAGI standards are discussed in sections II.B.3 and II.E of this proposed rule.

2. Internet Web Site (§ 435.1200(d))

Section 1943 of the Act says that no later than January 1, 2014, States shall establish an Internet Web site, linked to the Web sites of other insurance affordability programs, through which individuals may obtain information, apply for, and enroll in Medicaid. To accomplish this, States could, for example, create one enrollment Web site for information and enrollment in all insurance affordability programs, or they could establish a broad health care Web site that includes health insurance coverage, health care services and supports, and health education information from a broad array of entities. Additionally, a State could establish a Medicaid presence on an existing State Web site. This Web site must be coordinated with the Exchange Web site as described at § 155.205 of the Exchange proposed rule.

Proposed § 435.1200(d) gives individuals the option to apply for or renew their eligibility for Medicaid online. A Web site that connects an individual directly into the Medicaid eligibility determination system is eligible for enhanced FFP under the April 2011 final rule establishing enhanced funding for Medicaid eligibility and enrollment activities, if the system in its totality, including the Web site, meets certain standards and conditions. Additional information on Web site specifications will be provided in forthcoming guidance.

Because the Internet Web site may serve as the primary mechanism through which individuals communicate with the agency, it must be accessible to individuals with disabilities and persons who are limited English proficient (LEP). At § 435.1200(d)(2) we propose that the agency must ensure accessibility of Web resources in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act, and must take reasonable steps to provide meaningful access for LEP persons. Accessibility needs of LEP persons may be met by providing language assistance services, such as translated information and ''taglines'' that inform LEP persons of the ability to talk to a multilingual staff person or an interpreter.

Web sites, interactive kiosks, and other information systems would be viewed as being in compliance with section 504 if they meet or exceed section 508 standards, which ensure that Federal agencies' electronic information technology is accessible to people with disabilities. The latest Section 508 guidelines issued by the US Access Board can be accessed at *http://access-board.gov/sec508/standards.htm,* and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 can be accessed at *http://www.w3.org/TR/WCAG20/.*

3. Provision of Medical Assistance for Individuals Found Eligible for Medicaid by an Exchange (§ 435.1200(e))

Consistent with sections 1413 and 2201 of the Affordable Care Act, under the coordinated system proposed in these rules, if the Exchange finds that an individual is eligible for Medicaid, the State Medicaid agency must enroll the

individual without further determination of eligibility. This enrollment is subject to the rules established by the agency. We note that the State Medicaid agency has the responsibility to facilitate health plan selection for enrolled individuals, but may arrange with the Exchange to undertake this function. This could include providing the individual with available health plan options and transmitting enrollment transactions to the health plan, if applicable.

As discussed in section II.B.3 of this proposed rule, for most individuals, eligibility for Medicaid would be determined based on MAGI. As described in the Exchange proposed rule, the scope of the final eligibility determinations made by the Exchanges is limited to those based on individuals having MAGI-based income at or below the applicable MAGI standard. Note that in certain circumstances the State may establish procedures whereby the Exchange will undertake Medicaid eligibility determinations on other bases. Individuals who are not eligible for Medicaid based on MAGI, would be screened, using information provided on the application, for potential Medicaid eligibility on other bases. As appropriate, their applications and other relevant information would be transmitted to the Medicaid agency for a full Medicaid eligibility determination. See section 155.345 of the Exchange proposed rule for additional information. Further, all applicants have the right to request and receive a full determination of eligibility on bases other than MAGI from the State Medicaid agency.

Section 435.1200(e) describes the standards for the Medicaid agency to promptly and efficiently enroll individuals determined to be Medicaid eligible by the Exchange. To accomplish this, we propose that the agency establish procedures to receive, via secure electronic interface from the Exchange, the finding of Medicaid eligibility and the individual's electronic account, including all application information. We recognize that an actual transfer of data may not occur, as the Medicaid agency and the Exchange may be utilizing a shared eligibility system. However, the legal responsibility for the electronic accounts and for further action, as appropriate, will transfer from the Exchange to the Medicaid agency. We expect processes to occur in real time whenever possible and, as noted earlier, we will be defining more detailed standards and other performance metrics, with State and stakeholder input, in subsequent Federal guidance.

4. Transfer of Applications From Other Insurance Affordability Programs to the State Medicaid Agency (§ 435.1200(f))

To ensure a coordinated eligibility and enrollment process as directed by the Affordable Care Act and address existing coordination rules for separate CHIP and Medicaid agencies in section 2102(b)(3)(B) of the Act, we propose a new § 435.1200(f). This provision includes and revises provisions previously covered under § 431.636(b)(1) through (b)(3). Under proposed § 435.1200(f), the State Medicaid agency must adopt procedures to promptly determine the eligibility of individuals assessed as potentially Medicaid-eligible by other insurance affordability programs and, if eligible, to enroll them without delay.

Under this proposal, individuals with household income below the applicable MAGI level who are assessed as potentially Medicaid eligible by another insurance affordability program would be quickly and easily enrolled in Medicaid. Because all insurance affordability programs will be utilizing a common process for MAGI-based eligibility determinations, an individual assessed by such a program as potentially Medicaid eligible based on MAGI should receive a seamless determination from the Medicaid agency, and no further action should be required of the applicant. For individuals with household income above the applicable MAGI standard, who are either assessed by an insurance affordability program as potentially eligible on a basis other than MAGI, or who request an eligibility determination on another basis, we propose that the Medicaid agency must conduct a full Medicaid eligibility determination in the same manner as if their application had been submitted directly to the agency.

We propose that the Medicaid agency establish procedures to receive the electronic account of any individual determined potentially Medicaid eligible by another insurance affordability program, and to promptly and without undue delay conduct an eligibility determination in accordance with the provisions set forth in § 435.911(c). The agency must not request any information already obtained, or duplicate any eligibility verifications already performed, by the other insurance affordability program and included in the individual's electronic account. Once the Medicaid determination is complete, we propose that the agency notify the insurance affordability program of the determination of Medicaid eligibility or ineligibility. Issues related to the notices needed to effectuate coordinated eligibility will be addressed in future rulemaking.

5. Evaluation of Eligibility for Other Insurance Affordability Programs (§ 435.1200(g))

Section 1943(b)(1)(C) of the Act directs States to ensure that any individual who applies for, but is determined ineligible for, Medicaid or CHIP is screened for eligibility for advance payment of the premium tax credit, cost sharing reductions, and enrollment in a qualified health plan offered through the Exchange. Therefore, in § 435.1200(g)(1), we propose that the Medicaid agency must assess potential eligibility for other insurance affordability programs when the agency determines that an individual is not eligible for Medicaid.

While the Affordable Care Act does not provide express authority for Medicaid to make eligibility determinations for coverage through the Exchanges, sections 1943(b)(2) of the Act and 1413(d)(2) of the Affordable Care Act do permit the agency to enter into a contract with the Exchange to do so. Absent such an agreement, the agency must promptly transfer the electronic account of individuals screened as potentially eligible, via secure electronic interface, to the Exchange so that such individuals can receive an immediate eligibility determination and, if eligible, be enrolled without delay. This provision assumes that verification of any information required only for eligibility in the Exchange, such as access to affordable employer-sponsored insurance, will be completed by the applicable program once the applicant's case is transferred. (Under current law and regulations, States also have the flexibility to have the State Medicaid agency administer some or all of the administrative functions for a separate CHIP, including the determination of eligibility for such program.)

We further propose that the electronic account transferred include the determination of ineligibility made by the Medicaid agency as well as all information provided on the single streamlined application and, as appropriate, verified by the State Medicaid agency. We note again that an actual transfer of data may not be necessary, but legal responsibility for the case will transfer from Medicaid to the appropriate program. We also note that the Exchange cannot reverse a determination of Medicaid ineligibility made by the Medicaid agency.

In this and the Exchange proposed rule, we propose that individuals determined ineligible for Medicaid based on MAGI, for whom the Medicaid agency is evaluating eligibility on the basis of being blind or disabled, may enroll in other insurance affordability programs while a final Medicaid determination is pending. Once the Medicaid determination is completed, if the individual is Medicaid-eligible, such coverage would be terminated in favor of Medicaid, but if not Medicaid-eligible, coverage would continue through the other program. This avoids unnecessary delays in coverage for individuals whose Medicaid eligibility determination process may be lengthy, while avoiding any overlap in coverage for those eventually determined Medicaid eligible based on blindness or disability. Proposed § 435.1200(g)(2) reflects the Medicaid agency's responsibilities in effectuating this policy. We note that proposed 26 CFR 1.36B(2)(c)(2)(iii)(B) in the Treasury proposed rule specifies that if an individual receiving advance payments of the premium tax credit is approved for Medicaid coverage, the individual is treated for purposes of eligibility for such credit, as eligible for minimum essential coverage no earlier than the first day of the first calendar month after such coverage is approved; thus, an applicant who is being evaluated by the Medicaid agency for eligibility based on blindness or disability and who is provided with advance payments of the premium tax credit in the interim would not be liable to repay such advance payments upon retroactive approval of Medicaid during the period for which advance payments were paid.

Since it would be inefficient and confusing to transfer and enroll individuals in other coverage, only to be disenrolled from such coverage days or even a few weeks later for enrollment in Medicaid, we propose to limit application of the policy described to individuals whom the Medicaid agency, in accordance with procedures in proposed § 435.911(c)(3), is evaluating for eligibility on the basis of being blind or disabled.

J. Single State Agency (§ 431.10 and § 431.11)

As discussed in section II.I above, to ensure a fully coordinated eligibility determination and enrollment process, the Exchange proposed rule provides that Exchanges will make Medicaid eligibility determinations to effectuate Section 1943(b)(B). For numerous reasons, including the coordinated enrollment process, we anticipate that States will want to consider different ways to achieve integration across Exchanges, Medicaid agencies and CHIP.

Under Medicaid's ''single State agency'' requirement in section 1902(a)(5) of the Act, as codified in § 431.10 and § 431.11, States must identify a ''single State agency to administer or to supervise the administration'' of the Medicaid program (that is, the Medicaid agency). This ensures that there is a single point of responsibility and accountability for proper administration of the State Medicaid program, including for eligibility determinations.

We note, however, that the statute at 1902(a)(5) specifically permits and in some cases requires the single State agency to delegate the authority to make eligibility determinations to certain other agencies. Current regulations provide for such delegation of eligibility functions in § 431.10(c). The regulations at § 431.10(e) provide that, in delegating any single State agency functions, the Medicaid agency retain authority to exercise administrative discretion in the administration or supervision of the plan, and that if other State or local agencies perform services for the Medicaid agency, they must not have the authority to change or disapprove any administrative decision of the Medicaid agency, or otherwise substitute their judgment for that of the Medicaid agency in the application of policies, rules and regulations issued by the Medicaid agency. It is our understanding that the use of this delegation authority is widespread across the nation, and in some States, multiple State agencies separate and apart from the State Medicaid agency, as well as county agencies make Medicaid eligibility determinations on behalf of the single State agency and under its supervision. In all instances, the single State agency is responsible under the statute to set the rules for the program, and to ensure that the determinations made are consistent with the statute.

Related section 1902(a)(4) of the Act requires a State plan to provide for certain methods of administration, including the establishment of personnel standards on a merit basis. We have historically advised States that public employees must make Medicaid eligibility determinations. This position has been based on the premise that certain activities in the eligibility determination process cannot be delegated to private entities because they involve discretion or value judgment that are inherently governmental in nature, and in such instances we have stated that State merit system employees must be utilized. In addition, there have been concerns about whether States that contract out their eligibility determination capacity would be able to effectively monitor and if necessary bring that capacity back ''in house'' if policy implementation issues arose.

Section 1413(d)(2)(B) of the Affordable Care Act reaffirms the single State agency requirement by providing that nothing in the law ''changes any requirement under Title XIX that eligibility for participation in a State's Medicaid program must be determined by a public agency.'' The proposed regulation is consistent with this provision. Simultaneously, we solicit comments on how these statutory provisions should apply in the context of Exchanges making Medicaid eligibility determinations and simpler, more uniform eligibility criteria.

In this rule, we propose to allow Medicaid agencies to delegate eligibility determinations for individuals whose eligibility will be determined according to MAGI to Exchanges that are public agencies. Specifically, we propose to permit Exchanges that are public agencies to make Medicaid eligibility determinations as long as the single State Medicaid agency retains discretion in the administration or supervision of the plan. We note that if Exchanges are established as a non-governmental entity as allowed by the Affordable Care Act, the coordination provisions in the law may mean the co-location of Medicaid State workers at Exchanges or other accommodations to ensure coordination is accomplished. We solicit comment on approaches to accommodate the statutory option for a State to operate an Exchange through a private entity, including whether such entities should be permitted to conduct Medicaid eligibility determinations consistent with the law.

In § 431.10(c)(1)(iii), we propose to permit Medicaid single State agencies to delegate their MAGI eligibility determination function to Exchanges operated by governmental entities, provided the single State agency remains solely responsible for setting eligibility policies and is accountable for ensuring the program operates consistently with such polices. In § 431.10(c), we propose that the single State agency be responsible for ensuring that eligibility determinations are made consistent with its rules and that corrective actions are instituted as appropriate; that there is no conflict of interest by any agency delegated the responsibility to make determinations; that eligibility determinations are made in the best interest of beneficiaries; and

that it guard against improper incentives or outcomes.

We further propose to add new § 435.10(d)(l) through (5), and a conforming change to the introductory text at § 431.10(d), to provide that agreements between single State agencies and agencies making determinations must state the quality control and oversight plans by the single State agency to review determinations made by agencies making Medicaid eligibility determinations; that the agencies making Medicaid eligibility determinations report to the single State agency; that confidentiality and security requirements in accordance with sections 1902(a)(7) and 1942 of the Act for all beneficiary data are met; and that all agencies making Medicaid eligibility determinations meet the requirements of 1902(a)(4) relating to personnel standards.

Finally, we would retain the requirement in § 431.10(e) that Medicaid agencies may not delegate the authority to exercise administrative discretion or issue policies and rules on program matters; that the authority must not be impaired if subject to review by other entities; and that other entities must not have the authority to change or disapprove any administrative decision of that agency, or otherwise substitute their judgment for that of the Medicaid agency for the application of policies, rules and regulations issued by the Medicaid agency.

K. Provisions of Proposed Regulation Implementing Application of MAGI to CHIP

Section 2101(d) of the Affordable Care Act revises section 2102(b)(1)(B) of the Act to ensure that, effective January 1, 2014, that States base income eligibility for CHIP on MAGI and household income, as defined in section 36B of the IRC, consistent with section 1902(e)(14) of the Act. Below we outline proposed changes to existing sections (§ 457.10, § 457.301, § 457.305 and § 457.320) of the CHIP regulations, as well as the addition of new § 457.315, to implement the CHIP MAGI components of the law.

1. Definitions and Use of Terms (§ 457.10 and § 457.301)

We propose a nomenclature change, replacing the term ''family income'' with ''household income'' wherever it appears in 42 CFR part 457, and adding a definition for ''household income.'' We propose to modify the term ''Medicaid applicable income level'' to clarify that the 1997 Medicaid applicable income level used in CHIP will also be converted to a MAGI-equivalent income level, consistent with guidance provided by the Secretary under sections 1902(e)(14)(A) and (E) of the Act. We are also adding other new terms related to the proposed regulations.

2. State Plan Provisions (§ 457.305)

Section 2102(a)(5) of the Act directs States to include a description of their income eligibility standards in their State plan. We propose to add a reference to the new § 457.315 on application of MAGI and household income.

3. Application of MAGI and Household Definition (§ 457.315)

Under section 2102(b)(1)(B)(v) of the Act, as added by section 2101(d)(1) of the Affordable Care Act, beginning January 1, 2014, States will use ''modified adjusted gross income'' (MAGI) and ''household income,'' as those terms are defined in section 36B(d)(2) of the IRC, to determine eligibility for CHIP, and for other purposes for which an income determination is needed, ''consistent with section 1902(e)(14)'' of the Act, which governs the application of MAGI and ''household'' income in Medicaid and which is implemented at proposed § 435.603 of these rules. In addition, section 2107(e)(1)(F) of the Act, as added by section 2101(d)(2) of the Affordable Care Act, states that section 1902(e)(14) be applied to CHIP ''in the same manner'' as it is applied to Medicaid.

Currently, States use different methods for defining income and household composition under CHIP. Many States operate their programs through expansions of Medicaid coverage. Among States with separate CHIP programs, some follow Medicaid financial methodologies while others rely on different methods, including gross income tests. While we recognize that the statutory application of MAGI rules to CHIP represents a change for some States, doing so is consistent with broader goals of coordination across programs. The adoption of MAGI-based methodologies to determine income for CHIP represents a necessary alignment with other insurance affordability programs and is particularly important for families both because children will be moving among different programs as family circumstances changes and because CHIP-eligible children will often be in families where the parent is eligible for a premium tax credit through the Exchange. Because the statute provides that CHIP apply the new MAGI methodologies in the same manner as Medicaid, we propose at § 457.315 that, in determining financial eligibility for CHIP, States use the methodologies for determining household composition and income as those proposed for Medicaid at § 435.603(b)–(h), as well as the exception, codified at proposed § 435.603(i)(1), to permit States to rely on a finding of income made by an Express Lane Agency in accordance with section 2107(e)(1)(E) of the Act. As discussed in section II.B. of this proposed rule, our proposed MAGI-based methods for determining Medicaid eligibility mirror the section 36B definitions of MAGI and household income, except in a very limited number of situations.

For a more detailed discussion of the proposed financial methodologies based on MAGI to be applied to both CHIP and Medicaid, see section II.B.1 and II.B.3 of this proposed rule.

4. Other Eligibility Standards (§ 457.320)

As discussed in section II.B.3.a and consistent with current practice in almost all State CHIPs, assets will no longer be considered in determining financial eligibility for Medicaid or CHIP. Section 457.320(a) lists the various eligibility standards States may adopt for one or more groups of children. We propose eliminating ''resources'' and ''disposition of resources'' in conformance with the law.

The Affordable Care Act also eliminates the use of income disregards other than a disregard of 5 percent of income specified under section 1902(e)(14)(I) of the Act. This means that, as of 2014, States no longer will be able to raise their effective income standards for their CHIPs through the use of a ''block of income'' disregard. The maximum income standard will be the higher of 200 percent FPL, 50 percentage points above the applicable Medicaid income level defined in section 2110(b)(4) of the Act and § 457.301, and the effective income standard in effect in the State (taking into account any income disregards adopted) as of December 31, 2013, converted to a MAGI-equivalent income standard in accordance with section 1902(e)(14)(A) and (E) of the Act.

5. Clarifications Related to MAGI

Nothing in this regulation affects existing rules regarding family size in States that take up the CHIP ''unborn child option'' (per the existing definition of child at § 457.10). In States that provide coverage under the option at § 457.10, the unborn child is counted in family size.

L. Residency for CHIP Eligibility (§ 457.320)

CHIP regulations currently allow States the option to adopt eligibility standards related to residency. The following changes to the regulations governing residency standards for separate CHIPs are proposed to ensure coordination between all insurance affordability programs. Further discussion on the rationale behind the proposed changes can be found in section II.C of this proposed rule.

We propose at § 457.320(d) to modify the definition of residency for non-institutionalized children who are not wards of the State under CHIP to reference the Medicaid definition for children at proposed § 435.403(i). As under § 435.403(i), for purposes of CHIP eligibility, a child under the proposed rule is considered a resident of the State in which he or she resides (for example, with a parent or caretaker and including without a fixed address), or in which a parent or caretaker is employed or seeking employment, including seasonal workers. The provisions of the proposed rule are not intended to effect a significant change in policy, and are discussed in more detail in section II.C.2 of this proposed rule. The provision at § 435.403(m) of the Medicaid rule, involving situations in which two or more States dispute a child's State of residence, is also applied under the proposed rule to CHIP; under that provision, physical location governs.

M. CHIP Coordinated Eligibility and Enrollment Process

Section 2101(e) of the Affordable Care Act adds section 2107(e)(1)(O) to the Act to apply to CHIP the same enrollment simplification standards described for Medicaid under the new section 1943 of the Act. These standards build on existing practices and provisions in section 2102(b)(3)(B) of the Act relating to coordinated eligibility and enrollment between Medicaid and CHIP. The regulatory amendments proposed correspond to proposed changes and additions to Medicaid at § 435.905 through § 435.908, § 435.916, § 435.917, § 435.940 through § 435.956, and § 435.1200, discussed more fully at sections II.D, II.E, II.G, II.H, II.I, and II.K of this proposed rule. We seek comments for CHIP on the issues raised in these corresponding sections for Medicaid.

1. Applications and Outreach Standards (§ 457.330, § 457.334, § 457.335 and § 457.340)

We propose revisions to § 457.330 similar to those proposed for Medicaid at § 435.907 to implement the use of a single, streamlined application for all insurance affordability programs, which builds on the successful experience many States have had with joint Medicaid-CHIP applications.

We propose adding § 457.335 and modifying § 457.340(a) to set forth standards for the availability of program information and application assistance, similar to those proposed for Medicaid at § 435.905 and at § 435.908, discussed in section II.E.3 of this proposed rule. We propose removing the mention of enrollment caps in § 457.340(a) to support the role of CHIP agencies in accepting the single streamlined application and screening for all insurance affordability programs regardless of whether CHIP enrollment is capped. To implement section 1943(b)(4)of the Act, relating to the establishment of Web sites to facilitate application and enrollment in all insurance affordability programs, we propose adding § 457.335 similar to the rule proposed for Medicaid at § 435.1200(d), discussed in section II.I. of this proposed rule.

We propose to revise § 457.340(b) to specify that all CHIP agencies require applicants who have an SSN to provide it. We recognize that the Privacy Act makes it unlawful for States to deny benefits to an individual based upon that individual's failure to disclose his or her Social Security number, unless such disclosure is required by Federal law or was part of a Federal, State or local system of records in operation before January 1, 1975. However, section 1414(a)(2) of the Affordable Care Act authorizes the Secretary to collect and use SSNs where necessary to administer the provisions of, and amendments made by, the Affordable Care Act. We believe such section provides the authority for the requirement of SSNs when applicants are using the coordinated system and streamlined application designed by the Secretary under section 1413 of the Affordable Care Act. However, similar to Medicaid, non-applicants cannot be required (but may be requested) to provide an SSN. Consistent with Medicaid regulations at § 435.910, the CHIP agency must not deny or delay services to an otherwise eligible applicant pending issuance or verification of an applicant's SSN.

We propose revisions to the effective date of eligibility in § 457.340(f) to ensure that the method adopted by the State for determining the effective date of coverage will provide for a coordinated transition of children between programs as family circumstances change, without gaps or overlaps in coverage.

2. Determination of CHIP Eligibility and Coordination With Exchange and Medicaid (§ 457.348 and § 457.350)

We propose to add new coordination rules at § 457.348 to mirror the rules for Medicaid agencies at proposed § 435.1200(e) and (f), and to coordinate with the rules in 45 CFR § 155.345 of the Exchange proposed rule. Proposed § 457.348(a) and (b) would ensure that State CHIP agencies promptly enroll individuals determined eligible for CHIP by the Exchange, without requiring additional information or making further determinations, and promptly determine the eligibility of (and, if eligible, enroll) individuals determined potentially eligible for CHIP by the State Medicaid agency. Consistent with current CHIP policy, proposed § 457.348(c) clarifies that CHIP agencies may enter into arrangements with the State Medicaid agency to accept that agency's determinations of CHIP eligibility.

We also propose revisions to regulations at § 457.350, which currently relate to the responsibilities of the CHIP agency to coordinate with Medicaid. The proposed revisions are consistent with those proposed for Medicaid agencies at § 435.1200(g), discussed in section II.I.5 of this preamble, and 45 CFR § 155.345 of the Exchange rule, discussed in section II.A.1 of the Exchange preamble.

Two of the proposed revisions to § 457.350 warrant particular mention. First, the standards at § 457.350, as revised, apply to all individuals who are included as applicants on the single application—for example, parents and other adults in the household. Second, at § 457.350(j), we propose that, for children who do not appear Medicaid eligible based on MAGI, but whom the CHIP agency identifies as potentially eligible for Medicaid on another basis, such as disability, the CHIP agency both transmit the application and all pertinent information to the Medicaid agency for a full Medicaid evaluation and continue to process the CHIP determination, enrolling the child, if eligible, in the program unless and until the child is determined eligible for Medicaid. This is consistent with the process proposed for the Exchange at 45 CFR 155.345 in the Exchange proposed rule and with the responsibilities of the

Medicaid agency at proposed § 435.1200(f).

We anticipate significant variation in how States choose to operationalize the coordination of CHIP with other insurance affordability programs, and we will work with States to achieve the high level of integration of processes, which will be needed to effectuate the coordination required and to avoid duplication of costs and reduce administrative burden on States, children, and their families. At proposed § 457.350(k), we note that CHIP agencies may enter into arrangements with the Exchange to make eligibility determinations for advanced premium tax credits in accordance with section 1943(b)(2) of the Act.

3. Periodic Redetermination of CHIP Eligibility (§ 457.343) and Coverage Months

Under sections 1943(b)(3) of the Act and sections 1413(a) and 1413(c)(2) of the Affordable Care Act, we propose to add new policies at § 457.343 to implement the data-driven renewal procedures for CHIP proposed for Medicaid at § 435.916. For a fuller discussion of the proposed renewal process, which we believe is consistent with current renewal processes in many States; see section II.G of this proposed rule. The proposed data-driven verification system is also consistent with the system proposed for the premium tax credit determinations conducted by the Exchange.

In proposed 45 CFR § 155.410 of the Exchange proposed rule published on July 15, 2011, eligibility begins on the first day of the following month for all qualified health plan selections made by the 22nd of the previous month, and on the first day of the second following month for all qualified health plan selections made between the 23rd and last day of a given month. Similar to Medicaid, we are seeking comment on a provision that would continue CHIP coverage until the end of the month following the end of the appropriate termination notice period, subject to certain exceptions. This policy, which we believe is the policy currently in operation in most CHIPs, would prevent a gap in coverage for an individual or family moving from CHIP to the Exchange. Further discussion of this issue can be found at section II.G. of this proposed rule.

4. Verification of Eligibility (§ 457.380)

Consistent with the provisions of section 1413(c)(3)(A) of the Affordable Care Act (applicable to CHIP through sections 1943(b)(3) and 2107(e)(1)(O) of the Act), we propose revising § 457.380, based on section 1413 of the Affordable Care Act, relating to verification of eligibility for separate CHIPs consistent with the rules proposed for the Exchanges and Medicaid. Consistent verification procedures prevent gaps in coverage caused by different programs operating under different rules.

To better align all insurance affordability programs, we reference specific verification methods for residency and income. Proposed § 457.380(c) references proposed regulations for verification of residency for purposes of Medicaid eligibility at § 435.956(c), which also align with proposed Exchange regulations at 45 CFR 155.315(c). At proposed § 457.380(d), we require separate CHIPs to verify income in accordance with proposed Medicaid regulations at § 435.948, which are coordinated with proposed Exchange regulations at 45 CFR 155.320. As described in § 435.945(b) and § 435.948, States may continue to choose to accept self-declaration of income, but must also request information from third-party data sources in accordance with § 435.948 and to continue to comply with program integrity requirements. States are not required under § 435.948 to request third-party financial eligibility information that the State determines is not useful to verifying the financial eligibility of the applicant. For other eligibility criteria, we propose in § 457.380(a) and (e) to continue to allow CHIPs to develop reasonable verification procedures, including reliance on self-declaration or attestation (except when verifying citizenship or immigration status). However, we explicitly provide that States accept self-attestation of pregnancy and household membership, as proposed for Medicaid in § 435.956(e), unless the State has other information that is not reasonably compatible with the attestation. We also provide standards for verifying age and date of birth.

The Affordable Care Act envisions a data-driven verification system in order to improve the application experience for families while maintaining strong program integrity. Mirroring standards being proposed for Medicaid at § 435.952 and the Exchange at 45 CFR 155.315, we propose adding § 457.380(f) to clarify that the State may only request additional information if it is not available electronically. Consistent with proposed Medicaid regulations at § 435.948(b), we propose in § 457.380(g) that States must use the electronic service established by the Secretary under proposed § 435.949 if reliable electronic data needed for verification is available. In proposed § 457.380(h), we affirm that program integrity responsibilities for CHIP are not affected by this proposed regulation.

Finally, we propose adding § 457.380(i), similar to proposed § 435.948(f) and § 435.949(c) of the Medicaid regulation, and to enable States, with approval from the Secretary, to modify the verification procedures used by its program. We solicit comments on alternative verification methods that may help improve coordination between CHIP and other insurance affordability programs.

5. Ministerial Changes (§ 457.80, § 457.300, § 457.301, § 457.305 and § 457.353)

We are also proposing a number of ministerial changes necessary to bring other sections of the current CHIP into conformance with the proposed changes and revisions described above, including revisions to § 457.80, § 457.300, § 457.301, § 457.305 and § 457.353.

N. FMAP for Newly Eligible Individuals and for Expansion States

The Affordable Care Act provides for a significant increase in the FMAP for medical assistance expenditures for individuals determined eligible under the adult group in the State and who are considered to be ''newly eligible'', as defined in section 1905(y)(2)(A) of the Act. The increased FMAP specified in section 1902(y)(1) of the Act is not available for the medical assistance expenditures for any individual who is not considered newly eligible. Under section 1905(y)(2) of the Act, an individual is newly eligible if the individual would not have otherwise been determined eligible for Medicaid under the eligibility provisions of the Medicaid State plan, demonstrations, or waivers in effect in the State as of December 1, 2009.

1. Availability of FMAP (§ 433.10(c))

We propose to amend 42 CFR part 433 to add new provisions at § 433.10(c) to indicate the increases to the FMAPs as available to States under the Affordable Care Act. The following describes these new FMAP provisions.

a. Newly Eligible FMAP (§ 433.10(c)(6))

In § 433.10, we propose to add a new paragraph (c)(6) to indicate the increased FMAP rates available to States beginning January 1, 2014, for the medical assistance expenditures of individuals determined eligible under the adult group who are considered to

be newly eligible, as defined in section 1905(y)(2)(A) of the Act.

b. Expansion State FMAP (§ 433.10(c)(7) and § 433.10(c)(8))

In § 433.10, we propose to add new paragraphs (c)(7) and (8) to indicate the availability of additional FMAP rates for expansion States.

(1) 2.2 Percentage Point Increase in FMAP (§ 433.10(c)(7))

Per section 1905(z)(1) of the Act, we propose to add § 433.10(c)(7) to indicate the availability of a general 2.2 percentage point increase to the base FMAP of a State (as determined under section 1905(b) of the Act) for certain expansion States, as defined in section 1905(z)(3) of the Act. The general 2.2 percentage increase to the base FMAP is available only to a State that: (1) Meets the definition of expansion State; (2) does not qualify for any payments for the full increased FMAP for individuals who are newly eligible; and (3) has not been approved by the Federal government to use amounts of their DSH allotments for the costs of providing medical assistance or other health benefits coverage under a demonstration that was in effect on July 1, 2009. Only for States that meet these 3 conditions, the base FMAP would be increased by 2.2 percentage points for all expenditures in CYs 2014 and 2015 (to which the base FMAP would apply). Since by definition, the base FMAP plus 2.2 percentage points would only be available and applicable for expenditures for individuals who are not newly eligible, such general increase would be available for all individuals in such States.

(2) Expansion State FMAP (§ 433.10(c)(8))

The increased FMAP discussed in section II.N.1.a. of this proposed rule is available for individuals in the adult group who are considered to be newly eligible. We propose to add § 433.10(c)(8) to indicate an additional FMAP rate will be available for expansion States for the expenditures for certain nonpregnant childless adults who are determined eligible under the adult group, and who are not considered to be newly eligible, as defined in section 1905(y)(2)(A) of the Act.

Beginning in CY 2014 and each year thereafter, the expansion State FMAP for medical assistance for individuals described in the adult group who are nonpregnant childless adults is equal to the base FMAP for the State increased by a certain percentage determined in accordance with a formula specified in section 1905(z) of the Act, as amended by the Affordable Care Act. This new expansion State FMAP is equal to the base FMAP plus a ''transition percentage'' multiplied by the difference between the Newly Eligible FMAP provided to States beginning in CY 2014 and the expansion State's base FMAP. The transition percentage is as follows:

- 50 percent in CY 2014;
- 60 percent in CY 2015;
- 70 percent in CY 2016;
- 80 percent in CY 2017;
- 90 percent in CY 2018; and
- 100 percent in CY 2019 and every year thereafter.

The following illustrates how the expansion State's FMAP would be calculated:

Example. In CY 2019, assume the expansion State's base FMAP is 60 percent. In CY 2019 the Newly Eligible FMAP is 93 percent. Therefore, in this example, in CY 2019 the expansion State FMAP would be 93 percent, calculated as follows:

$$E = F + (T \times (N - F))$$

E = Expansion State FMAP
F = Expansion State's Base FMAP
T = Transition Percentage
N = Newly Eligible FMAP

$$93\% = 60\% + (100\% \times (93\% - 60\%))$$

Beginning in 2020 both the expansion State FMAP and the newly eligible FMAP will be 90 percent.

2. Methodology (§ 433.206(a) and § 433.206(b))

One of the key steps in simplifying the eligibility determination process for individuals and States involves developing a methodology that ensures the Federal government will pay the appropriate FMAP rate for both ''newly eligible'' individuals as well as for expenditures that are subject to the expansion State FMAP rate. As discussed above, the Affordable Care Act provides for streamlined eligibility and enrollment policies and processes that are a departure from the more complex pre-Affordable Care Act Federal Medicaid eligibility policy, but the pre-Affordable Care Act rules retain relevance for the purposes of determining the appropriate FMAP rate for expenditures beginning in CY 2014. Although the new MAGI rules are used for purposes of determining eligibility for the adult group, the newly eligible FMAP is not available for all individuals whose eligibility will be determined using MAGI; rather the newly eligible FMAP is only available for those members of the adult group who are determined to be newly eligible as discussed in this regulation. In order for States to determine which beneficiaries are ''newly eligible'' and which are not, States must evaluate a large group of beneficiaries against the State's pre-Affordable Care Act eligibility rules. To do so on a case-by-case basis would require States to operate two eligibility systems or processes—one simplified system for the purpose of determining eligibility, and another different and more complex system to assign the appropriate FMAP rate. The two sets of rules would, in turn, require Exchanges as well as State Medicaid agencies to collect from applicants information in excess of what is required for States to determine eligibility either for Medicaid or premium tax credits available through the Exchange.

Running two distinct eligibility systems would pose challenges to applicants, States, and the Federal government. Applicants would have to report and verify income, assets, and deductions under pre-Affordable Care Act rules, even though that information would no longer be required to determine eligibility. Similarly, States and the Federal government would have to seek and verify information not needed for eligibility determinations, resulting in excess administrative burden and inefficiency, a result counter to the goals of the Affordable Care Act.

Because a double eligibility system is burdensome and costly to States and the Federal government, a barrier to enrollment for eligible individuals and families, and would likely lead to inaccurate determinations, we have identified possible alternate approaches for determining the appropriate FMAP rate. Specifically, this proposed rule discusses the potential revision of regulatory provisions in part 433 to propose three alternative methodologies which States could use for claiming expenditures at the appropriate FMAPs: The regular FMAP, the newly eligible FMAP and the expansion State FMAP for individuals eligible for Medicaid beginning in CY 2014 under the provisions in sections 1902(a)(10)(A)(i)(VIII) and 1905(y) and (z) of the Act as amended by the Affordable Care Act. The proposed rules would not permit FFP for the costs of maintaining dual eligibility systems for the adult group. HHS plans to test, with States, each of the proposed methodologies and possibly others suggested through the comment process. Once the rules are finalized, CMS will provide technical support to States as they adopt an identified methodology.

In developing the proposed claiming methods, in consultation with States and subject matter experts, we identified and applied certain principles

to assure that each method will accurately reflect the application of the appropriate FMAP. These principles are also the criteria against which we will measure the feasibility of the approaches proposed in this proposed rule and others that may be proposed during the comment period. First, any methodology must provide as accurate and valid application of the applicable FMAPs to actual expenditures as possible in the determination of the appropriate amounts of Federal payments for such expenditures. The methodology must not include a systemic bias in favor of either the States or the Federal government. Second, any allowable methodology should minimize administrative burdens and costs to States, the Federal government, individuals, and the health care system. Third, any methodology must be developed and applied transparently by both the Federal government and States. Fourth, any method must take into consideration the practical programmatic and operational goals of the Medicaid program. Finally, in order to ensure that the States claim expenditures at the correct FMAP, any methodologies used by the States should include sufficient data to identify, associate and reconcile expenditures with the related eligibility group to which the FMAPS apply. With these principles in mind, we propose that States work in partnership with the Federal government on technical support and review as well as ongoing monitoring, verification, and adjustment by States and the Federal government. HHS plans to monitor State implementation and operations closely and could require adjustments and changes to processes as necessary to ensure that systems are implemented in an unbiased and accurate way. HHS is exploring mechanisms to verify methodology results, including on-site reviews, sampling and confirmation with outside data sources, which could identify issues resulting in improper levels of FMAP being claimed. HHS will define procedures as needed to ensure accurate reporting and verification of computations to determine the applicable FMAP potentially including enhanced monitoring and prospective or retrospective FMAP adjustments. States and the Federal government each have a strong interest in an accurate, simplified system, and we expect to undertake these efforts in full partnership with States.

Given the principles discussed above, we are considering three main approaches to identifying newly eligible individuals for purposes of applying the correct FMAP rate in the development of States' claims for Federal funding in Medicaid: (1) Using upper income and other thresholds across categorical eligibility groups, taking into account the December 2009 eligibility standards in effect under State plans, waivers or demonstrations and applicable disregards and adjustments, to approximate, in the aggregate, the December 2009 standards; (2) using a sampling methodology across individuals in the adult group and related Medicaid expenditures to make a statistically valid extrapolation of who is newly eligible and their related expenditures; or (3) using an extrapolation from available data sources to determine the proportion of individuals covered under the new adult group who would not have been eligible under the eligibility criteria in effect under the State plan or applicable waiver as of December 1, 2009, validating and adjusting the estimate, based on sampling or some other mechanism, going forward. We seek comment on these three approaches.

At § 433.206(a), we propose that a State may opt to use any of the specified alternatives discussed below. As discussed further, these specific options may not ultimately be the methods available, as we expect to modify, narrow or combine the proposed approaches in the final rule depending upon public comment and testing for feasibility. We are specifically interested in input as to what other options should be considered, and whether it is advisable for States to choose from among different methods or for HHS to identify a single method that all States would use.

If selection is available, we propose at § 433.206(b) that a State provide notice to CMS of which methodology it plans to use at least two calendar years prior to the first day of the calendar year in which the State will use that particular method, except for 2014 as discussed below. For example, a State would provide notice to CMS of the methodology it plans to use for CY 2017 no later than December 31, 2014. For the initial year (CY 2014), States would give notice to CMS no later than one year prior to the beginning of the calendar year, January 1, 2013. This allows States time to determine which method best meets their needs in that context and to make preparations for the systems and eligibility determination modifications needed for the initial years. We further propose that once a State selects a methodology, it must use that method for a 3-year period, at a minimum, subject to necessary monitoring and adjustment. This will allow stability in the process and allow for the provision of appropriate allocation of resources within the State and at the Federal level. We request comments on this minimum 3-year period.

As noted above, we are proposing to not provide the option of maintaining double eligibility systems and completing a determination for each individual under obsolete eligibility rules for purposes of determining the appropriate FMAP because we believe that this is neither necessary nor efficient. Rather, we propose to rely on one or more alternate methodologies.

3. Alternative 1: 2009 Eligibility Standard Threshold

The ''threshold methodology'' would allow States to use upper-income thresholds, as well as proxies for other eligibility criteria (such as assets or disability status) across categorical eligibility groups, taking into account the December 1, 2009 eligibility standards, to determine whether an individual is considered to be newly eligible for purposes of assigning a Federal matching rate. This methodology would use information the individual supplied on their application, and other appropriate data sources, subject to appropriate verification and documentation requirements, to assign the individual to one of the categories that the Affordable Care Act subsumed into the adult group, such as certain parents and caretaker relatives, 19 and 20 year olds, and childless adults, and to then apply simplified eligibility criteria based on the rules in effect December 1, 2009 to identify those who would have been eligible under the December 1, 2009 criteria. This option requires States to apply the December 1, 2009 eligibility criteria, but in a simplified manner, to each Medicaid beneficiary who is included in the adult group. Based on the threshold combined with proxies, the individual would be determined to be newly eligible or an individual who would have been eligible based on the December 2009 eligibility standards.

As previously noted, States will need to establish income eligibility thresholds for MAGI populations to be eligible for Medicaid under the State plan, demonstration or a waiver of the plan using MAGI that are not less than the effective income eligibility levels that applied under the State plan, demonstration or waiver on the date of enactment of the Act (''income standard conversion''). States using the threshold methodology similarly could convert the income standards in effect as of December 1, 2009 for other optional eligibility groups (for example, based on

disability) to MAGI-equivalent standards, against which the MAGI-based income of an individual eligible under the new adult group would be compared for the purpose of determining whether such individual would have been eligible under the optional group and thus is newly eligible or not. CMS will solicit State input and providing further guidance and technical support on the income standard conversion process.

We propose that States employing this threshold methodology would also establish, subject to CMS approval, proxies of eligibility criteria in place prior to CY 2014 that are not related to income, such as disability status and asset value. For disability, for example, proxies could be based on receipt of SSDI, screening questions included in the application process (for example, ''Have you had an accident or illness serious enough that it has caused and is still causing you to miss work for an extended period of time?''), retroactive claims review (to determine individuals with significant medical problems), some other method, or such methods in combination (for example, use of both a screening question and retrospective claims review). States would have to be clear with applicants that this information would not be used for an eligibility determination purposes. We are requesting comments on what methods or proxies could be used by States for disability status as well as whether there are any special considerations which must be considered in the identification or use of appropriate proxies for States that apply a more restrictive definition of disability than the SSI program.

Although we are looking for proxies for disability determinations to determine whether to claim enhanced FMAP for an individual or not, we are also considering the possibility of using only actual disability determinations to ascertain the appropriate FMAP. Thus, if an individual underwent an actual disability determination and was found to be disabled, and met other criteria associated with a pre-Affordable Care Act optional eligibility category for the disabled such that he or she would have been eligible as disabled in December 2009, that individual would not be newly eligible. This proposal would be feasible to the extent that it is reasonable to expect that individuals with disabilities have sufficient incentives to undergo disability determinations, most likely to obtain disability-related cash benefits, such that a proxy is not necessary. We are soliciting comments on whether adequate incentives do exist such that no additional proxies for a disability determination need be applied.

For the reasons noted, we are also proposing that States using the threshold methodology identify thresholds or proxies for estimating whether individuals in the adult group meet any asset test that was applied to the applicant's coverage category in December 2009. The State would also propose procedures for obtaining the information needed to compare the situation of individuals in the adult group to the proxy. For example a State might include a few simple questions during the application process to enable comparison against the proxy, for example, ''Excluding your primary residence and automobile, are your assets, including any savings or checking accounts, stocks, bonds, or other liquid assets, greater than X dollars?'' States could also use information on tax returns to obtain information about assets via interest or dividend income. We also are interested in comments regarding the feasibility of using the Asset Verification System (AVS), required for all States under section 1940 of the Act as a tool to obtain asset data on individuals in the adult group without asking for it directly.

We also considered proposing that the threshold methodology be limited to an individual's income and not the assets/resources when comparing the individual against the December 2009 eligibility criteria. This would allow States to not collect asset information no longer needed for eligibility purposes and it is consistent with analysis showing that only very small numbers of people with income in this range will have disqualifying assets. However, without evaluating assets, all individuals whose incomes are below the income threshold would not be newly eligible, even though it is possible that some would not have been eligible under the pre-Affordable Care Act rules. Thus, if assets are not considered there could be individuals who would be newly eligible, but for whom the State could not claim enhanced match. We believe this methodology has merit as we recognize there is a burden on States and to beneficiaries in including an asset proxy and that a significant portion of low-income individuals do not have assets in excess of those thresholds. We invite comment on both approaches.

In lieu of additional questions on an application for coverage asking about assets, we are also considering allowing States to develop an estimate based on actual data on the proportion of individuals applying for coverage who failed eligibility for a specific group in effect as of December 1, 2009 due to possession of assets exceeding the asset limit. For example, if the State had an optional disability group in December 2009 with a resource test, and 15 percent of applicants were denied coverage in that group because their assets exceeded the resource, the State could assume that 15 percent of the disabled individuals with incomes below the converted December 2009 standard in the adult group would also fail the asset test. The State would therefore estimate the percentage of individuals who were disabled in the adult group would be newly eligible. We are interested in comments as to whether States have reliable data upon which this calculation could be made.

We also propose that once an individual is determined to be either a newly eligible individual or an individual who would have been eligible under the December 2009 standards for FMAP determination purposes, the determination would be applicable throughout the 12-month eligibility period after a person is determined eligible. Our proposal is based on the observation that changes in income occur in both directions and are not biased in one direction or the other. Our proposal is also based on the goal of achieving administrative simplicity, which can best be obtained through a single annual FMAP determination for an individual who remains enrolled in Medicaid, whether continuously enrolled or not, rather than requiring a State to potentially make many such determinations over the course of a year.

Finally, we do not believe that States need to consider whether an individual would have been eligible under a spend down for a medically needy category under section 1902(a)(10)(C) of the Act in considering whether someone would have been eligible under standards in effect in December 2009. This is because we believe that there is inherent uncertainty in determining whether and when a spend down would have been met. An individual who is not yet ''medically needy'' because he or she has not yet met the spenddown requirements would not be considered to be eligible for Medicaid under the December 2009 standards. However, if an individual does qualify by meeting the medically needy income standard without a spenddown, the State could not claim enhanced FMAP for that individual.

The threshold methodology would require ongoing monitoring, verification, and adjustment. States using the threshold methodology would need to work with CMS to verify this

methodology for a sample of cases within the first 2 years of use to test whether the threshold methodology is accurate and valid. We propose to undertake a periodic review, working collaboratively with States to evaluate the accuracy of the threshold methodologies and make adjustments to improve the accuracy of the threshold, as needed. We propose that adjustments to the methodology would be prospective only. Once a State has an approved methodology, that methodology would apply unless and until a review process indicated that adjustment was necessary. Finality and certainty are important for the operation of the program.

4. Alternative 2: Statistically Valid Sampling Methodology (§ 433.210)

At § 433.210, we are proposing the standards for States to use sampling to extrapolate the correct expenditures for which the State would receive the FMAP rate for newly eligible individuals established under the Affordable Care Act. Sampling is the statistical practice of selecting a random and unbiased subset of Medicaid eligible individuals and their related expenditures. We believe that a statistically valid sampling plan is a transparent, and widely accepted methodology of allocating costs. OMB Circular A–87 revised establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and Federally-recognized Indian tribal governments. We propose that States using this methodology would use a statistically valid sampling methodology meeting the requirements of OMB A–87.

To ensure consistency, we propose to specify the additional standards States would need to use to perform a statistically valid sample of the population of individuals covered under the new eligibility group created by the Affordable Care Act, to determine the proportion that would not have been eligible based on the State's December 2009 eligibility standards, and therefore be newly eligible. We propose to specify standards within this regulation as well as in accompanying guidance relating to sample size and specifics of sampling techniques, *etc.* We believe this will allow HHS to work with States to refine specific sampling requirements and procedures as we gain experience over time. For example, we anticipate the sample size requirements may evolve as we gain experience with actual data becoming available and tested over time. We also believe that guidance on the inclusion of specific demonstration-related issues would be best provided through subregulatory guidance to allow better consideration of State-specific issues, as well as to provide an opportunity to refine the specific methodologies and requirements.

For all individuals selected for the sample, the State would perform the equivalent of a full eligibility determination using the eligibility standards in place in that State as of December 2009. Each individual in the sample would be determined to be either a newly eligible individual or an individual who would have been eligible under the December 2009 standards. We propose that States should submit their sampling plans to CMS with adequate time for review and approval in advance of implementation, preferably not later than the first day of the calendar year for which the State will implement that plan.

We propose that the State would pull the claims for each selected individual to determine actual expenditures for the sample. The State would determine the proportion of actual expenditures in the sample that were for newly eligible individuals and extrapolate this proportion to the population sampled to determine the correct allocation of expenditures for which the State would make a claim at the FMAP rate for newly eligible individuals established under the Affordable Care Act. We believe this methodology would most accurately determine a weighted expenditure proportion from actual claims to apply to the adult group.

We also considered using a methodology in which a per capita expenditure would be determined for the adult group. States would apply this per capita expenditure amount proportionately to determine the appropriate FMAP claiming. We believe this methodology may allow for greater ease of administration, but seek comment on whether this would reflect a fair allocation of expenditures to each distinct population.

We propose that States would perform a statistically valid sample for the year in which the State is claiming. This sample would be based on the entire adult group population, from which the State would randomly select Medicaid eligible individuals on a monthly basis, in accordance with CMS' sampling guidelines. Once individuals are determined in that month of review to be either a newly eligible individual or an individual who would have been eligible under the December 2009 standards, the State would apply that eligibility determination throughout the entire year for the purpose of FMAP determination. Our proposal is based on the observation that switches occur in both directions and are not biased in one direction and the administrative simplicity that can be obtained through a single annual determination is preferred.

The State would pull all medical expenditures for the prior 12 months for the individual. If the individual is enrolled exclusively in a managed care organization (MCO), for which the State makes a capitated monthly payment to an MCO, the State would consider the risk-adjusted monthly payment to the MCO as the full medical assistance expenditure for that individual for each month the individual is so enrolled. Otherwise, the medical expenditures for each individual are equal to the actual expenditures made to providers for items and services provided to that individual. It does not include any Medicaid supplemental payments that are not associated with medical assistance payments made for specific items and services provided to a specific individual.

We propose that the State complete the sampling and related expenditure analysis no later than 2 years after the completion of the designated year. The State will retroactively apply the FMAP to the correct year and make any necessary prior period adjustments to the CMS–64 expenditure report to assure accurate Federal funding. We will work with States to meet the proposed time frame to ensure their ability to claim the enhanced funding.

We propose that the State would claim based on the most recent data for the current year. We understand that the State will not have accurate data based on the actual year's enrollment and expenditures until after the finish of that year. Therefore, we propose to allow States to make interim claims for the FMAP rate for newly eligible individuals established under the Affordable Care Act. These claims would be based on the most recent year for which a State has statistically valid data. For example, in CY 2020, if a State had a completed sample for CY 2018, but was finalizing its sample and related extrapolation for CY 2019, the State would use the data from the CY 2018 sample and apply the FMAP according to the CY 2018 findings. Once the State completes the CY 2020 sample, it will retroactively adjust the CY 2020 expenditures claimed on the CMS–64 to incorporate the actual data from 2020 (the process for CYs 2014 and 2015 is discussed below). We solicit comment on this estimation and reconciliation process.

We propose that States will continue to sample on an annual basis for the first consecutive three years the State implements a sampling methodology. For all following years, we propose that the State would sample on a 3-year basis.

For the initial years (CYs 2014 and 2015), we propose to allow States to calculate and apply a reasonable estimate of the expenditures claimed at the Newly Eligible and expansion State FMAP rates established under the Affordable Care Act and make the retroactive adjustment described above based on CY 2014 data extrapolated using the State's sampling methodology. We would allow States to create a reasonable estimate in one of two ways: (a) Based on a State's statistically valid sample of low-income populations that reasonably approximates the expected Medicaid adult group; or (b) based on a HHS developed estimate of the proportion of newly eligibles and per capita expenditures for the projected newly eligibles that HHS would develop and test in collaboration with States by, for example, using a combination of Medical Expenditure Panel Survey (MEPS) and Medical Statistical Information System (MSIS) data, or other existing data sources. In the first option, we propose to allow States to calculate the projected per capita expenditures for the newly eligible population based on a sample of the low-income population of those individuals enrolled in and appearing to be potentially eligible for Medicaid as of CY 2014. The States would use the sampling methodology guidelines applied to the population of State residents (Medicaid enrollees and other low-income individuals) that approximated the expected Medicaid eligible adult group. We propose that States submit a sampling plan demonstrating compliance with OMB Circular A–87 and, other requirements specified within this rule and other CMS sampling guidance. The methodology must include not only a description of the population from which the sample will be pulled prior to CY 2014, but also how the chosen population approximates the adult group. States would complete the sample and expenditure extrapolation in accordance with a sampling plan prior to January 1, 2014.

We propose that States use data from the sample to calculate the projected proportion of newly eligible individuals, as well as per capita expenditures for such individuals. The State would use MSIS data and Medicaid experience to estimate expenditures for the ''would have been eligible'' population. The State would use this information to determine the appropriate estimated expenditure proportions to claim at the respective FMAP rates for the initial years.

We propose to allow Federal match based on the estimate until the actual data became available and sampled in accordance with the methodology established above. The State would make a retroactive claims adjustment on the CMS–64 based on the actual data from CY 2014.

Alternatively, in the second option we propose to allow States to use a CMS established estimate of the proportion and per capita expenditures for the projected newly eligible for CY 2014 based on currently available State-specific data (for example using MEPS data, a combination of MEPS and MSIS data, or other existing data sources). We propose to establish the proportion of newly eligible individuals and per capita expenditure amounts that each State could use in estimating FMAP for the initial years. We would publish the estimates for State use for CY 2014 no later than January 1, 2013 to ensure States have sufficient time to incorporate the data and create reasonable estimates.

We propose to provide Federal match based on the estimate until the actual data became available and sampled in accordance with the CMS-established sampling requirements established in this regulation and in future subregulatory guidance or validated in another way. If sampling were chosen as a validation method, we propose to require that States would implement a statistically valid sample methodology throughout CYs 2014 and 2015 to determine the correct proportion of newly eligibles and expenditures to claim at the 100 percent FMAP for CYs 2014 and 2015, respectively. The State would make a retroactive adjustment based on the actual data from CY 2014.

We consider this concept to be similar to an interim rate payment methodology. It allows for the State to receive the increased FMAP rate for a reasonable estimate of newly eligible individuals and settle to actual expenditures when the data is available. We are soliciting comments on this approach.

5. Alternative 3: Use of a FMAP Methodology Based on Reliable Data Sources (§ 433.212)

We are also proposing an option for States to use State specific estimates established by the Secretary using reliable data sources such as MEPS data or State MSIS data. This option is described in proposed § 433.212.

Under this model, States would use the estimated proportions in claiming FFP for medical assistance expenditures for newly eligible individuals. Because the model and estimated proportions would be available prior to each year, the State would claim expenditures and draw down Federal funds in real time. There would be no need for a retroactive adjustment. Rather, the verification to actual claims beginning in CY 2016 would apply to correcting for future years by adjusting the model.

We have reviewed current Federal analytic models created for other purposes to determine if they could estimate the potential impact of eligibility changes in the Affordable Care Act. We believe these models may have merit and may be an appropriate starting point for creating estimates for payment purposes beginning CY 2014. We are also considering a model in which HHS develops an algorithm to determine, for each State, the appropriate percentages of Medicaid enrollees with a given set of characteristics (such as income, age, assets, family structure, disability status) who would be considered newly eligible or not newly eligible under the December 2009 eligibility rules for purposes or applying the related FMAP. The algorithm would estimate for example, that 90 percent of the adults with a child with income between 100 percent and 110 percent of the FPL in a specific State would not have been eligible under the old rules. Then, the State would count the number of adult Medicaid enrollees in CY 2014 who had a child and whose income was between 100 percent and 110 percent of FPL, and would receive the Newly Eligible FMAP for 90 percent of their expenditures, and the base FMAP for 10 percent.

We propose to review, evaluate, and potentially expand upon existing models to develop an acceptable estimate to be the basis for determining FMAP. We are specifically interested in receiving comments on the data sources that should be considered for inclusion in the model. We believe MSIS and MEPS data likely to be the most useful and relevant data sources available consistently for all States. We propose to not limit the data sources we may choose to review and incorporate into a predictive model as long as the data sources are relevant, accurate and available in a timely manner to both the Federal government and the State. We believe the modeling process, as well as the data sources used to create the specific models must be fully tested, transparent and readily available to States.

We further propose that we would annually establish a model to reasonably predict in an unbiased way the appropriate proportion of expenditures (that is, State-specific rates) to determine the amount each State could claim using the ''Newly Eligible'' FMAP. We propose to solicit and integrate public input into the development of the final modeling estimate. The State-specific rates would be finalized and made public no later than October 1 of the year prior to the calendar year in which the State would implement the methodology. For CY 2014, we would establish and publish the State-specific rates by October 1, 2012.

We solicit comments on the potential of creating accurate State specific estimates given the available data sources and the limitations of each. We also are requesting comments on other possible approaches to compensate for the potential limits on State-specific data to create robust accurate estimates at the State level.

Beginning in CY 2016, we propose to integrate validation measures, such as statistically valid sampling methodologies, into the model to verify and assure the data accuracy. This verification of actual claims would apply to correcting for future years by adjusting the model. For example, we would work with selected States in each year to pull a random sample of Medicaid enrolled individuals in the adult group. We would then work with the State to apply the State's December 1, 2009 eligibility standards to determine the proportion of individuals that are newly eligible and the proportion that would have been eligible under the standards at that time. We would then determine actual expenditures for those individuals to determine the appropriate proportion of expenditures to be claimed at the Newly Eligible FMAP rate. We propose that such sampling methodology be transparent to States. We further propose to employ a public notice and comment process to assure the integration of State and other stakeholder concerns into a final verification system.

6. Additional Methodology Approaches

We are requesting comments and suggestions on hybrid approaches that incorporate all of the alternatives listed. We believe that the above-described alternatives could be combined, so as to achieve the benefits, while mitigating the downside of each. Thus, sampling could be used to verify and improve upon the accuracy of the estimates made under the threshold methodology or as stated above in the other data source methodology. While sampling might be necessary in the initial years, as confidence in the accuracy of the other method increased, sampling could be required on a less frequent basis (for example, once every 3 to 5 years), thereby diminishing the burden otherwise imposed by sampling, or we could see using the threshold methodology for simpler, more straightforward cases and sampling for more complicated ones. We invite comments on using a hybrid approach.

In addition, regardless of which approach is ultimately employed, we intend to monitor the effects and impact of that method over time and make refinements as necessary. We are interested in assuring that the alternatives proposed are viable in the sense that States can implement them in a meaningful way. We solicit comments on how each method may be operationalized and what challenges or obstacles a State may face in doing so. We also seek comment on analytical approaches that CMS should consider using when comparing the relative feasibility, validity, and reliability of the methods proposed above.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule would implement provisions of the Affordable Care Act that expand access to health coverage through improvements in Medicaid and CHIP; ensure coordination between Medicaid, CHIP, and the new Affordable Insurance Exchanges (which are proposed in a separate NPRM under RIN 0938–AR25); and simplify the enrollment and renewal processes. Taken together, the policies proposed in this rule would result in a reduction in burden for individuals applying for or receiving coverage, as well as for States. Although there are short-term burdens associated with implementation of this proposed rule, over time the Medicaid program would be made substantially easier for States to administer and for individuals to navigate by streamlining Medicaid eligibility, simplifying Medicaid and CHIP eligibility rules for most individuals, and creating a coordinated process that results in a seamless enrollment experience across Medicaid, CHIP, and the new affordable insurance Exchanges.

At the same time, CMS is undertaking a number of business process, structural and system improvements designed to support modernized IT systems and streamline the manner in which it works with States and to minimize burdens in review and approval processes. A new reliance on automated information sources and data-sharing across agencies and programs will facilitate enrollment and renewal. In addition, the business process, structural and data system improvements underway at CMS are designed to create an environment where a significant proportion of the interactions between States and the Federal government can take place through a Web-based information portal. For example, we anticipate that CMS will have developed a Web-based system for States to submit the State plan amendments that will be needed to implement the Medicaid and CHIP programmatic modifications and that the system itself, for submission, review, and approval will be significantly more streamlined. It is not possible at this point to quantify the impact of these changes in terms of burden, but we believe that the estimates included in this collection of information discussion likely overstate the actual burden on States. The foundation for this is established through a final rule that enables States to receive a 90 percent Federal matching rate for design, development, installation or enhancement of eligibility determination systems through December 31, 2015, for those States meeting a series of specified standards and conditions. In addition, enhanced funding at a 75 percent Federal matching rate is available for States to maintain and operate their eligibility systems, subject to the conditions noted above. The estimates of the impact of these changes and the additional Federal support in this area are discussed in more detail in the final rule published on April 19, 2011 (76 FR

21950) entitled ''Federal Funding for Medicaid Eligibility Determination and Enrollment Activities.''

Information collection requirements (ICRs) are outlined below that involve Medicaid and CHIP eligibility determinations and enrollment. We are soliciting public comment on each of these issues for the following sections of the proposed rule that contain ICRs. We used data from the Bureau of Labor Statistics to derive average costs for all estimates of salary in establishing the information collection requirements. Salary estimates include the cost of fringe benefits, calculated at 35 percent of salary, which is based on the March 2011 Employer Costs for Employee Compensation report by the U.S. Bureau of Labor Statistics.

Finally, in calculating the estimates of burden on States, it was important to take into account the Federal government's contribution to the cost of administering the Medicaid and CHIP programs. The Federal government provides funding based on a Federal Medical Assistance Percentage (FMAP) that is established for each State based on the per capita income in the State as compared to the national average. FMAPs range from a minimum of 50 percent in States with higher per capita incomes to a maximum of 76.25 percent in States with lower per capita incomes. States receive an ''enhanced'' FMAP for administering their CHIP programs, ranging from 65 to 83 percent. All States receive a 50 percent FMAP for administration. As noted above, States also receive higher Federal matching rates for certain services and now for systems improvements or redesign, so the level of Federal funding provided to a State can be significantly higher. As such, in taking into account the Federal contribution to the costs of administering the Medicaid and CHIP programs for purposes of estimating State burden with respect to collection of information, we elected to use the higher end estimate that the States would contribute 50 percent of the costs, even though the burden will likely be much smaller.

The following provisions will be addressed through separate PRA notices and comment processes:

Medicaid and CHIP State Plans: §§ 431.10(c) and (d); 431.11(d); 435.110(b); 435.116(b); 435.118(b); 435.119(b); 435.218(b); 435.403(h) and (i); 435.603(a); 435.905(a) and (b); 435.948(d); 435.949(c); 435.1200(c), (d), (e), (f), and (g); 457.80(c); 457.305(a) and (b); 457.310(b); 457.320(d); 457.340(a), (b), and (f); 457.343; 457.348(a), (b), (c), and (d); 457.350(a), (b), (c), (f), (g), and (j); 457.380(a), (c), (d), (e), (f), (g), (h), and (i); and 457.390;

Choice of Methodology for Determining Expenditures Claimed at FMAP Rate for Newly Eligibles: §§ 433.206(b); 433.208(b); 433.210(a); and 433.212(a);

Single, Streamlined Application: §§ 435.907 and 457.330;

Collection of Applicant's Social Security Number: §§ 435.907(e) and 457.340(b); and

Revisions to CHIP Annual Reporting Template System (CARTS): § 435.907(e), § 457.353.

A. ICRs Regarding Program Information (§§ 435.905 and 457.335)

Amendments are proposed to § 435.905 for Medicaid and § 457.335 for CHIP that would require Medicaid and CHIP State agencies to disclose program information to the public electronically. These provisions are necessary to ensure that Medicaid and CHIP program information is available on the Internet Web site where individuals and families can explore their coverage options and submit an application.

In a review of State Web sites, we found that all 50 States and the District of Columbia have Web sites for Medicaid and CHIP and that nearly every State already provides the information specified in this proposed rule. We also found that all States offer access to their health insurance applications online.

While these provisions are subject to the PRA, we believe that the requirement above is a usual and customary practice in keeping with the use of modern technology and, therefore, presents no new burden. States have always been required to assure that applicants, providers, other interested parties, and the general public have access to information about Medicaid and CHIP eligibility requirements, available Medicaid services, and the rights and responsibilities of applicants and beneficiaries.

B. ICRs Regarding Verification (§§ 435.945, 435.948, 435.956, 457.350, and 457.380)

The provisions propose guidelines for verification of certain factors for Medicaid and CHIP eligibility (for example, income, State residency, SSNs, and pregnancy status) and the sharing of data among agencies. These proposed amendments are necessary to facilitate the determination of eligibility with minimal paper documentation required from individuals.

We expect that over the long-term, these guidelines will reduce burden on States and individuals. The State of Utah's eFIND system provides an example of a successfully streamlined verification process. eFIND gathers data from more than 15 Federal and State sources including wage reporting, SSA, the SAVE system, and child support to verify Medicaid eligibility for applicants in real time. The State has estimated that eFIND has reduced the processing time for an eligibility determination from 17 minutes down to 3 minutes, saving the State $2.1 million in the first year.

The specific burden associated with the written agreements for data sharing is the time and effort necessary for the State to modify existing agreements with applicable agencies for the collection of this information. We estimate that 53 State Medicaid agencies (the 50 States, the District of Columbia, Northern Mariana Islands, and American Samoa) will be subject to this requirement. We estimate it will take each State an average of 30 hours to modify agreements with the appropriate agencies. For the purpose of the cost burden, we estimate it will take a health policy analyst 20 hours, at $43 an hour, and a manager 10 hours, at $77 an hour, to complete the agreements. The estimated cost burden for each State is $1,630 [($43 × 20) + ($77 × 10)], for a total cost burden of $86,390 [$1,630 × 53] and a total annual hour burden of 1,590 hours [30 × 53]. Taking into account the Federal contribution to Medicaid and CHIP program administration, the estimated State share of these costs will be no more than $43,195 [$86,390 × 50 percent].

D. ICRs Regarding Renewal (§§ 435.916 and 457.343)

These provisions discuss the redetermination process for individuals whose eligibility is based on MAGI. These provisions are necessary to facilitate the accurate and efficient redetermination of Medicaid and CHIP eligibility.

We estimate 53 Medicaid agencies (the 50 States, District of Columbia, Northern Mariana Islands, and American Samoa) and an additional 43 CHIP agencies (States that have a separate or combination CHIP) will be subject to the provision above, for a total of 96 agencies.

The burden associated with this requirement is the time and effort necessary for the State to develop and automate renewal notices and perform the revised recordkeeping related to redetermining eligibility. Individuals whose eligibility is based on MAGI would need to provide any additional

information for the State to complete a redetermination of eligibility.

Research has indicated that 33–50 percent of people experience a change in circumstance that may impact their eligibility for coverage (Sommers and Rosenbaum, *Health Affairs* 2011). Based on this research we conservatively estimate that of the approximately 51 million individuals enrolled in Medicaid and CHIP whose eligibility will be based on MAGI, half (25.5 million individuals) will have their eligibility redetermined using the information already available to the agency. This approach greatly simplifies the renewal process and will ultimately reduce costs for States.

For example, the State of Louisiana streamlined its renewal process through a combination of administrative renewal, ex-parte review and conducting renewals over the telephone in 2007. As a result, fewer than 10 percent of families actually complete and submit a renewal form in order to remain enrolled in Medicaid or CHIP coverage. The State reports more than $18 million in savings each year due to these changes.

We estimate that it will take each Medicaid and CHIP agency 16 hours annually to develop, automate and distribute the notice of eligibility determination based on use of existing information. For the purpose of the cost burden, we estimate it will take a health policy analyst 10 hours, at $43 an hour, and a senior manager 6 hours, at $77 an hour, to complete the notice. The estimated cost burden for each agency is $892 [(10 × $43) + (6 × $77)]. The total estimated cost burden is $85,632 [96 × $892], and the total annual hour burden is 1,536 hours [(10 + 6) × 96]. Taking into account the Federal contribution, the total estimated State costs would be $42,816 [$85,632 × 50 percent].

The remaining half of the individuals (25.5 million) will need to provide additional information to the State so that their eligibility can be renewed. The proposed process is much less burdensome than the processes currently in place in many States that require individuals to complete a new application at renewal. We estimate that it will take an individual 20 minutes to complete the proposed streamlined renewal process. The total annual hour burden is 8.5 million hours [(20 minutes × 25.5 million individuals)/60 minutes] for 25.5 million individuals. We note that the number of people who need to provide additional information may be smaller than our estimate, but we used a higher end estimate to account for the greatest potential impact on States and individuals. Some States that employ a simplified renewal approach similar to what is proposed in this rule are able to renew coverage for nearly 80 percent of beneficiaries without contacting the individual or family.

States will keep records of each renewal that is processed in Medicaid and CHIP. The amount of time for recordkeeping will be the same for renewals based on information available to the agency and renewals that require additional information from individuals. We estimate that it will take the State agency 3 minutes (0.05 hour) at a rate of $25 per hour for the average State eligibility worker to conduct the required recordkeeping for each of the 51 million renewals. The total estimated annual hour burden is 2,550,000 hours or 26,562.5 hours per agency [2,550,000/96]. At a rate of $25 per hour the total estimated cost burden for recordkeeping is $63,750,000 [2,550,000 × $25] or $664,063 per agency [$63,750,000/96]. Taking into account the Federal contribution, the total estimated State share of the costs would be $31,875,000 [$63,750,000 × 50 percent].

E. ICRs Regarding Web Sites (§ 435.1200 and § 457.335)

Sections 435.1200 and 457.335 require Medicaid and separate CHIP agencies to have a Web site that performs the functions described in this proposed rule.

We estimate that 53 Medicaid agencies and an additional 43 CHIP agencies (in States that have a separate or combination CHIP) would be subject to the provisions above. To achieve efficiency, we assume that States will develop only one Web site to perform the required functions. Therefore, we base our burden estimates on 50 States, the District of Columbia, the Northern Mariana Islands, and American Samoa (53 agencies) and do not include the 43 separate CHIP programs.

The burden associated with this ICR for information disclosure is the time and effort necessary for the State to develop and disclose information on the Web site, develop and automate the required notices, and transmit (report) the application data to the appropriate insurance affordability program.

We know that all States have Web sites and printable applications online and that 19 States have some ability to enable individuals to renew their coverage online. We estimate that it will take each State an average of 320 hours to develop the additional functionality to meet the proposed requirements, including developing an online application, automating the renewal process and adding a health plan selection function. We estimate that it will take a health policy analyst 85 hours (at $43 an hour), a senior manager 50 hours (at $77 an hour), and various network/computer administrators or programmers 185 hours (at $54 an hour) to meet the reporting requirements for this subpart. We estimate the total cost burden for a State to be $17,495 [(85 × $43) + (50 × $77) + (185 × $54)] for a total estimated burden of $927,235 [53 × $17,495] and a total annual hour burden of 16,960 hours for all 53 entities [(85 + 50 + 185) × 53]. Taking into account the Federal contribution to Medicaid and CHIP systems development and administration efforts, we estimate that the total State share of costs would be $463,618 [$927,235 × 50 percent] at most. States that elect to pursue these activities as part of a larger systems redesign effort would have significantly lower costs due to the availability of the 90 percent FMAP.

We estimate that it will take each State entity 16 hours annually to develop and automate each of the two required notices (32 total hours). For the purpose of the cost burden, we estimate it will take a health policy analyst 10 hours, at $43 an hour, and a senior manager 6 hours, at $77 an hour, to complete each notice. The estimated cost burden of two notices for each agency is $1,784 [$892 × 2]. The total estimated cost burden is $94,552 [$1,784 × 53], and the total annual hour burden is 1,696 hours [16 × 2 × 53] for the notices.

We estimate that it will take network/computer administrators or programmers 150 hours (at $54 an hour) to transmit the application data of ineligible individuals to the appropriate insurance affordability program and meet this information reporting requirement for each State (53). The estimated cost burden for each agency is $8,100 [150 × $54]. The total estimated cost burden for 53 States is $429,300 [53 × $8,100], and the total annual hour burden is 7,950 hours [150 × 53]. Taking into account the Federal contribution, the estimated total State share of costs would be $214,650 [$429,300 × 50 percent].

The total estimated cost burden of the provisions described above is $1,451,087 [$927,235 + $94,552 + $429,300], and the total annual hour burden is 26,606 hours [16,960 + 1,696 + 7,950].

F. ICRs Regarding Medicaid Statement of Expenditures for the Medical Assistance Program (CMS–64)

This action does not revise or impose any new information collection requirements or burden that would

require additional OMB review of CMS–64. OMB has approved the burden and information collection requirements of CMS–64 under OMB control number 0938–0067.

TABLE 2—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)	State share of costs ($)
§§ 435.945, 435.948, 435.956, 457.350, and 457.380	53	1	30	1,590	1,630	86,390	43,195
§§ 435.916 and 457.343	96	1	16	1,536	892	85,632	42,816
§§ 435.916 and 457.343	25.5 million	1	.33	8.5 million			
§§ 435.916 and 457.343	96	1	26,562.5	[1] 2.55 million	664,063	63,750,000	31,875,000
§§ 435.1200 and 457.335	53	1	502	26,606	27,379	1,451,087	725,543
Total						65,373,100	32,686,555

Notes: All proposed collections are new; therefore the OMB Control Number is omitted from the table.

There are no capital or maintenance costs incurred by the proposed collections; therefore it is omitted from the table. Capital costs resulting from the development or improvement of new electronic systems were addressed in the Federal Funding for Medicaid Eligibility Determination and Enrollment Activities final rule (76 FR 21950).

Labor Cost figures are indicated here on a per Respondent basis.

The 1.4 average responses per Agency (that is, Respondent) are based on the total estimated number of agreements divided by the number of respondents. The number of actual agreements will vary by State based on the governance structure of the State's Medicaid, CHIP, and Exchange programs.

We have submitted a copy of this proposed rule to the OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, (CMS–2349–P) Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Summary of Preliminary Regulatory Impact Analysis

The summary analysis of benefits and costs included in this proposed rule is drawn from the detailed Preliminary Regulatory Impact Analysis (PRIA), available at *http://www.cms.gov/MedicaidEligibility/downloads/CMS-2349-P-PreliminaryRegulatoryImpactAnalysis.pdf.*

A. Introduction

The Office of Management and Budget has determined that this rule is ''economically significant'' for the purposes of Executive Order 12866. Therefore, we have prepared a PRIA that presents the costs and benefits of this rulemaking.

B. Need for This Regulation

This proposed rule would implement provisions of the Affordable Care Act related to Medicaid eligibility, enrollment and coordination with the Exchanges, CHIP, and other insurance affordability programs. It also addresses the current eligibility restrictions and barriers to enrollment in the Medicaid program which leave millions of low-income Americans uninsured, and which contribute to poor health outcomes, financial stress, and high health care and administrative costs. In addition, this proposed rule sets out the increased Federal medical assistance percentage (FMAP) rates relating to ''newly eligible'' individuals and certain medical assistance expenditures in expansion States'' beginning January 1, 2014.

C. Summary of Costs and Benefits

The preliminary impact analysis uses the estimates of the CMS Office of the Actuary (OACT) and the estimates prepared by the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation. It provides both estimates to illustrate the uncertainty inherent in projections of future Medicaid financial operations. Analysis by OACT indicates that the proposed rule would result in an estimated additional 24 million newly eligible and currently eligible individuals enrolling in Medicaid by 2016.[1] [2] OACT notes that such estimates are uncertain, since they depend on future economic, demographic, and other factors that

[1] OACT's original estimates for the financial impact of the expansion of Medicaid eligibility under the Affordable Care Act are documented in an April 22, 2010 memorandum, ''Estimated Financial Effects of the Patient Protection and Affordable Care Act, as Amended,'' available at *https://www.cms.gov/ActuarialStudies/downloads/PPACA_2010-04-22.pdf.* These estimates have been updated using later data, revised participation assumptions, and later information on policy decisions.

[2] OACT's estimates include approximately 2–3 million individuals with primary health insurance coverage through employer-sponsored plans who would enroll in Medicaid for supplemental coverage.

cannot be precisely determined in advance. Similarly, the actual behavior of individuals and the actual operation of the new enrollment processes and Affordable Insurance Exchanges will affect enrollment and costs. The Congressional Budget Office (CBO) has estimated a net increase of 16 million newly and previously eligible people enrolled in Medicaid and CHIP in 2016 as a result of the new law as implemented through this regulation.[3] Some of the difference between OACT and CBO's projections can be explained by different participation rate assumptions, which are described further in the more detailed PRIA.

Increased access to medical care and the simplified enrollment process proposed by this rule would benefit both newly eligible and currently eligible individuals by improving health outcomes and providing financial security. Additionally, the proposed rule would benefit States and providers by reducing uncompensated care costs, shifting spending on either State-funded health coverage or uncompensated care to the Federal government. Finally, the simplified Medicaid eligibility policies will over time reduce administrative burdens on State Medicaid agencies.

We anticipate that the proposed rule would impose costs on a small number of currently eligible individuals who will become ineligible for Medicaid coverage under the new eligibility methodology. These individuals would bear the cost of purchasing subsidized insurance in the Exchanges, though these costs may be offset by premium tax credits.

OACT estimates that Federal spending on Medicaid for newly and currently eligible individuals who enroll as a result of the changes made by the Affordable Care Act would increase by a total of $202 billion from 2012 through 2016. Reflecting somewhat different participation assumptions and other projection factors, CBO estimates an increase in federal spending of $162 billion over the same period of time.[4] OACT estimates that State expenditures on behalf of the additional individuals and families gaining Medicaid coverage as a result of the Affordable Care Act will total $2.7 billion in FY 2014, $4.0 billion in FY 2015, and $4.9 billion in FY 2016.[5] For both OACT and CBO, these estimates do not consider offsetting savings to States that will result, to a varying degree depending on the State, from less uncompensated care, less need for State-financed health services and coverage programs, and greater efficiencies in the delivery of care. Indeed, an Urban Institute analysis estimates that the costs to States will be more fully offset by other effects of the legislation, for net savings to States of $92 to $129 billion from 2014 to 2019.[6]

D. Methods of Analysis

OACT prepared its estimate using data on individuals and families, together with their income levels and insured status, from the Current Population Survey and the Medical Expenditure Panel Survey. In addition, they made assumptions as to the actions of individuals in response to the new coverage options under the Affordable Care Act and the operations of the new enrollment processes and the Affordable Insurance Exchanges. The estimated Medicaid coverage and financial effects are particularly sensitive to these latter assumptions. Among those eligible for Medicaid under the expanded eligibility criteria established by the Affordable Care Act, and who would not otherwise have health insurance, OACT assumed that 95 percent would enroll. This assumption, which is significantly higher than current enrollment percentages, reflects OACT's consideration of the experience with health insurance reform in Massachusetts and its expectation that the streamlined enrollment process and enrollment assistance available to people through the Affordable Insurance Exchanges will be very effective in helping eligible individuals and families become enrolled. Although CBO used similar data and overall methodologies, and also anticipates that the streamlined enrollment process and Exchange enrollment assistance will improve applicants' ability to become enrolled, CBO has included a significantly smaller from this factor than assumed by OACT.[7]

E. Regulatory Options Considered

Alternative approaches to implementing the Medicaid eligibility, enrollment and coordination requirements in the Affordable Care Act were considered in developing this proposed rule. However, it was determined that these alternatives would have created substantial administrative burdens for States and individuals, and created gaps in coverage that would reduce the number of people with insurance. We welcome public comment regarding the potential economic effects of the proposed rule.

F. Accounting Statement

For full documentation and discussion of these estimated costs and benefits, see the detailed PRA, available at *http://www.cms.gov/MedicaidEligibility/downloads/CMS-2349-P-PreliminaryRegulatoryImpactAnalysis.pdf.*

[3] CBO. Analysis of Major Health Care Legislation Enacted in March 2010. Statement of Douglas W. Elmendorf. March 30, 2011—*http://www.cbo.gov/ftpdocs/121xx/doc12119/03-30-;HealthCareLegislation.pdf* The CBO estimates exclude individuals with primary coverage through employer-sponsored plans who enroll in Medicaid for supplemental coverage.

[4] CBO. Analysis of the Major Health Care Legislation Enacted in March 2010. Statement of Douglas W. Elmendorf. March 30, 2011—*http://www.cbo.gov/ftpdocs/121xx/doc12119/03-30-HealthCareLegislation.pdf.*

[5] OACT estimates total gross additional State expenditures of approximately $80 billion for FYs 2012 through 2021, offset by $35 billion in lower State costs as a result of the transitional FMAP for expansion States, for a net total increase of $45 billion. For comparison, CBO estimates net additional State expenditures of about $60 million for the same time frame.

[6] M. Buettgens *et al.,* ''Consider savings as well as costs: State governments would spend at least $90 billion less with the ACA than without it from 2014 to 2019,'' The Urban Institute, July 2011. Available at *http://www.urban.org/uploadedpdf/412361-consider-savings.pdf.*

[7] CBO's specific take-up assumptions are not available. Researchers at the Urban Institute have approximated the participation rate assumed by CBO. The Kaiser Family Foundation has characterized this assumption as follows: ''These results assume moderate levels of participation similar to current experience among those made newly eligible for coverage and little additional participation among those currently eligible. This scenario assumes 57 percent participation among the newly eligible uninsured and lower participation across other coverage groups.'' J. Holohan and I. Headen, ''Medicaid coverage and spending in health reform: National and State-by-State results for adults at or below 133% FPL,'' Kaiser Commission on Medicaid and the Uninsured, May 2010, available online at *http://www.kff.org/healthreform/upload/Medicaid-Coverage-and-Spending-In-Health-Reform-National-and-State-By-State-Results-for-Adults-at-or-Below-133-FPL.pdf.*

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED NET COSTS, FROM FY 2012 TO FY 2016

[In millions]

Category	Transfers			
	Year dollar	Units discount rate		Period covered
	2012	7%	3%	
Annualized Monetized Transfers from Federal Government to States on Behalf of Beneficiaries.	Primary Estimate	$35,564	$37,324	FYs 2012–2016
Annualized Monetized Transfers from States on Behalf of Beneficiaries.	Primary Estimate	2,131	2,235	FYs 2012–2016
Annualized Monetized Transfers from Federal Government to States.	Primary Estimate	1,577	1,657	FYs 2012–2016

Source: CMS Office of the Actuary.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. It is important to understand, however, that the UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly costs resulting from (A) imposing enforceable duties on State, local, or tribal governments, or on the private sector, or (B) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

We believe that States can take actions that will largely offset the increased medical assistance spending for newly enrolled persons. Because the net effects are uncertain and the overall costs significant, we have drafted the PRIA to meet the requirements for analysis imposed by UMRA, together with the rest of the preamble. The extensive consultation with States we describe later in this analysis was aimed at the requirements of both UMRA and Executive Order 13132 on Federalism. We invite comment on these issues from States and local governments as well as any other interested parties.

1. State and Local Governments

Our discussion of the potential expected impact on States is provided in the benefits, costs, and transfers section of the preliminary regulatory impact analysis. As noted previously, the Affordable Care Act requires States that participate in the Medicaid program to cover adults with incomes below 133 percent of the Federal poverty level, and provides substantial new Federal support to nearly offset the costs of covering that population.

2. Private Sector and Tribal Governments

We do not believe this proposed rule would impose any unfunded mandates on the private sector. As we explain in more detail in the Regulatory Flexibility Act analysis, the provisions of the Affordable Care Act implemented by the proposed rule deal with eligibility and enrollment for the Medicaid and CHIP programs, and as such are directed toward State governments rather than toward the private sector. Since the proposed rule would impose no mandates on the private sector, we conclude that the cost of any possible unfunded mandates would not meet the threshold amounts discussed previously that would otherwise require an unfunded mandate analysis for the private sector. We also conclude that an unfunded mandate analysis also is not needed for tribal governments since the proposed rules would not impose mandates on tribal governments.

H. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities if a proposed rule would have a significant economic impact on a substantial number of small entities. Few of the entities that meet the definition of a small entity as that term is used in the RFA (for example, small businesses, nonprofit organization, and small governmental jurisdictions with a population of less than 50,000) would be impacted directly by this proposed rule. Individuals and States are not included in the definition of a small entity. There are some States in which counties or cities share in the costs of Medicaid. OACT has estimated that between 2014 and 2021 the Federal government would pay about 94 percent of the costs of benefits for new Medicaid enrollees with the States paying the remaining 6 percent. An Urban Institute and Kaiser Family Foundation study estimated that the Federal government will bear between 92 and 95 percent of the overall costs of the new coverage provided as a result of the Affordable Care Act, with the States shouldering the remaining five to eight percent of the costs.[8] To the extent that States require counties to share in these costs, some small jurisdictions could be affected by the requirements of this proposed rule. However, nothing in this rule would constrain States from making changes to alleviate any adverse effects on small jurisdictions. The Department has no way of estimating the impact of this proposed rule on small jurisdictions and requests public comment on this issue.

Because this proposed rule is focused on eligibility and enrollment in public programs, it does not contain provisions that would have a significant direct impact on hospitals, and other health care providers that are designated as small entities under the RFA. However, the provisions in this proposed rule may have a substantial, positive indirect effect on hospitals and other health care providers due to the substantial increase in the prevalence of health coverage among populations who are currently unable to pay for needed health care, leading to lower rates of uncompensated care at hospitals. Again, the Department cannot determine whether this proposed rule would have a significant economic impact on a substantial number of small entities, and we request public comment on this issue.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant economic impact on the operations of a substantial number of small rural

[8] J. Holahan and I. Headen, ''Medicaid coverage and spending in health reform: National and State-by-State results for adults at or below 133% FPL,'' Kaiser Commission on Medicaid and the Uninsured, May 2010, available online at *http://www.kff.org/healthreform/upload/Medicaid-Coverage-and-Spending-in-Health-Reform-National-and-State-By-State-Results-for-Adults-at-or-Below-133-FPL.pdf.*

hospitals. This analysis must conform to the provisions of section 603. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this proposed rule would not have a direct economic impact on the operations of a substantial number of small rural hospitals. As indicated in the preceding discussion, there may be indirect positive effects from reductions in uncompensated care.

I. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct effects on States, preempts State law, or otherwise has Federalism implications. As discussed previously, the Affordable Care Act and this proposed rule have significant direct effects on States.

The Affordable Care Act requires major changes in the Medicaid and CHIP programs, which would require changes in the way States operate their individual programs. While these changes are intended to benefit beneficiaries and enrollees by improving coordination between programs, they are also designed to reduce the administrative burden on States by simplifying and streamlining systems.

We have consulted with States to receive input on how the various Affordable Care Act provisions codified in this proposed rule would affect States. We have participated in a number of conference calls and in person meetings with State officials in the months before and since the law was enacted. These discussions have enabled the States to share their thinking and questions about how the Medicaid changes in the legislation would be implemented. The conference calls also furnished opportunities for CMS to explore these implementation issues together with States and also provide information on an informal basis about implementation plans to the State Medicaid Directors, and for the Directors to comment informally on what they heard in the course of those conversations.

We continue to engage in ongoing consultations with Medicaid and CHIP Technical Advisory Groups (TAGs), which have been in place for many years and serve as a staff level policy and technical exchange of information between CMS and the States. In particular, we have had discussions with the Eligibility TAG (E–TAG) and the Children's Coverage TAG.

The E–TAG is a group of State Medicaid officials with specific expertise in the field of eligibility policy under the Medicaid program. The Children's Coverage TAG is a combination of Medicaid and CHIP officials that convene to discuss issues that affect children enrolled in those programs. Through consultations with these TAGs, we have been able to get input from States specific to issues surrounding the changes in eligibility groups and rules that will become effective in 2014.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

Subpart A—Single State Agency

2. Section 431.10 is amended by—

A. Revising paragraph (b)(2)(ii) and the introductory text of paragraph (c)(1).

B. Adding paragraphs (c)(1)(iii) and (c)(3).

C. Revising paragraphs (d) and (e)(3).

The revisions and additions read as follows:

§ 431.10 Single State agency.

* * * * *

(b) * * *

(2) * * *

(ii) Make rules and regulations that it follows in administering the plan or that are binding upon State or other agencies that administer the plan.

* * * * *

(c) * * *

(1) The plan must specify whether the entity that determines eligibility for families, adults, and for individuals under 21 is—

* * * * *

(iii) A government-operated Exchange established under sections 1311(b)(1) or 1321(c)(1) of the Affordable Care Act (Pub. L. 111–148).

* * * * *

(3) The single State agency is responsible for assuring and enforcing that—

(i) Eligibility determinations are made consistent with its rules and if there is a pattern of incorrect determinations that corrective actions are instituted and/or the delegation is terminated;

(ii) There is no conflict of interest by any agency delegated the responsibility to make eligibility determinations; and

(iii) Eligibility determinations will be made in the best interest of applicants and beneficiaries and that the single State agency will guard against improper incentives and/or outcomes.

(d) *Agreement with Federal or State and local agencies.* The plan must provide for written agreements between the Medicaid agency and the Federal or other State or local agencies that determine eligibility for Medicaid, stating—

(1) The relationships and respective responsibilities of the agencies;

(2) The quality control and oversight plans by the single State agency to review determinations made by the delegee;

(3) The reporting requirements from the delegee making Medicaid eligibility determinations to the single State agency.

(4) The confidentiality and security requirements in accordance with sections 1902(a)(7) and 1942 of the Act for all applicant and beneficiary data; and

(5) That merit protection principles are employed by the agency responsible for the Medicaid eligibility determination.

(e) * * *

(3) If other Federal, State or local agencies or offices perform services for the Medicaid agency, they must not have the authority to change or disapprove any administrative decision of, or otherwise substitute their judgment for that of, the Medicaid agency for the application of policies, rules and regulations issued by the Medicaid agency.

3. Section 431.11 is amended by revising paragraph (d) to read as follows:

§ 431.11 Organization for administration.

* * * * *

(d) *Eligibility determined by other agencies.* If eligibility is determined by Federal or State agencies other than the Medicaid agency or by local agencies under the supervision of other State agencies, the plan must include a description of the staff designated by those other agencies and the functions they perform in carrying out their responsibilities.

Subpart M—Relations With Other Agencies

§ 431.636 [Removed]

4. Remove § 431.636.

PART 433—STATE FISCAL ADMINISTRATION

5. The authority citation for part 433 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Federal Matching and General Administration Provisions

6. Section 433.10 is amended by—

A. In paragraph (a), removing the phrase ''and 1905(b),'' and adding in its place the phrase ''1905(b), 1905(y), and 1905(z)''

B. Adding new paragraphs (c)(6), (c)(7), and (c)(8).

The additions read as follows:

§ 433.10 Rates of FFP for program services

* * * * *

(c) * * *

(6)(i) Beginning January 1, 2014, under section 1905(y) of the Act, the FMAP for a State that is one of the 50 States or the District of Columbia, for amounts expended by such State for medical assistance for newly eligible individuals, as defined in § 433.204 of this part, will be an increased FMAP equal to:

(A) 100 percent, for calendar quarters in calendar years (CYs) 2014 through 2016;

(B) 95 percent, for calendar quarters in CY 2017;

(C) 94 percent for calendar quarters in CY 2018;

(D) 93 percent for calendar quarters in CY 2019;

(E) 90 percent for calendar quarters in CY 2020; and

(F) 90 percent for calendar quarters in all other CYs after 2020.

(ii) The FMAP specified in paragraph (c)(6)(i) of this section will apply to amounts expended by a State for medical assistance for newly eligible individuals in accordance with the requirements of the methodology selected by the State under § 422.206 of this chapter.

(7)(i) During the period January 1, 2014 through December 31, 2015, under section 1905(z)(1) of the Act for a State described in paragraph (c)(7)(ii) of this section, the FMAP determined under paragraph (b) of this section will be increased by 2.2 percentage points.

(ii) A State qualifies for the general increase in the FMAP under paragraph (c)(7)(i) of this section, if the State:

(A) Is an expansion State, as described in paragraph (c)(8)(iii) of this section;

(B) Does not qualify for any payments on the basis of the increased FMAP under paragraph (c)(6) of this section, as determined by the Secretary; and

(C) Has not been approved by the Secretary to divert a portion of the Disproportionate Share Hospital Allotment for the State to the costs of providing medical assistance or other health benefits coverage under a demonstration that is in effect on July 1, 2009.

(iii) The increased FMAP under paragraph (c)(7)(i) of this section is available for amounts expended by the State for medical assistance for individuals that are not newly eligible as defined in § 433.204 of this part.

(8)(i) Beginning January 1, 2014, under section 1905(z) of the Act, the FMAP for an expansion State defined in paragraph (c)(8)(iii) of this section, for amounts expended by such State for medical assistance for individuals described in section 1902(a)(10)(A)(i)(VIII) of the Act who are not newly eligible as defined in § 433.204 of this part and who are nonpregnant childless adults for whom the State may require enrollment in benchmark coverage under section 1937 of the Act, will be determined in accordance with the following formula:

$F + (T \times (N - F))$

F = The base FMAP for the State determined under paragraph (b) of this section, subject to paragraph (c)(7) of this section.

T = The transition percentage specified in paragraph (c)(8)(ii) of this section.

N = The Newly Eligible FMAP determined under paragraph (c)(6) of this section.

(ii) For purposes of paragraph (c)(8)(i) of this section, the transition percentage is equal to:

(A) 50 percent, for calendar quarters in CY 2014;

(B) 60 percent, for calendar quarters in CY 2015;

(C) 70 percent, for calendar quarters in CY 2016;

(D) 80 percent, for calendar quarters in CY 2017;

(E) 90 percent, for calendar quarters in CY 2018; and

(F) 100 percent, for calendar quarters in CY 2019 and all subsequent calendar years.

(iii) A State is an expansion State if, on the March 23, 2010, the State offered health benefits coverage Statewide to parents and nonpregnant, childless adults whose income is at least 100 percent of the poverty line, that includes inpatient hospital services, is not dependent on access to employer coverage, employer contribution, or employment and is not limited to premium assistance, hospital-only benefits, a high deductible health plan, or alternative benefits under a demonstration program authorized under section 1938 of the Act. A State that offers health benefits coverage to only parents or only nonpregnant childless adults described in the preceding sentence will not be considered to be an expansion State.

(iv) For amounts expended by an expansion State as defined in paragraph (c)(8)(iii) of this section for medical assistance for individuals described in section 1902(a)(10)(A)(i)(VIII) of the Act who are newly eligible as defined in § 433.201, and who are non-pregnant childless adults for whom the State may require enrollment in benchmark coverage under section 1937 of the Act, the FMAP is as specified in paragraph (c)(6) of this section.

7. Subpart E is added to part 433 to read as follows:

Subpart E—Methodologies for Determining Federal Share of Medicaid Expenditures for Mandatory Group

Sec.

Subpart E—Methodologies for Determining Federal Share of Medicaid Expenditures for Mandatory Group

§ 433.202 Scope.

This subpart sets forth the requirements and procedures under which States may claim for the higher Federal share of expenditures for newly eligible individuals specified in § 433.204 of this subpart.

§ 433.204 Definitions.

As used in this subpart:

Newly Eligible Individual means an individual eligible for Medicaid in accordance with the requirements of the new adult group and who would not have been eligible for Medicaid under the State's eligibility standards and methodologies for the Medicaid State plan, waiver or demonstration programs in effect in the State as of December 1, 2009.

§ 433.206 Choice of methodology.

(a) Beginning January 1, 2014, the State must determine the expenditures which may be claimed at the FMAP rate described in § 433.10 of this part using one of the following methods:

(1) Applying eligibility thresholds and proxies in accordance with § 433.208 of this part; or

(2) Conducting a statistically valid sample in accordance with § 433.210 of this part; or

(3) Electing to utilize the CMS established FMAP proportion rate established in accordance with § 433.212 of this part.

(b) The State must provide to CMS for approval a methodology that provides the description of the method it will use to determine the appropriate FMAP claim for medical assistance expenditures for newly eligible individuals including all of the following requirements:

(1) Except as provided in paragraph (b)(2) of this section, at least 2 years prior to the year in which the State will implement that method.

(2) For CY 2014, the State must notify CMS of such method no later than December 31, 2012.

(3) Changing claiming methodologies:

(i) The State must use the chosen methodology for at least 3 consecutive years before changing to another methodology;

(ii) The State must notify CMS of any change in methodology in accordance with paragraphs (b)(1) and (b)(2) of this section.

(c) To implement each methodology—

(1) The State must first determine those individuals eligible under section 1902(a)(10)(A)(i)(VIII) of the Act.

(2) The State may apply a CMS approved methodology only to expenditures for such individuals.

(d) Nothing in this section impacts the timing or approval of an individual's eligibility for Medicaid.

§ 433.208 Threshold methodology.

(a) Beginning January 1, 2014, States may elect to apply a CMS-approved State specific threshold methodology that meets all of the following requirements:

(1) Incorporates State eligibility standards, including disregards and other adjustments that were in place as of December 1, 2009.

(2) Incorporates any enrollment caps under section 1115 demonstration programs that were in place in the State on December 1, 2009.

(3) Is applied to each individual applicant determined eligible for Medicaid under the adult group.

(4) Is used to determine whether each individual is newly eligible so that the State may claim the FMAP described in § 433.10(c) of this subpart for all expenditures for such individuals.

(b) To implement the threshold methodology, the State must submit a methodology and receive CMS approval of such methodology prior to its application to new FMAP determinations.

(1) Such methodology will specify how the State will determine the population within the adult group and describe in a format provided by CMS how it is approximating the December 1, 2009 standards and methodologies, as well as how the State will apply the established criteria.

(2) Subject to approval by CMS, a State may use criteria including but not limited to:

(i) Self-declaration.

(ii) Claims history.

(iii) Receipt of Social Security Disability Income.

(iv) Disability determination by SSA.

(v) Information from the Asset Verification System established under the DRA.

(vi) Information from tax returns.

(vii) Application of a proportion derived from historical data of the actual proportion of individuals within specific eligibility groups that were ineligible for Medicaid due to assets or eligible for Medicaid due to disability status using the eligibility standards in place as of December 1, 2009.

(viii) Other disability and asset data sources.

(c) The threshold methodology must:

(1) Not be biased in such a manner as to overestimate or over report individuals as newly eligible who were actually individuals who would have been eligible using the State's December 1, 2009 eligibility standards.

(2) Provide an accurate estimation of which individuals would have been eligible in accordance with the December 1, 2009 eligibility standards to be used for the designated year, by incorporating simplified assessments of asset and disability requirements in place at that time. Once individuals are determined to be either a newly eligible individual or an individual who would have been eligible under the December 2009 standards, the State would apply that eligibility determination throughout the entire year.

(3) Be verified by, and adjusted prospectively to include results of, any evaluations conducted by CMS in conjunction with the State(s) of the accuracy of the threshold.

§ 433.210 Statistically valid sampling methodology.

(a)(1) A State choosing to implement a statistically-valid sampling methodology to determine the proportion of expenditures to which the FMAP specified in § 433.10(c) of this subpart will apply, must submit to CMS a methodology that details the sampling plan prior to making such claims which demonstrates compliance with the requirements established in this section as well as all additional requirements that CMS issues in subregulatory guidance.

(2) The methodology with the sampling plan must be submitted to CMS on or before January 1 of the calendar year in which the State will claim expenditures using the sampling methodology.

(3) The State may not implement the sampling methodology until CMS has reviewed and approved the State's sampling plan.

(b) A State must verify that its sampling plan follows all relevant requirements established in the most current OMB Circular A–87.

(c) The State must implement the plan as specified in the CMS-approved sampling plan for the year in which it claims expenditures based on the sampling plan.

(d) A State must draw a statistically valid sample from the population of Medicaid applicants who are eligible for Medicaid under the adult group.

(e) The State must evaluate each individual randomly selected to be included in the sample to determine whether:

(1) The individual is newly eligible; or

(2) The individual would have been eligible under the standards in place to determine eligibility under the Medicaid State plan and/or demonstration program as of December 1, 2009, including any enrollment caps under section 1115 demonstration programs that were in place in the State on December 1, 2009.

(f) The State will attribute all actual medical assistance expenditures in that calendar year for each newly eligible individual in the sample and for each individual in the sample who would have been eligible under the December 1, 2009 standards. The State will extrapolate and apply the proportion of

Medicaid expenditures attributed to the newly eligible in the sample to the expenditures of the population.

(g) The State will consider the amount determined in accordance with paragraph (f) of this section to be the expenditures of the newly eligible individuals and receive the FMAP rate described in § 433.10(c) of this subpart for such expenditures when the State claims on the CMS–64.

(h) The State may claim and receive the FMAP described in § 433.10(c) of this subpart for an estimated proportion on an interim basis as follows:

(1) States may claim expenditures in current years based on an interim FMAP proportion determined by the most recent year for which data is available.

(2) States must make a retroactive adjustment to claims on the CMS–64 for the current year once that expenditure information is finalized under the provisions of paragraph (f) of this section.

(3)(i) Results of a statistically-valid sampling methodology for any given year must be finalized and applied, and adjustments to claims on the CMS–64 must be made, within 2 years from the date of the actual expenditure.

(ii) If the State does not have supporting documentation at the end of the second year following the year at issue, the State must make a decreasing adjustment on the CMS–64 to refund the higher FMAP rates, and such claims will be regarded as untimely under 45 CFR 95.7 if resubmitted.

(iii) A State must implement the statistically valid sampling methodology in accordance with this section on an annual basis for the initial 3 consecutive years.

(A) States that have completed the requirements for 3 consecutive years, are required thereafter to verify using a sampling methodology in accordance with this section every 3 years.

(B) Any State that meets the requirements of paragraph (h)(3)(iii)(A) of this section may retroactively apply results of the sample to the rates of the calendar year expenditures for the years prior to the sample up to the last year in which the State completed and applied the results of a sampling methodology.

§ 433.212 CMS established FMAP proportion.

(a) Beginning January 1, 2014, States may elect to apply a CMS determined proportion to medical assistance expenditures for individuals eligible for Medicaid in the adult group.

(b) CMS will publish State-specific estimated FMAP proportions of eligibility under the December 2009 eligibility criteria using data sources including, but not limited to MEPS and MSIS data.

(c) CMS will meet all of the following requirements:

(1) Solicit and incorporate comments on the development of rates.

(2) Annually establish a model to predict in an unbiased way the appropriate proportion of expenditures for which each State would claim the FMAP rate described in § 433.10(c) of this subpart for newly eligible individuals taking into account any enrollment caps under demonstration programs that were in place in the State on December 1, 2009.

(3) Publish the State-specific rates by October 1 of the preceding year. For CY 2014, the model must be published no later than January 1, 2013.

(4) Incorporate results from a validation methodology in accordance with § 433.212(e) of this subpart such as a statistically valid sampling of State data of actual individuals eligible for and enrolled in Medicaid in accordance with section 1902(a)(10)(A)(i)(VIII) of the Act.

(5) Provide technical assistance to States on applying the rates established.

(d) States will apply the CMS published State-specific proportion of expenditures attributed to the newly eligible to expenditures for all individuals eligible for and enrolled in Medicaid in accordance with section 1902(a)(10)(A)(i)(VIII) of the Act. The State will consider the amount determined in accordance with this section to be the expenditures of the newly eligible individuals and receive the FMAP rate described in § 433.10(c) of this part for such expenditures when the State claims expenditures on the CMS–64.

(e) Validation measures such as statistical sampling must be incorporated into the estimate:

(1) On an annual basis beginning in CY 2016, to include expenditures related to CY 2014, and continue through CY 2021;

(2) After CY 2021, validation will be completed, and results incorporated into the model, on a 3-year basis;

(3) After CY 2030, validation will be completed, and results incorporated into the model, on a 5-year basis.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

8. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

9a. Remove the term ''family income'' wherever it appears in part 435 and add in its place the term ''household income.''

Subpart A—General Provisions and Definitions

9b. Section 435.4 is amended by—

A. Adding the definitions of ''Advance payments of the premium tax credit,'' ''Affordable Insurance Exchange (Exchange),'' ''Agency,'' ''Caretaker relative,'' ''Dependent child,'' ''Effective income level,'' ''Electronic account,'' ''Household income,'' ''Insurance affordability program,'' ''MAGI-based income,'' ''Minimum essential coverage,'' ''Modified adjusted gross income (MAGI),'' ''Pregnant woman,'' ''Secure electronic interface,'' and ''Tax dependent'' in alphabetical order.

B. Revising the definition of ''Families and children.''

The revisions read as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Advance payments of the premium tax credit means payments of the tax credit specified in section 36B of the Internal Revenue Code of 1986, which provide premium assistance on an advance basis to support enrollment of an eligible individual in a qualified health plan through the Exchange.

* * * * *

Affordable Insurance Exchange (Exchange) means a governmental agency or non-profit entity that meets the applicable requirements and makes qualified health plans available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

Agency means a State Medicaid agency.

* * * * *

Caretaker relative means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for Federal income tax purposes), including the child's natural, adoptive, or step parent; another relative of the child based on blood (including those of half-blood), adoption, or marriage; and the spouse of such parent or relative, even after the marriage is terminated by death or divorce.

* * * * *

Dependent child means a child who is under the age of 18, or is age 18 and a

full-time student, and who is deprived of parental support by reason of the death, absence from the home, or unemployment of at least one parent, unless the State has elected in its State plan to eliminate such deprivation requirement. A parent is considered to be unemployed if he or she is working less than 100 hours per month, or such higher number of hours as the State may elect in its State plan.

Effective income level means the income standard applicable under the State plan for an eligibility group, after taking into consideration any disregard of a block of income.

Electronic account means an electronic file that includes all information collected and generated by the State regarding each individual's Medicaid eligibility and enrollment, including all documentation required under § 435.913.

Families and children means individuals whose eligibility for Medicaid is determined based on being a pregnant woman, a child younger than age 21, or a parent or other caretaker relative of a dependent child. It does not include individuals whose eligibility is based on other factors, such as blindness, disability, being aged (65 or more years old), or a need for long-term care services.

Household income has the meaning provided in § 435.603(d).

Insurance affordability program means:

(1) A State Medicaid program under title XIX of the Act;

(2) A State children's health insurance program (CHIP) under title XXI of the Act;

(3) A State basic health program established under section 1331 of the Affordable Care Act;

(4) Coverage in a qualified health plan through the Exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code of 1986; or

(5) Coverage in a qualified health plan through the Exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

MAGI-based income has the meaning provided in § 435.603(e).

* * * * *

Minimum essential coverage means coverage defined in section 5000A(f) of subtitle D of the Internal Revenue Code of 1986, as added by section 1401 of the Affordable Care Act, and implementing regulations of such section issued by the Secretary of the Treasury.

Modified adjusted gross income (MAGI) has the meaning provided in section 36B(d)(2) of the Internal Revenue Code of 1986.

* * * * *

Pregnant woman means a woman during pregnancy and the post partum period, which extends until the last day of the month in which a 60-day period, beginning on the date the pregnancy terminates, ends.

Secure electronic interface means an interface which allows for the exchange of data between Medicaid and other insurance affordability programs and adheres to the requirements in part 433, subpart C of this chapter.

* * * * *

Tax dependent means an individual for whom another individual properly claims a deduction for a personal exemption under section 151 of the Internal Revenue Code of 1986 for a taxable year.

Subpart B—Mandatory Coverage

10. The heading for subpart B is revised as set forth above.

11. Section 435.110 is revised to read as follows:

§ 435.110 Parents and other caretaker relatives.

(a) *Basis.* This section implements sections 1931(b) and (d) of the Act.

(b) *Scope.* The agency must provide Medicaid to parents and other caretaker relatives, as defined in § 435.4, and if applicable the spouse of the parent or other caretaker relative, whose household income is at or below the income standard established by the agency in the State plan, in accordance with paragraph (c) of this section.

(c) *Income standard.* The agency must establish in its State plan the income standard as follows:

(1) The minimum income standard is a State's AFDC income standard in effect as of May 1, 1988 for a household of the applicable family size.

(2) The maximum income standard is the higher of—

(i) The effective income level in effect for section 1931 low-income families under the Medicaid State plan or waiver of the State plan as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or

(ii) A State's AFDC income standard in effect as of July 16, 1996 for a household of the applicable family size, increased by no more than the percentage increase in the Consumer Price Index for all urban consumers between July 16, 1996 and the effective date of such increase.

12. Revise the undesignated center heading that is immediately before § 435.116 to read as follows:

Mandatory Coverage of Pregnant Women, Children Under 19, and Newborn Children

13. Section 435.116 is revised to read as follows:

§ 435.116 Pregnant women.

(a) *Basis.* This section implements sections 1902(a)(10)(A)(i)(III) and (IV); 1902(a)(10)(A)(ii)(I), (IV), and (IX); and 1931(b) and (d) of the Act.

(b) *Scope.* The agency must provide Medicaid to pregnant women whose household income is at or below the income standard established by the agency in its State plan, in accordance with paragraph (c) of this section.

(c) *Income standard.* The agency must establish in its State plan the income standard as follows:

(1) The minimum income standard is the higher of:

(i) 133 percent FPL for a household of the applicable family size; or

(ii) Such higher income standard up to 185 percent FPL, if any, as the State had established as of December 19, 1989 for determining eligibility for pregnant women, or, as of July 1, 1989, had authorizing legislation to do so.

(2) The maximum income standard is the higher of—

(i) The highest effective income level in effect under the Medicaid State plan for coverage under the sections specified at paragraph (a) of this section, or waiver of the State plan covering pregnant women, as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or

(ii) 185 percent FPL.

(d) *Covered services.*

(1) Pregnant women are covered under this section for the full Medicaid coverage described in paragraph (d)(2) of this section, except that the agency may provide only pregnancy-related services described in paragraph (d)(3) of this section for pregnant women whose income exceeds the applicable income limit established by the agency in its State plan, in accordance with paragraph (d)(4) of this section.

(2) *Full Medicaid coverage*—

(i) Consists of all services which the State is required to cover under § 440.210(a)(1) of this chapter and all services which it has opted to cover under § 440.225 of this chapter; and

(ii) May include, at State option, enhanced pregnancy-related services in accordance with § 440.250(p) of this chapter.

(3) *Pregnancy-related services*—

(i) Consist at least of services, as defined by the agency, related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and other conditions which may complicate pregnancy; and

(ii) May include, at State option, enhanced pregnancy-related services in accordance with § 440.250(p) of this chapter).

(4) *Applicable income limit for full Medicaid coverage of pregnant women.* For purposes of paragraph (d)(1) of this section—

(i) The minimum applicable income limit is the State's AFDC income standard in effect as of May 1, 1988 for a household of the applicable family size.

(ii) The maximum applicable income limit is the highest effective income level for coverage under section 1902(a)(10)(A)(i)(III) of the Act or under section 1931(b) and (d) of the Act in effect under the Medicaid State plan or waiver of the State plan as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard.

14. Section 435.118 is added to read as follows:

§ 435.118 Infants and children under age 19.

(a) *Basis.* This section implements sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII); 1902(a)(10)(A)(ii)(IV) and (IX); and 1931(b) and (d) of the Act.

(b) *Scope.* The agency must provide Medicaid to children under age 19 whose household income is at or below the income standard established by the agency in its State plan, in accordance with paragraph (c) of this section.

(c) *Income standard.*

(1) The minimum income standard is the higher of—

(i) 133 percent FPL for a household of the applicable family size; or

(ii) For infants under age 1, such higher income standard up to 185 percent FPL, if any, as the State had established as of December 19, 1989 for determining eligibility for infants, or, as of July 1, 1989 had authorizing legislation to do so.

(2) The maximum income standard for each of the age groups of infants under age 1, children age 1 through age 5, and children age 6 through age 18 is the higher of—

(i) 133 percent FPL;

(ii) The highest effective income level for each age group in effect under the Medicaid State plan for coverage under the applicable sections of the Act listed at § 435.118(a), or waiver of the State plan covering such age group, as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or

(iii) For infants under age 1, 185 percent FPL.

15. Revise the undesignated center heading that is before § 435.119 to read as follows:

Mandatory Coverage for Individuals Age 19 through 64

16. Section 435.119 is revised to read as follows:

§ 435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL.

(a) *Basis.* This section implements section 1902(a)(10)(A)(i)(VIII) of the Act.

(b) *Eligibility.* The agency must provide Medicaid to individuals who:

(1) Are age 19 or older and under age 65;

(2) Are not pregnant;

(3) Are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act;

(4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and

(5) Have household income that is at or below 133 percent FPL for a household of the applicable family size.

(c) *Coverage for dependent children.*

(1) A State may not provide Medicaid to a parent or other caretaker relative living with a dependent child if the child is under the age specified in paragraph (c)(2) of this section, unless such child is receiving benefits under Medicaid, the Children's Health Insurance Program under subchapter D of this chapter, or otherwise is enrolled in other minimum essential coverage as defined in § 435.4 of this part.

(2) For the purpose of paragraph (c)(1) of this section, the age specified is under age 19, unless the State had elected as of March 23, 2010 to provide Medicaid to individuals under age 20 or 21 under § 435.222 of this part, in which case the age specified is such higher age.

Subpart C—Options for Coverage

17. The heading for subpart C is revised to read as set forth above.

18. Section 435.218 is added to read as follows:

§ 435.218 Individuals above 133 percent FPL.

(a) *Basis.* This section implements section 1902(a)(10)(A)(ii)(XX) of the Act.

(b) *Eligibility.*

(1) *Criteria.* The agency may provide Medicaid to individuals who:

(i) Are under age 65;

(ii) Are not eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part;

(iii) Are not otherwise eligible for and enrolled for optional coverage under a State's Medicaid State plan in accordance with subpart C of this part, based on information available to the State from the application filed by or on behalf of the individual; and

(iv) Have household income that exceeds 133 percent FPL, but is at or below the income standard elected by the agency and approved in its Medicaid State plan, for a household of the applicable family size.

(2) *Limitations.*

(i) A State may not, except as permitted under an approved phase-in plan adopted in accordance with paragraph (b)(3) of this section, provide Medicaid to higher income individuals described in paragraph (b)(1) of this section without providing Medicaid to lower income individuals described in such paragraph.

(ii) The limitation on coverage of parents and other caretaker relatives specified in § 435.119(c) also applies to coverage under this section.

(3) *Phase-in plan.* A State may phase in coverage to all individuals described in paragraph (b)(1) of this section under a phase-in plan submitted in a State plan amendment to and approved by the Secretary.

Subpart E—General Eligibility Requirements

19. Section 435.403 is amended by—

A. Redesignating paragraphs (h) and (i) as paragraphs (i) and (h), respectively.

B. Revising newly redesignated paragraphs (h)(1) and (h)(4)

C. Revising newly redesignated paragraphs (i)(1) and (i)(2).

D. Removing newly redesignated paragraph (i)(3).

E. Further redesignating newly redesignated paragraph (i)(4) as paragraph (i)(3).

F. Amending paragraph (l)(2) by removing ''paragraph (h)'' and adding ''paragraph (i)'' in its place.

The revisions and addition read as follows:

§ 435.403 State residence.

* * * * *

(h) *Individuals age 21 and over.*

(1) For an individual not residing in an institution as defined in paragraph (b) of this section, the State of residence is the State where the individual—

(i) Intends to reside, including without a fixed address or, if incapable

of stating intent, where the individual is living; or

(ii) Has entered the State with a job commitment or seeking employment (whether or not currently employed).

* * * * *

(4) For any other institutionalized individual, the State of residence is the State where the individual intends to reside or, if incapable of stating intent, where the individual is living.

(i) *Individuals under age 21.*

(1) For an individual under age 21 who is capable of indicating intent and who is emancipated from his or her parent or who is married, the State of residence is determined in accordance with paragraph (h)(1) of this section.

(2) For an individual under age 21 not described in paragraph (i)(1) of this section, not living in an institution as defined in paragraph (b) of this section and not eligible for Medicaid based on receipt of assistance under title IV–E of the Act, as addressed in paragraph (g) of this section, the State of residence is the State:

(i) Where the individual resides, including with a custodial parent or caretaker or without a fixed address; or

(ii) Where the individual's parent or caretaker has entered the State with a job commitment or seeking employment (whether or not currently employed).

* * * * *

Subpart G—General Financial Eligibility Requirements and Options

20. Section 435.603 is added to read as follows:

§ 435.603 Application of modified adjusted gross income (MAGI).

(a) *Basis, scope, and implementation.*

(1) This section implements section 1902(e)(14) of the Act.

(2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (i) of this section and as provided in paragraph (a)(3) of this section.

(3) In the case of determining ongoing eligibility for beneficiaries determined eligible for Medicaid on or before December 31, 2013 and receiving Medicaid as of January 1, 2014, application of the financial methodologies set forth in this section must not be applied until March 31, 2014 or the next regularly-scheduled redetermination of eligibility for such individual under § 435.916, whichever is later, if the individual otherwise would lose eligibility as a result of the application of these methodologies.

(b) *Definitions.* For purposes of this section—

Code means the Internal Revenue Code of 1986.

Family size means the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as 2 persons. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted, at State option, as either 1 or 2 person(s).

Tax dependent has the meaning provided in § 435.4 of this part.

(c) *Basic rule.* Except as specified in paragraph (i) of this section, the agency must determine financial eligibility for Medicaid based on ''household income'' as defined in paragraph (d) of this section.

(d) *Household income.*

(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household, minus an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size.

(2) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not required to file a tax return under section 6012 of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

(3) In the case of individuals described in paragraph (f)(2)(i) of this section, household income also includes actually available cash support provided by the person claiming such individual as a tax dependent.

(e) *MAGI-based income.* For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code, except that, notwithstanding the treatment of the following under the Code—

(1) An amount received as a lump sum is counted as income only in the month received.

(2) Scholarships or fellowship grants used for education purposes and not for living expenses are excluded from income.

(3) *American Indian/Alaska Native exceptions.* The following are excluded from income:

(i) Distributions from Alaska Native Corporations and Settlement Trusts;

(ii) Distributions from any property held in trust, or that is subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior.

(iii) Distributions resulting from real property ownership interests related to natural resources and improvements—

(A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or

(B) Resulting from the exercise of Federally-protected rights relating to such real property ownership interests;

(iv) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;

(v) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(f) *Household.*

(1) *Basic rule for taxpayers not claimed as a tax dependent.* In the case of an individual filing a tax return for the taxable year in which an initial determination or redetermination of eligibility is being made, and who is not claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and all tax dependents.

(2) *Basic rule for individuals claimed as a tax dependent.* In the case of an individual who is claimed as a tax dependent by another taxpayer, the household is the household of the taxpayer claiming such individual as a tax dependent, except that the household must be determined in accordance with paragraph (f)(3) of this section in the case of—

(i) Individuals other than a spouse or a biological, adopted or step child who are claimed as a tax dependent by another taxpayer;

(ii) Individuals under age 21 living with both parents, if the parents are not married; and

(iii) Individuals under age 21 claimed as a tax dependent by a non-custodial parent.

(3) *Rules for individuals who neither file a tax return nor are claimed as a tax dependent.* In the case of individuals who do not file a Federal tax return and are not claimed as a tax dependent, the household consists of the individual and, if living with the individual—

(i) The individual's spouse;

(ii) The individual's natural, adopted and step children under age 19 or, if such child is a full-time student, under age 21; and

(iii) In the case of individuals under age 19, or, in the case of full-time students, under age 21 the individual's natural, adopted and step parents and adoptive and step siblings under age 19 or, if such sibling is a full-time student, under age 21.

(4) *Married couples.* In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they file a joint tax return under section 6013 of the Code or whether one spouse is claimed as a tax dependent by the other spouse.

(g) *No resource test or income disregards.* In the case of individuals whose financial eligibility for Medicaid is determined in accordance with this section, the agency must not—

(1) Apply any assets or resources test; or

(2) Apply any income or expense disregards under sections 1902(r)(2) or 1931(b)(2)(C), or otherwise under title XIX, of the Act.

(h) *Budget period.*

(1) *Applicants and new enrollees.* Financial eligibility for Medicaid for applicants and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined must be based on current monthly household income and family size.

(2) *Current beneficiaries.* For individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or projected annual household income for the current calendar year.

(3) In determining current monthly or projected annual household income under paragraph (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. Such future increase or decrease in income must be verified in the same manner as other income, in accordance with the income and eligibility verification requirements at § 435.940 *et seq.,* including by self-attestation if reasonably compatible with other electronic data obtained by the agency in accordance with such sections.

(i) *Eligibility Groups for which modified MAGI-based methods do not apply.* The financial methodologies described in this section are not applied in determining the eligibility for individuals whose eligibility for Medicaid is being determined on the following bases or under the following eligibility groups. For individuals described in paragraphs (i)(3) through (i)(6) of this section, the agency must use the financial methods described in § 435.601 and § 435.602 of this subpart.

(1) Individuals whose eligibility for Medicaid does not require a determination of income by the State Medicaid agency, including, but not limited to, individuals deemed to be receiving Supplemental Security Income (SSI) benefits and eligible for Medicaid under § 435.120, individuals receiving SSI benefits and eligible for Medicaid under § 435.135, § 435.137 or § 435.138 of this subpart and individuals for whom the State relies on a finding of income made by an Express Lane agency, in accordance with section 1902(e)(13) of the Act.

(2) Individuals who are age 65 or older.

(3) Individuals whose eligibility is being determined on the basis of being blind or disabled, or on the basis of being treated as being blind or disabled, including, but not limited to, individuals eligible under § 435.121, § 435.232 or § 435.234 of this part or under section 1902(e)(3) of the Act.

(4) Individuals whose eligibility is being determined on the basis of the need for long-term care services, including nursing facility services or a level of care in any institution equivalent to such services; home and community-based services under section 1915 or under a demonstration under section 1115 of the Act; or services described in sections 1905(a)(7) or (24) or in sections 1905(a)(22) and 1929 of the Act.

(5) Individuals who are being evaluated for eligibility for Medicare cost sharing assistance under section 1902(a)(10)(E) of the Act, but only for purposes of determining eligibility for such assistance.

(6) Individuals who are being evaluated for coverage as medically needy under subparts D and I of this part.

Subpart J—Eligibility in the States and District of Columbia Applications

21. Section 435.905 is revised to read as follows:

§ 435.905 Availability of program information.

(a) The agency must furnish the following information in electronic and paper formats, and orally as appropriate, to all applicants and other individuals who request it:

(1) The eligibility requirements;

(2) Available Medicaid services; and

(3) The rights and responsibilities of applicants and beneficiaries.

(b) Such information must be provided in simple and understandable terms and in a manner that is accessible to persons who are Limited English Proficient (LEP) and individuals living with disabilities.

22. Section 435.907 is revised to read as follows:

§ 435.907 Application.

(a) The agency must require an application from the applicant, an authorized representative, or someone acting responsibly for the applicant.

(b) The application must be—

(1) The single, streamlined application for all insurance affordability programs developed by the Secretary in accordance with section 1413(b)(1)(A) of the Affordable Care Act; or

(2) An alternative single, streamlined application for all insurance affordability programs developed by a State and approved by the Secretary in accordance with section 1413(b)(1)(B) of the Affordable Care Act. The alternative application must be no more burdensome than the single streamlined application described in paragraph (b)(1) of this section and ensure coordination across insurance affordability programs.

(c) For individuals applying for coverage, or who may be eligible, on a basis other than the applicable modified adjusted gross income standard in accordance with § 435.911, the agency may use either the single, streamlined application and supplemental forms to collect additional information needed to determine eligibility on such other basis or an alternative application form approved by the Secretary.

(d) The agency must establish procedures to enable an individual, or other authorized person acting on behalf of the individual, to submit an application—

(1) Via the Internet Web site described in § 435.1200(d) of this part;

(2) By telephone;

(3) Via mail;

(4) In person; or

(5) Via facsimile.

(e) *Information related to non-applicants.*

(1) The agency may not require an individual who is not applying for benefits for himself or herself (a ''non-applicant'') to provide an SSN or information regarding such individual's citizenship, nationality, or immigration

status on any application or supplemental form.

(2) The agency may request that a household member who is a non-applicant provide an SSN, only if—

(i) Provision of the SSN to the agency is voluntary and the agency permits the completion of the application without such information;

(ii) The SSN from a non-applicant is used to determine an applicant's eligibility for Medicaid or for a purpose directly connected to the administration of the State plan; and

(iii) The agency clearly notifies the non-applicant that the provision of an SSN is voluntary and informs the individual how the SSN will be used, at the time it is requested.

(f) The initial application must be signed under penalty of perjury. Electronic, including telephonically recorded, signatures and handwritten signatures transmitted by fascimile or other electronic transmission must be accepted.

23. Section 435.908 is revised to read as follows:

§ 435.908 Assistance with application and redetermination.

(a) The agency must allow individual(s) of the applicant or beneficiary's choice to assist in the application process or during a redetermination of eligibility.

(b) The agency must provide assistance to any individual seeking help with the application or redetermination process in person, over the telephone, and online, and in a manner that is accessible to individuals with disabilities and those who are limited English proficient.

24. Redesignate § 435.911 through § 435.914 as § 435.912 through § 435.915 respectively.

25. Add new § 435.911 to read as follows:

§ 435.911 Determination of eligibility.

(a) *Statutory basis.* This section implements sections 1902(a)(4), (a)(8), (a)(10)(A), (a)(19), and (e)(14) and section 1943 of the Act.

(b)(1) *Applicable modified adjusted gross income standard* means 133 percent of the Federal poverty level or, if higher—

(i) In the case of parents and other caretaker relatives described in § 435.110(b), the income standard established in accordance with § 435.110(c);

(ii) In the case of pregnant women, the income standard established in accordance with § 435.116(c);

(iii) In the case of individuals under age 19, the income standard established in accordance with § 435.118(c);

(iv) The income standard established under § 435.218(b)(1)(iv) of this part, if the State has elected to provide coverage under such section and, if applicable, coverage under the State's phase-in plan has been implemented for the individual whose eligibility is being determined.

(2) [Reserved]

(c) For each individual who has submitted an application described § 435.907 and who meets the non-financial requirements for eligibility (or for whom the agency is providing a reasonable opportunity to provide documentation of citizenship or immigration status, in accordance with sections 1903(x), 1902(ee) or 1137(d) of the Act), the State Medicaid Agency must comply with the following—

(1) *Eligibility determination for mandatory coverage on basis of modified adjusted gross income.* For each such individual who is under age 19, pregnant, or age 19 or older and under age 65 and not entitled to or enrolled for Medicare benefits under part A or B or title XVIII of the Act, and whose household income is at or below the applicable modified adjusted gross income standard, the agency must promptly and without undue delay furnish Medicaid benefits to such individual in accordance with parts 440 and 441 of this chapter.

(2) *Eligibility on basis other than applicable modified adjusted gross income standard.* For each such individual not determined eligible for Medicaid in accordance with paragraph (c)(1) of this section, the agency must collect additional information as needed, consistent with § 435.907(c), to—

(i) Determine whether such individual is eligible for Medicaid on any other basis.

(ii) Promptly and without undue delay furnish Medicaid to each such individual determined eligible, in accordance with parts 440 and 441 of this chapter; and

(iii) Comply with the requirements set forth in § 435.1200(g).

26. Section 435.916 is revised to read as follows:

§ 435.916 Periodic redeterminations of Medicaid eligibility.

(a) *Redetermination of individuals whose Medicaid eligibility is based on modified adjusted gross income.*

(1) Except as provided in paragraph (d) of this section, the eligibility of Medicaid beneficiaries whose financial eligibility is based on the applicable modified adjusted gross income standard in accordance with § 435.911(c)(1)must be redetermined once every 12 months.

(2) The agency must make a redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency under § 435.948, § 435.949 and § 435.956 of this part.

(i) *Individuals redetermined eligible on the basis of information available to the agency.*

(A) If the agency determines, on the basis of information available to the agency that the individual remains eligible for Medicaid, consistent with the requirements of this subpart and subpart E of part 431 the agency must notify the individual—

(1) Of the eligibility determination, and basis therefore; and

(2) That the individual must inform the agency, through any of the modes permitted for submission of applications under § 435.907(d) of this subpart, if any of the information contained in such notice is inaccurate.

(B) Such individuals must not be required to sign and return the notice.

(ii) *Individuals not redetermined eligible on basis of information available to agency.* If the agency cannot determine, on the basis of information available to it, that the individual remains eligible for Medicaid, or if it otherwise needs additional information to complete the redetermination, the agency must comply with the requirements in paragraph (a)(3) of this section.

(3) *Use of a pre-populated renewal form.* For individuals not redetermined eligible under paragraph (a)(2) of this section, the agency must—

(i) Provide the individual with—

(A) A renewal form containing information available to the agency that is needed to renew eligibility, as specified by the Secretary;

(B) At least 30 days from the date of the renewal form to respond and provide necessary information;

(C) Notice of the agency's decision concerning eligibility in accordance with this subpart and subpart E of part 431 of this chapter; and

(D) The ability to respond to the renewal form through any of the modes permitted for submission of applications under § 435.907(d), and if required, sign the renewal electronically.

(ii) Verify any information provided by the beneficiary in accordance with § 435.945 through § 435.956.

(iii) Reconsider in a timely manner the eligibility of an individual who is terminated for failure to respond to the renewal form, if the individual subsequently responds to the agency within a reasonable period after the date of termination without the need for the individual to file a new application.

(4) *Transmission of data on individuals no longer eligible for Medicaid.* If an individual is determined ineligible for Medicaid, the agency must assess the individual for eligibility for other insurance affordability programs and transmit the electronic account and any relevant information used to make the eligibility determination to the appropriate program in accordance with the requirements set forth in § 435.1200(g) of this part.

(b) *Redetermination of individuals whose Medicaid eligibility is determined on a basis other than modified adjusted gross income.* The agency must redetermine the eligibility of Medicaid beneficiaries excepted from modified adjusted gross income under § 435.603(i) of this part, for circumstances that may change, at least every 12 months. The agency may—

(1) Consider blindness as continuing until the reviewing physician under § 435.531 of this part determines that a beneficiary's vision has improved beyond the definition of blindness contained in the plan; and

(2) Consider disability as continuing until the review team, under § 435.541 of this part, determines that a beneficiary's disability no longer meets the definition of disability contained in the plan.

(c) *Procedures for reporting changes.* The agency must have procedures designed to ensure that beneficiaries make timely and accurate reports of any change in circumstances that may affect their eligibility and that such changes may be reported in accordance with the modes required for submission of applications under § 435.907(d) of this subpart.

(d) *Agency action on information about changes.* Consistent with the requirements of § 435.952 of this subpart—

(1) The agency must promptly redetermine eligibility when it receives information about changes in a beneficiary's circumstances that may affect his or her eligibility.

(2) If the agency has information about anticipated changes in a beneficiary's circumstances that may affect his or her eligibility, it must redetermine eligibility at the appropriate time based on such changes.

27. Section 435.940 is revised to read as follows:

§ 435.940 Basis and scope.

The income and eligibility verification requirements set forth at § 435.940 through § 435.960 of this subpart are based on sections 1137, 1902(a)(4), 1902(a)(19), 1903(r)(3) and 1943(b)(3) of the Act and section 1413 of the Affordable Care Act.

28. Section 435.945 is revised to read as follows:

§ 435.945 General requirements.

(a) Nothing in these regulations in this subpart should be construed as limiting the State's program integrity measures or affecting the State's obligation to ensure that only eligible individuals receive benefits, consistent with part 455 of this subchapter.

(b) Except with respect to citizenship and immigration status information, and subject to the verification requirements set forth in this subpart, the agency may accept attestation without requiring further paper documentation (either self-attestation by the applicant or beneficiary or by a parent, caretaker or other person acting responsibly on behalf of an applicant or beneficiary) of all information needed to determine the eligibility of an applicant or beneficiary for Medicaid.

(c) The agency must request and use information relevant to verifying an individual's eligibility for Medicaid in accordance with § 435.948 through § 435.956 of this subpart.

(d) The agency must furnish, in a timely manner, income and eligibility information needed for verifying eligibility for the following programs:

(1) To other agencies in the State and other States and to the Federal programs both listed in § 435.948(a) of this subpart and identified in section 1137(b) of the Act;

(2) Other insurance affordability programs;

(3) The child support enforcement program under part D of title IV of the Act; and

(4) SSA for OASDI under title II and for SSI benefits under title XVI of the Act.

(e) The agency must, as required under section 1137(a)(7) of the Act, and upon request, reimburse another agency listed in § 435.948(a) of this subpart or paragraph (d) of this section for reasonable costs incurred in furnishing information, including new developmental costs associated with furnishing the information to another agency.

(f) Prior to requesting information for an applicant or beneficiary from another agency or program under this subpart, the agency must inform the individual that the agency will obtain and use information available to it under this subpart to verify income and eligibility or for other purposes directly connected to the administration of the State plan.

(g) The agency must report information as prescribed by the Secretary for purposes of determining compliance with § 431.305, subpart P of part 431, § 435.910, § 435.913, and § 435.940 through § 435.965 of this chapter and of evaluating the effectiveness of the income and eligibility verification system.

(h) Information exchanged electronically between the State Medicaid agency and any other agency or program must be sent and received via secure electronic interfaces as defined in § 435.4 of this part.

(i) The agency must execute written agreements with other agencies before releasing data to, or requesting data from, those agencies. Such agreements must provide for appropriate safeguards limiting the use and disclosure of information as required by Federal or State law or regulations.

29. Section 435.948 is revised to read as follows:

§ 435.948 Verifying financial information.

(a) The agency must request information relating to financial eligibility from other agencies in the State and other States and Federal programs in accordance with this section. To the extent the agency determines such information is useful to verifying the financial eligibility of an individual, the agency must request:

(1) Information related to wages, net earnings from self-employment, unearned income and resources from the State Wage Information Collection Agency (SWICA), the Internal Revenue Service, the Social Security Administration, the agencies administering the State unemployment compensation laws, the State-administered supplementary payment programs under section 1616(a) of the Act, and any State program administered under a plan approved under Titles I, X, XIV, or XVI of the Act; and

(2) Information related to eligibility or enrollment from the Public Assistance Reporting Information System (PARIS), the Supplemental Nutrition Assistance Program, and other insurance affordability programs.(Note: all eligibility determination systems must conduct data matching through PARIS).

(b) To the extent that the information identified in paragraph (a) is available through the electronic service established in accordance with § 435.949 of this subpart, the agency

must obtain the information through such service.

(c)(1) If the information identified in paragraph (a) of this section is not available through the electronic service established in accordance with § 435.949 of this subpart, the agency may obtain the information directly from the appropriate agency or program consistent with the requirements in § 435.945 of this subpart.

(2) The agency must request the information by SSN, or if a SSN is not available, using other personally identifying information in the individual's account, if possible.

(d) *Flexibility in information collection and verification.* Subject to approval by the Secretary, the agency may request and use income information from a source or sources alternative to those listed in paragraph (a) of this section provided that such alternative source will reduce the administrative costs and burdens on individuals and States while maximizing accuracy, minimizing delay, meeting applicable requirements relating to the confidentiality, disclosure, maintenance, or use of information, and promoting coordination with other insurance affordability programs.

30. Section 435.949 is added to read as follows:

§ 435.949 Verification of information through an electronic service.

(a) The Secretary will establish an electronic service through which States may verify certain information with, or obtain such information from, Federal agencies, including the Social Security Administration, the Department of Treasury, the Department of Homeland Security and any other Federal offices that maintain records containing information related to eligibility for Medicaid or other minimum essential coverage.

(b) To the extent that information is available through the electronic service established by the Secretary, States must obtain the information through such service, subject to the requirements in subpart C of part 433 of this chapter.

(c) The Secretary may provide for, or approve a request from a State to utilize, an alternative mechanism through which States may collect and verify such information, if the Secretary determines that such alternative mechanism meets the criteria set forth in § 435.948(d) of this subpart.

31. Section 435.952 is revised to read as follows:

§ 435.952 Use of information and requests of additional information from individuals.

(a) The agency must promptly evaluate information received or obtained by it in accordance with regulations under § 435.940 through § 435.960 of this subpart to determine whether such information may affect the eligibility of an individual or the benefits to which he or she is entitled.

(b) If information provided by or on behalf of an individual (on the application or renewal form or otherwise) is reasonably compatible with information obtained by the agency in accordance with § 435.948, § 435.949 or § 435.956 of this subpart, the agency must determine or redetermine eligibility based on such information.

(c) An individual must not be required to provide additional information or documentation unless information needed by the agency in accordance with § 435.948, § 435.949 or § 435.956 of this subpart cannot be obtained electronically or the information obtained electronically is not reasonably compatible with information provided by or on behalf of the individual.

(1) In such cases, the agency may seek additional information, including a statement which reasonably explains the discrepancy or other additional information (including paper documentation), from the individual.

(2) The agency must provide the individual a reasonable period to furnish such additional information.

(d) The agency may not deny or terminate eligibility or reduce benefits for any individual on the basis of information received in accordance with regulations under § 435.940 through § 435.960 of this subpart unless the agency has sought additional information from the individual in accordance with paragraph (c) of this section, and provided proper notice and hearing rights to the individual in accordance with this subpart and subpart E of part 431.

§ 435.953 [Removed]

32. Section 435.953 is removed.

§ 435.955 [Removed]

33. Section 435.955 is removed.

34. Section 435.956 is added to read as follows:

§ 435.956 Verification of other non-financial information.

(a) [Reserved]

(b) [Reserved]

(c) *State residency.*

(1) The agency may verify State residency in accordance with § 435.945(b) of this subpart or through other reasonable verification procedures consistent with the requirements in § 435.952 of this subpart.

(2) A document that provides evidence of immigration status may not be used alone to determine State residency.

(d) *Social Security numbers.* The agency must verify Social Ssecurity numbers (SSNs) in accordance with § 435.910(f) and (g) of this subpart.

(e) *Pregnancy and household size.* The agency must accept self-attestation of pregnancy and the individuals that comprise an individual's household, as defined in 435.603(f), unless the state has information that is not reasonably compatible with such attestation, subject to the requirements of § 435.952 of this subpart.

(f) *Age and date of birth.* The agency may verify date of birth in accordance with § 435.945(b) of this subpart or through other reasonable verification procedures consistent with the requirements in § 435.952 of this subpart.

35. Subpart M is added to read as follows:

Subpart M—Coordination of Eligibility and Enrollment Between Medicaid, CHIP, Exchanges and Other Insurance Affordability Programs

§ 435.1200 Medicaid agency responsibilities.

(a) *Statutory basis.* This section implements sections 1943 and 2102(b)(3)(B) and (c)(2) of the Act.

(b) *Definitions.* As used in this subpart:

Applicable modified adjusted gross income (MAGI) standard is defined as provided in § 435.911(b)(1) of this part.

Application means the single streamlined application described in § 435.907(b) submitted by or on behalf of an individual.

Exchange is defined as provided in § 435.4 of this part.

Insurance Affordability Program is defined as provided in § 435.4 of this part.

Secure electronic interface is defined as provided in § 435.4 of this part.

(c) *General requirements.* The State Medicaid Agency must —

(1) Participate in and comply with the coordinated eligibility and enrollment system described in section 1943 of the Act to ensure that the agency fulfills the responsibilities set forth in paragraphs (e) through (g) of this section in partnership with other insurance affordability programs.

(2) Consistent with § 431.10(d) of this chapter, enter into one or more agreements with the Exchange and the

agencies administering other insurance affordability programs, as defined in § 435.4 of this part, as are necessary to fulfill each of the requirements of this section.

(3) In accordance with the Medicaid State plan, certify the criteria, including but not limited to applicable MAGI standards as defined in § 435.911(b) of this subpart and satisfactory immigration status, necessary for the Exchange to determine Medicaid eligibility.

(d) *Internet Web site.* The State Medicaid agency must make available to current and prospective Medicaid applicants and beneficiaries a Web site that:

(1) Supports applicant and beneficiary activities, including accessing information on the insurance affordability programs available in the State, applying for and renewing coverage, and other activities as appropriate; and

(2) Is accessible to people with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act and provides meaningful access for persons who are limited English proficient.

(e) *Provision of Medicaid for individuals found eligible for Medicaid by the Exchange.* For each individual found eligible for Medicaid by the Exchange based on the applicable MAGI standard, the agency must establish procedures—

(1) To receive, via secure electronic interface, the electronic account containing the finding of Medicaid eligibility, all information provided on the application, and any information obtained or verified by the Exchange in making such finding; and

(2) To furnish Medicaid to the individual promptly and without undue delay in accordance with parts 440 and 441 of this chapter, to the same extent and in the same manner as if such individual had been determined eligible for Medicaid by the agency.

(f) *Transfer of applications from other insurance affordability programs to the State Medicaid agency.* The agency must adopt procedures to ensure that it promptly and without undue delay determines the Medicaid eligibility of individuals determined to be potentially eligible for Medicaid by other insurance affordability programs. The procedures must ensure that—

(1) The agency accepts, via secure electronic interface, the electronic account for the individual screened as potentially Medicaid eligible, including all information provided on the application and any information obtained or verified by the insurance affordability program;

(2) The agency may not request information or documentation from the individual that is already contained in the electronic account;

(3) The agency determines the Medicaid eligibility of the individual, promptly and without undue delay, in accordance with § 435.911(c) of this part in the same manner as if the application had been submitted directly to, and processed by, the agency, except that the agency must not verify eligibility criteria already verified by the insurance affordability program.

(4) The agency notifies the insurance affordability program of the final determination of the individual's eligibility or ineligibility for Medicaid.

(g) *Evaluation of eligibility for the Exchanges and other insurance affordability programs.*

(1) *Individuals determined not eligible for Medicaid.* For individuals who submit an application which includes sufficient information to determine Medicaid eligibility, and whom the agency determines are not eligible for Medicaid, the agency must establish procedures to assess such individuals for potential eligibility for other insurance affordability programs and promptly and without undue delay transfer such individuals' electronic accounts to any other program(s) for which they may be eligible. The electronic account must include all information provided on the application and any information obtained or verified by the agency, including the determination of Medicaid ineligibility.

(2) *Individuals undergoing a Medicaid eligibility determination on a basis other than MAGI.* In the case of an individual with household income, as defined in § 435.603(d) of this part, greater than the applicable MAGI standard and for whom the agency is determining eligibility on the basis of being blind or disabled, the agency must establish procedures to—

(i) Assess the individual for potential eligibility for coverage under other insurance affordability programs and, promptly and without undue delay, provide the individual's electronic account to any such program for which the individual may be eligible. The electronic account must be transmitted via secure electronic interface and must include all information provided on the application and any information obtained or verified by the agency, along with the determination that the individual is not Medicaid eligible on the basis of the applicable MAGI standard, but that a final determination of Medicaid eligibility is still pending; and

(ii) Notify the appropriate insurance affordability program(s) of the agency's final determination of eligibility or ineligibility.

PART 457—ALLOTMENTS AND GRANTS TO STATES

36a. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

36b. In part 457, remove the term ''family income'' wherever it appears and add in its place the term ''household income.''

37. In part 457 remove ''SCHIP'' wherever it appears and add in its place ''CHIP.''

Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

38. Section § 457.10 is amended by—

A. Removing the definition of ''Medicaid applicable income level.''

B. Adding the following definitions in alphabetical order: ''Affordable Insurance Exchange (Exchange),'' ''Electronic account,'' ''Household income,'' ''Insurance affordability program,'' ''Secure electronic interface,'' and ''Single, streamlined application.''

The additions read as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Affordable Insurance Exchange (Exchange) is defined as provided in § 435.4 of this chapter.

* * * * *

Electronic account means an electronic file that includes all information collected and generated by the State regarding each individual's CHIP eligibility and enrollment, including all documentation required under § 457.380 of this part.

* * * * *

Household income is defined as provided in § 435.603(d) of this chapter.

Insurance affordability program is defined as provided in § 435.4 of this chapter.

* * * * *

Secure electronic interface is defined as provided in § 435.4 of this chapter.

* * * * *

Single, streamlined application means the single, streamlined application form that is used by the State in accordance with § 435.907(b) of this chapter and 45 CFR 155.405 for individuals to apply for coverage for all insurance affordability programs.

* * * * *

39. Section § 457.80 is amended by revising paragraph (c)(3) to read as follows:

§ 457.80 Current State child health insurance coverage and coordination.

* * * * *

(c) * * *

(3) Ensure coordination with other insurance affordability programs in the determination of eligibility and enrollment in coverage to ensure that there are no unnecessary gaps in coverage, including through use of the procedures described in § 457.305, § 457.350 and § 457.353.

Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

40. Section 457.300 is amended by—

A. Republishing paragraph (a) introductory text.

B. Adding paragraphs (a)(4) and (a)(5).

C. Revising paragraph (c).

The addition and revision reads as follows:

§ 457.300 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements—

* * * * *

(4) Section 2107(e)(1)(O) of the Act, which relates to coordination of CHIP with the Exchanges and the State Medicaid agency.

(5) Section 2107(e)(1)(F) of the Act, which relates to income determined based on modified adjusted gross income.

* * * * *

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program. Regulations relating to eligibility, screening, applications and enrollment that are applicable to a Medicaid expansion program are found at § 435.4, § 435.229, § 435.905 through § 435.908, § 435.1102, § 435.940 through § 435.958, § 435.1200, § 436.3, § 436.229, and § 436.1102 of this chapter.

41. Section 457.301 is amended by—

A. Adding the definitions of ''Family size'' and ''Medicaid applicable income level'' in alphabetical order.

B. Removing the definition of ''Joint application.''

The additions read as follows:

§ 457.301 Definitions and use of terms.

* * * * *

Family size is defined as provided in § 435.603(b) of this chapter.)

Medicaid applicable income level means, for a child, the effective income level (expressed as a percentage of the Federal poverty level and converted to a modified adjusted gross income equivalent level in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act) specified under the policies of the State plan under title XIX of the Act (including for these purposes, a section 1115 waiver authorized by the Secretary or under the authority of section 1902(r)(2) of the Act) as of March 31, 1997 for the child to be eligible for Medicaid under either section 1902(l)(2) or 1905(n)(2) of the Act.

* * * * *

42. Section 457.305 is revised to read as follows:

§ 457.305 State plan provisions.

The State plan must include a description of—

(a) The standards, consistent with § 457.310 and § 457.320 of this subpart, and financial methodologies consistent with § 457.315 of this subpart used to determine the eligibility of children for coverage under the State plan.

(b) The State's policies governing enrollment and disenrollment; processes for screening applicants for and, if eligible, facilitating their enrollment in other insurance affordability programs; and processes for implementing waiting lists and enrollment caps (if any).

43. Section 457.310 is amended by—

A. Republishing paragraph (b) introductory text.

B. Revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) introductory text, and (b)(1)(iii)(B).

C. Adding paragraph (b)(1)(iv).

The revisions and addition read as follows:

§ 457.310 Targeted low-income child.

* * * * *

(b) *Standards.* A targeted low-income child must meet the following standards:

(1) * * *

(i) Has a household income, as determined in accordance with § 457.315, at or below 200 percent of the Federal poverty level for a family of the size involved;

(ii) Resides in a State with no Medicaid applicable income level;

(iii) Resides in a State that has a Medicaid applicable income level and has a household income that either—

* * * * *

(B) Does not exceed the income level specified for such child to be eligible for medical assistance under policies of the State plan under title XIX on June 1, 1997; or

(iv) Is not eligible for Medicaid as a result of the elimination of income disregards as specified under § 435.603(g) of this chapter.

* * * * *

44. Section 457.315 is added to read as follows:

§ 457.315 Application of modified adjusted gross income and household definition.

Effective January 1, 2014, the CHIP agency shall apply the financial methodologies set forth in paragraphs (b) through (h) of § 435.603 of this chapter in determining the financial eligibility of all individuals for CHIP. The exception to application of such methods for individuals for whom the State relies on a finding of income made by an Express Lane agency at § 435.603(i)(1) also applies.

45. Section 457.320 is amended by—

A. Removing paragraphs (a)(4) and (a)(6).

B. Redesignating paragraphs (a)(5), (a)(7), (a)(8), (a)(9), and (a)(10) as paragraphs (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively.

C. Revising paragraph (d).

D. Removing and reserving paragraph (e)(2).

The revisions and additions read as follows:

§ 457.320 Other eligibility standards.

* * * * *

(d) *Residency.*

(1) Residency for a non-institutionalized child who is not a ward of the State must be determined in accordance with § 435.403(i) of this chapter.

(2) A State may not—

(i) Impose a durational residency requirement;

(ii) Preclude the following individuals from declaring residence in a State—

(A) An institutionalized child who is not a ward of a State, if the State is the State of residence of the child's custodial parent or caretaker at the time of placement; or

(B) A child who is a ward of a State, regardless of where the child lives

(3) In cases of disputed residency, the State must follow the process described in § 435.403(m) of this chapter.

(e) * * *

(2) [Reserved]

46. Section 457.330 is added to read as follows:

§ 457.330 Application.

The State shall use the single, streamlined application used by the State in accordance with § 435.907(b) of this chapter, and otherwise comply with the provisions of such § 435.907 of this chapter, except that the terms of § 435.907(c) of this chapter (relating to applicants seeking coverage on a basis

other than modified adjusted gross income) do not apply.

47. Section 457.335 is added to read as follows:

§ 457.335 Availability of program information and Internet Web site.

The terms of § 435.905 and § 435.1200(d) of this chapter apply equally to the State in administering a separate CHIP.

48. Section 457.340 is amended by revising the section heading and paragraphs (a), (b) and (f) to read as follows:

§ 457.340 Application for and enrollment in CHIP.

(a) *Application assistance.* A State must afford families an opportunity to apply for CHIP without delay and must provide assistance to families in understanding and completing applications and in obtaining any required documentation. Such assistance must be made available to applicants and enrollees in person, over the telephone, and online, and must be provided in a manner that is accessible to individuals living with disabilities and those who are limited English proficient.

(b) *Use of Social Security number.* A State must require each individual applying for CHIP to provide a Social Security number (SSN) in accordance with § 435.910 and cannot require non-applicants to provide an SSN consistent with the requirements at § 435.907(e) of this chapter.

* * * * *

(f) *Effective date of eligibility.* A State must specify a method for determining the effective date of eligibility for CHIP, which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between programs as family circumstances change and avoids gaps or overlaps in coverage.

49. Section 457.343 is added to read as follows:

§ 457.343 Periodic redetermination of CHIP eligibility.

The redetermination procedures described in § 435.916 of this chapter apply equally to the State in administering a separate CHIP, except that the State shall verify information needed to renew CHIP eligibility in accordance with § 457.380 of this subpart, shall provide notice regarding the State's determination of renewed eligibility or termination in accordance with § 457.340(e) of this subpart and shall comply with the requirements set forth in § 457.350 of this subpart for screening individuals for other insurance affordability programs and transmitting such individuals' electronic account and other relevant information to the appropriate program.

50. Section 457.348 is added to read as follows:

§ 457.348 Determinations of Children's Health Insurance Program eligibility from other applicable health coverage programs.

(a) *Exchange determinations of CHIP eligibility.*

(1) For each individual found eligible for CHIP by the Exchange based on the applicable MAGI standard, the State must establish procedures—

(i) To receive, via secure electronic interface, the electronic account containing the finding of CHIP eligibility and all information provided on the application and/or verified by the Exchange which made such finding; and

(ii) To furnish CHIP to the individual promptly and without undue delay in accordance with § 457.340 of this subpart, to the same extent and in the same manner as if such individual had been determined by the State to be eligible for CHIP in accordance with such section.

(2) [Reserved].

(b) *Screening for potential CHIP eligibility by other insurance affordability programs.* The State must adopt procedures to ensure that it promptly and without undue delay determines the CHIP eligibility of individuals determined to be potentially eligible for CHIP, by other insurance affordability programs. The procedures must ensure that—

(1) The State accepts, via secure electronic interface, the electronic account for the individual screened as potentially CHIP eligible, including all information provided on the application and any information obtained or verified by the insurance affordability program;

(2) The State may not request information or documentation from the individual that is already contained in the electronic account;

(3) The State determines the CHIP eligibility of the individual, promptly and without undue delay, in accordance with § 457.340 in the same manner as if the application had been submitted directly to, and processed by, the State, except that the State must not verify eligibility criteria already verified by the insurance affordability program.

(4) The State notifies the insurance affordability program of the final determination of the individual's eligibility or ineligibility for CHIP.

(c) Option to accept CHIP eligibility determinations from the Medicaid agency. A State may accept determinations of CHIP eligibility made by another insurance affordability program in the same manner that it accepts Exchange determinations of CHIP eligibility under paragraph (a) of this section.

(d) Certification of eligibility criteria. The State must certify for the Exchange the criteria necessary to determine CHIP eligibility, including but not limited to the income standard adopted for its separate CHIP program and the criteria related to satisfactory immigration status, as set forth in the State plan in accordance with § 457.305 of this part.

51. Section 457.350 is amended by—

A. Revising the section heading.

B. Revising paragraphs (a), (b), (c), and (f).

C. Removing and reserving paragraph (d).

D. Adding paragraphs (i), (j), and (k).

The additions and revisions read as follows:

§ 457.350 Eligibility screening and enrollment in other insurance affordability programs.

(a) *State plan requirement.* The State plan shall include a description of the coordinated eligibility and enrollment procedures used, at intake and any follow-up eligibility determination, including any periodic redetermination, to ensure that:

(1) Only targeted low-income children are furnished CHIP coverage under the plan; and

(2) Enrollment is facilitated for applicants found to be potentially eligible for other insurance affordability programs in accordance with this section.

(b) *Screening objectives.* A State must identify any applicant, beneficiary, or other individual applying for coverage on the single, streamlined application who is potentially eligible for:

(1) Medicaid on the basis of having household income at or below the applicable modified adjusted gross income standard, as defined in § 435.911(b) of this chapter;

(2) Medicaid on a basis other than having household income at or below the applicable modified adjusted gross income standard; or

(3) Eligibility for other insurance affordability programs, including eligibility for advanced payments for premium tax credits based on having household income above the income standard in the State for CHIP or the applicable modified adjusted gross income standard in the State for Medicaid, as appropriate, or for enrollment in a qualified health plan through an Exchange without advanced payments for a premium tax credit.

(c) *Income eligibility test.* To identify the individuals described in paragraphs (b)(1) and (b)(3) of this section, a State must apply the methodologies used to determine household income described in § 457.315 of this part.

(d) [Reserved].

* * * * *

(f) *Applicants found potentially eligible for Medicaid based on modified adjusted gross income.* If the screening process reveals that the applicant is potentially eligible for Medicaid based on modified adjusted gross income, the State must—

(1) Promptly transmit the electronic account, and any other relevant information obtained through the application, to the Medicaid agency via secure electronic interface; and

(2) Except as provided in § 457.355 of this subpart, find the applicant ineligible, provisionally ineligible, or suspend the applicant's application for CHIP unless and until the Medicaid application for the applicant is denied; and

(3) Determine or redetermine eligibility for CHIP, consistent with the timeliness standards established under § 457.340(d) of this subpart, if—

(i) The State is notified, in accordance with § 435.1200(f)(4) of this chapter that the applicant has been found ineligible for Medicaid; or

(ii) The State is notified prior to the final Medicaid eligibility determination that the applicant's circumstances have changed and another screening shows that the applicant is not likely to be eligible for Medicaid.

* * * * *

(i) *Applicants found potentially eligible for other insurance affordability programs.* If the screening process reveals that an applicant is not eligible for CHIP, is not screened as potentially eligible for Medicaid on the basis of modified adjusted gross income, and is potentially eligible for enrollment in a qualified health plan through the Exchange or other insurance affordability programs, the State must promptly transmit the electronic account, and other relevant information obtained through the application to the applicable program using secure electronic interfaces.

(j) *Applicants potentially eligible for Medicaid on a basis other than modified adjusted gross income.* If, based on information obtained through the single, streamlined application, the applicant is not screened as potentially eligible for Medicaid on the basis of modified adjusted gross income but may be eligible for Medicaid on another basis, the State must—

(1) Promptly transmit the electronic account, and any other relevant information obtained through the application to the Medicaid agency using secure electronic interfaces; and

(2) Complete the determination of eligibility for CHIP in accordance with § 457.340 of this subpart; and

(3) Disenroll the beneficiary from CHIP if the State is notified in accordance with § 435.1200(f)(4) of this chapter that the applicant has been determined eligible for Medicaid.

(k) A State may enter into an arrangement with the Exchange to make eligibility determinations for advanced premium tax credits in accordance with Section 1943(b)(2) of the Act.

52. Section 457.353 is revised to read as follows:

§ 457.353 Monitoring and evaluation of screening process.

States must establish a mechanism and monitor to evaluate the screen and enroll process described at § 457.350 of this subpart to ensure that children who are:

(a) Screened as potentially eligible for other insurance affordability programs are enrolled in such programs, if eligible; or

(b) Determined ineligible for other insurance affordability programs are enrolled in CHIP, if eligible.

53. Section 457.380 is revised to read as follows:

§ 457.380 Eligibility verification.

(a) *General requirements.* Except with respect to verification of citizenship and immigration status, and subject to the verification requirements set forth in paragraph (d) of this section, the State may accept attestation of all information needed to determine the eligibility of an applicant or beneficiary for CHIP.

(b) [Reserved]

(c) *State Residents.* If the State does not accept self-attestation of residency, the State must verify residency in accordance with § 435.956(c) of this chapter.

(d) *Income.* The State must verify the income of an individual by using the data sources and following the standards and procedures for verification of financial eligibility described in § 435.945(b), § 435.948 and § 435.952 of this chapter.

(e) *Verification of other factors of eligibility.* For eligibility requirements not described in paragraphs (b), (c) or (d) of this section, a State may adopt reasonable verification procedures, except that the State must accept self-attestation of pregnancy and the individuals that comprise an individual's household unless the state has information that is not reasonably compatible with such attestation. The State may verify date of birth in accordance with § 435.945(b) or through other reasonable verification procedures consistent with the requirements in § 435.952.

(f) *Requesting information.*

(1) The State must use electronic sources of data, if available, before requesting additional information, including paper documentation, from an individual.

(2) An individual shall not be required to provide additional information or documentation unless information needed by the State cannot be obtained electronically or information obtained electronically is not reasonably compatible with information provided by or on behalf of the individual. In such cases, the State may seek additional information, including a statement which reasonably explains the discrepancy and/or paper documentation, from the individual. The State must provide the individual a reasonable period to furnish such information.

(g) *Electronic service.* To the extent that information sought under this section is available through the electronic service established by the Secretary at § 435.949 of this chapter, the State shall access the information through that service.

(h) *Interaction with program integrity requirements.* Nothing in this section should be construed as limiting the State's program integrity measures or affecting the State's obligation to ensure that only eligible individuals receive benefits.

(i) *Flexibility in information collection and verification.* Subject to approval by the Secretary, the State may modify the methods to be used for collection of information and verification of information as set forth in this section, provided that such alternative source will reduce the administrative costs and burdens on individuals and States while maximizing accuracy, minimizing delay, meeting applicable requirements relating to the confidentiality, disclosure, maintenance, or use of information, and promoting coordination with other insurance affordability programs.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 29, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 10, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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Part III

Department of Health and Human Services

45 CFR Parts 155 and 157
Patient Protection and Affordable Care Act; Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155 and 157

[CMS–9974–P]

RIN 0938–AR25

Patient Protection and Affordable Care Act; Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement certain functions of the new Affordable Insurance Exchanges (''Exchanges''), consistent with title I of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses. The specific Exchange functions proposed in this rule include: Eligibility determinations for Exchange participation and insurance affordability programs and standards for employer participation in SHOP.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on October 31, 2011.

ADDRESSES: In commenting, please refer to file code CMS–9974–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9974–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9974–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Laurie McWright at (301) 492–4372 for general information matters.

Alissa DeBoy at (301) 492–4428 for general information and matters related to part 155.

Michelle Strollo at (301) 492–4429 for matters related to eligibility.

Naomi Senkeeto at (301) 492–4419 for matters related to part 157.

SUPPLEMENTARY INFORMATION: A detailed Preliminary Regulatory Impact Analysis associated with this proposed rule is available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' A summary of the aforementioned analysis is included as part of this proposed rule.

Abbreviations

CHIP Children's Health Insurance Program
CMS Centers for Medicare & Medicaid Services
DOL U.S. Department of Labor
ERISA Employee Retirement Income Security Act (29 U.S.C. section 1001, *et seq.*)
FPL Federal Poverty Level
HHS U.S. Department of Health and Human Services
HMO Health Maintenance Organization
IHS Indian Health Service
IRS Internal Revenue Service
NAIC National Association of Insurance Commissioners
OMB Office of Management and Budget
OPM Office of Personnel Management
PHS Act Public Health Service Act
QHP Qualified Health Plan
SHOP Small Business Health Options Program
SSA Social Security Administration
The Act Social Security Act
The Code Internal Revenue Code of 1986

Executive Summary: Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges.'' Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs. And Exchanges will give individuals and small businesses the same purchasing clout as big businesses. The Departments of Health and Human Services, Labor and the Treasury (the Departments) are working in close coordination to release guidance related to Exchanges. The first in this series was a Request for Comment relating to Exchanges, published in the **Federal Register** on August 3, 2010 (75 FR 45584). Second, Initial Guidance to States on Exchanges was issued on November 18, 2010. Third, a proposed rule for the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011 (76 FR 13553). Fourth, two proposed regulations were published in the **Federal Register** on July 15, 2011 (76 FR 41866 and 76 FR 41930) to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act. Fifth, a proposed regulation for the

establishment of the Consumer Operated and Oriented Plan (CO–OP) Program under section 1322 of the Affordable Care Act was published in the **Federal Register** on July 20, 2011 (76 FR 43237). Sixth, three proposed rules, including this one, are being published in the **Federal Register** on August 17, 2011 to provide guidance on the eligibility determination process related to enrollment in a qualified health plan, advance payments of the premium tax credit, cost-sharing reductions, Medicaid, the Children's Health Insurance Program (CHIP), and participation in SHOP.

45 CFR 155.200(c) proposes that the Exchange perform eligibility determinations. This rule proposes the specific standards for the Exchange eligibility process, in order to implement sections 1311, 1312, 1411, 1412, and 1413 of the Affordable Care Act. Further, it supports and complements rulemaking conducted by the Secretary of the Treasury with respect to section 36B of the Internal Revenue Code (the Code), as added by section 1401(a) of the Affordable Care Act, and by the Secretary of HHS with respect to several sections of the Affordable Care Act regarding Medicaid and CHIP. This proposed rule also contains standards for employers with respect to participation in the Small Business Health Options Program (SHOP), paralleling the Exchange standards for SHOP set forth in the previous Exchange rule.

The aforementioned sections of the Affordable Care Act create a central role for the Exchange in the process of determining an individual's eligibility for enrollment in a qualified health plan (QHP), as well as for ''insurance affordability programs.'' In this proposed rule, ''insurance affordability programs'' is used to refer to advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP, and any State-established Basic Health Program, if applicable, as defined in 42 CFR 435.4 of the Medicaid proposed rule. We interpret Affordable Care Act sections 1311(d)(4)(F), and 1413, and section 1943 of the Act, as added by section 2201 of the Affordable Care Act, to establish a system of streamlined and coordinated eligibility and enrollment through which an individual may apply for enrollment in a QHP and insurance affordability programs and receive a determination of eligibility for such programs. We also interpret section 1413(b)(2) to mean that the eligibility and enrollment function should be consumer-oriented, minimizing administrative hurdles and unnecessary paperwork for applicants.

Submitting Comments: We welcome comments from the public on issues set forth in this proposed rule to assist us in fully considering issues and developing policies. Comments will be most useful if they are organized by the section of the proposed rule to which they apply. You can assist us by referencing the file code [CMS–9974–P] and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on the following public Web site as soon as possible after they have been received at *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at Room 445–G, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call 1–800–743–3951.

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I. Background

A. Legislative Overview

Section 1311(b) and section 1321 of the Affordable Care Act outline provisions for the establishment of Exchanges that will facilitate the purchase of insurance coverage by qualified individuals through qualified health plans (QHPs).

Section 1401 of the Affordable Care Act creates new section 36B of the Internal Revenue Code (the Code), which provides for a premium tax credit for eligible individuals who enroll in a QHP through an Exchange. Section 1402 establishes provisions to reduce the cost-sharing obligation of certain eligible individuals enrolled in a QHP offered through an Exchange.

Under section 1411 of the Affordable Care Act, the Secretary is directed to establish a program for determining whether an individual meets the eligibility standards for Exchange participation, advance payments of the premium tax credit, cost-sharing reductions, and exemptions from the individual responsibility provision.

Sections 1412 and 1413 of the Affordable Care Act and section 1943 of the Social Security Act (the Act), as added by section 2201 of the Affordable Care Act, contain additional provisions regarding eligibility for advance payments of the premium tax credit and cost-sharing reductions, as well as provisions regarding simplification and coordination of eligibility determinations and enrollment with other health programs. These provisions of the Affordable Care Act are addressed in subpart D of part 155 in this rule.

Section 1402 of the Affordable Care Act outlines standards for determining Indians eligible for certain categories of cost-sharing reductions.

Unless otherwise specified, the provisions in this proposed rule related to the establishment of minimum functions of an Exchange are based on the general authority of the Secretary under section 1321(a)(1) of the Affordable Care Act.

B. Stakeholder Consultation and Input

On August 3, 2010, HHS published a Request for Comment (the RFC) inviting the public to provide input regarding the rules that will govern the Exchanges. In particular, HHS asked States, tribal representatives, consumer advocates, employers, insurers, and other interested stakeholders to comment on the types of standards Exchanges should meet. The comment period closed on October 4, 2010. While this proposed rule does not directly respond to comments from the RFC, the comments received are described, where applicable, in discussing specific regulatory proposals.

The public response to the RFC yielded comment submissions from consumer advocacy organizations, medical and health care professional

trade associations and societies, medical and health care professional entities, health insurers, insurance trade associations, members of the general public, and employer organizations. The majority of the comments were related to the general functions and standards for Exchanges, QHPs, eligibility and enrollment, and coordination with Medicaid. We intend to respond to comments from the RFC, along with comments received on this proposed rule, as part of the final rule.

In addition to the RFC, HHS has consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States through the Exchange grant process, and meetings with tribal representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. This consultation will continue throughout the development of Exchange guidance.

C. Structure of the Proposed Rule

The regulations outlined in this notice of proposed rulemaking will be codified in 45 CFR part 155 and new part 157. Part 155 outlines the proposed standards for States relative to the establishment of Exchanges and outlines the proposed standards for Exchanges related to minimum Exchange functions. Part 157 outlines the basic standards that employers must meet to voluntarily participate in the Small Business Health Options Program (SHOP).

Subjects included in the Affordable Care Act addressed in prior proposed rulemaking include but are not limited to: (1) Federal standards for States that elect to establish and operate an Exchange; (2) minimum standards for health insurance issuers to participate in an Exchange and offer qualified health plans (QHPs); and (3) basic standards related to the establishment of the Small Business Health Options Program (SHOP).

Subjects included in the Affordable Care Act to be addressed in future separate rulemaking include but are not limited to: (1) Standards outlining the Exchange process for issuing certificates of exemption from the individual responsibility provision and payment under section 1411(a)(4); (2) defining essential health benefits, actuarial value and other benefit design standards; and (3) standards for Exchanges and QHP issuers related to quality.

II. Provisions of the Proposed Regulation

A. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

Under the Affordable Care Act, Exchanges will make QHPs available to qualified individuals. In accordance with our interpretation of the sections of the Affordable Care Act described below; the authority provided by, *inter alia,* section 1321(a); and 45 CFR 155.200(c), which specifies that the Exchange will perform eligibility determinations; we propose that the Exchange will determine eligibility for Exchange participation, as well as for insurance affordability programs. Sections 1312, 1331, 1401, 1402, 2001, 2002, and 2201 of the Affordable Care Act, by creating new law and amending existing law, in conjunction with titles XIX and XXI of the Act, set forth eligibility standards for these programs and benefits; and sections 1311, 1411, 1412, and 1413 of the Affordable Care Act create a central role for the Exchange in the process of determining an individual's eligibility based on those standards. In subpart D, we propose standards related to eligibility determinations for enrollment in a QHP and for insurance affordability programs. Throughout this subpart, we refer to Medicaid and CHIP, but we note that for those States that choose to establish a Basic Health Program, all provisions applicable to Medicaid and CHIP will also be generally applicable to the Basic Health Program. We also note that references in this subpart to ''Exchange'' refer specifically to functions in connection with the purchase of individual market coverage through the Exchange.

In 45 CFR 155.200(c) (76 FR 41866), we proposed that the Exchange perform eligibility determinations. We interpret Affordable Care Act sections 1311(d)(4)(F) and 1413, and section 1943 of the Act, as added by section 2201 of the Affordable Care Act, to provide for the establishment of a system of streamlined and coordinated eligibility and enrollment through which an individual may apply for insurance affordability programs and receive a determination of eligibility for any such program. Section 1413(b)(2) provides that an individual's eligibility be determined without unduly burdening the individual with unnecessary paperwork. We note that these approaches were supported by comments that we received in response to the RFC. One option that we considered was whether to establish a system in which the Secretary of HHS would determine eligibility for advance payments of the premium tax credit, with other eligibility and enrollment functions remaining as the responsibility of the Exchange, since premium tax credits are fully Federally-funded and the rules are the same across all States. However, we chose not to take this approach, because isolating one component of the eligibility determination process from the remaining eligibility and enrollment functions would pose significant challenges to ensuring a seamless experience for applicants. It would also limit the role of State Exchanges in this process. We note that States may also work with HHS to leverage technological and operational capabilities provided by HHS to execute Exchange functions in a way that will meet the needs of individuals. We solicit comments on this approach and alternatives.

We also note that throughout this subpart, we propose several transmissions of data, which we intend to occur electronically, using secure interfaces. We note that the standards specified in § 155.260 and § 155.270 regarding privacy and security apply to any data sharing processes and agreements under this subpart.

The proposed eligibility process is designed to minimize opportunities for fraud and abuse, including the use of clear eligibility standards and processes that rely on data sources in an electronic environment. We solicit comments regarding strategies to further limit the risk for fraud and abuse, and we look forward to working with States toward this goal.

Consistent with this streamlined, seamless eligibility and enrollment system, the Affordable Care Act requires a simplification of Medicaid and CHIP eligibility policy and rules, which is in 42 CFR 435.603 and 42 CFR 457.315, proposed by the Secretary of HHS in the Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010 rule, published in this issue of the **Federal Register** (the Medicaid proposed rule). Pursuant to the Affordable Care Act, this simplification aligns most of the rules under which individuals will be determined eligible for Medicaid and CHIP with those for advance payments of the premium tax credit and cost-sharing reductions, by generally using modified adjusted gross income (MAGI) as the basis for income

eligibility, effective January 1, 2014. While the use of this standard is referenced throughout this subpart, the use of a MAGI-based standard for Medicaid and CHIP is proposed in the Medicaid proposed rule, pursuant to section 2002 of the Affordable Care Act, and the definition of MAGI will be proposed by the Department of the Treasury in the Health Insurance Premium Tax Credit rule, scheduled for publication in this issue of the **Federal Register**.[1]

In this subpart, we have organized the standards we propose for the Exchange in determining eligibility as follows: Eligibility standards, eligibility determination process, and applicant information verification process.

a. Definitions and General Standards for Eligibility Determinations (§ 155.300)

In this section, we propose definitions for this subpart. We note that virtually all of the definitions in this section are from other proposed regulations, including many proposed in the Establishment of Exchanges and Qualified Health Plans rule, published at 76 FR 41866 (July 15, 2011), (Exchange proposed rule).

In paragraph (a), we propose the definition for ''adoption taxpayer identification number'' to have the same meaning as it does in 26 CFR 301.6109–3(a).

We propose the definition for ''applicable Medicaid modified adjusted gross income (MAGI)-based income standard'' to have the same meaning as ''applicable Medicaid modified adjusted gross income standard'' as defined in 42 CFR 435.911(b), applied under the State Medicaid plan or waiver of such plan, and as certified by the State Medicaid agency pursuant to 42 CFR 435.1200(c)(2), for determining Medicaid eligibility. Both 42 CFR 435.911(b) and 435.1200(c)(2) are proposed in the Medicaid proposed rule.

In support of our proposal that the Exchange determine an applicant's eligibility for CHIP, we propose to define ''applicable CHIP modified adjusted gross income (MAGI)-based income standard'' as the income standard applied under the State plan under Title XXI of the Act, or waiver of such plan, as defined at 42 CFR 457.305(a), and as certified by the State CHIP Agency pursuant to 42 CFR 457.348(d), for determining eligibility for child health assistance and enrollment in a separate child health program. The applicable CHIP MAGI-based standard will also vary from State to State depending on the threshold established by the State CHIP agency. Both 42 CFR 457.305 and 457.348(d) are proposed in the Medicaid proposed rule.

We propose to define ''application filer'' to mean an individual who submits an application for health insurance coverage to the Exchange and responds to inquiries about the application. An application filer may be an applicant or a non-applicant, and may or may not be a primary taxpayer.

We propose to define ''Federal Poverty Level'' (FPL) to mean the most recently published FPL, updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a qualified health plan through the Exchange; the open enrollment period is specified in 45 CFR 155.410. This definition is used for eligibility for advance payments of the premium tax credit and cost-sharing reductions, and matches the definition in the Treasury proposed rule. We note that the Medicaid proposed rule does not specify that FPL is based on the data published as of the first day of the Exchange open enrollment period, which means that the FPL table used in eligibility determinations for Medicaid and CHIP may be different from that used for advance payments of the premium tax credit and cost-sharing reductions, depending on the date of the eligibility determination. However, we note that for the annual open enrollment period for coverage, the FPL tables for Medicaid, CHIP, and advance payments of the premium tax credit and cost-sharing reductions should be the same.

For purposes of determining eligibility for cost-sharing provisions, we propose to codify the definition of ''Indian'' to mean any individual defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638, 88 Stat. 2203), in accordance with section 1402(d)(1) of the Affordable Care Act. This definition means an individual who is a member of a Federally-recognized tribe. Applicants meeting this definition are eligible for cost-sharing reductions or special cost-sharing rules on the basis of Indian status, which are described in § 155.350 of this subpart.

We propose to define ''insurance affordability programs'' as described earlier in this section.

We propose that the definition of the term ''minimum value'' has the meaning given to the term in section 36B(c)(2)(C) of the Code.

We propose to define ''non-citizen'' to mean any individual who is not a citizen or national of the United States, which is the same meaning as the term alien as defined in section 101(a)(3) of the Immigration and Nationality Act.

We propose to define ''primary taxpayer'' to mean an individual who (1) attests that he or she will file a tax return for the benefit year, in accordance with 26 CFR 1.6011–8; (2) if married (within the meaning of 26 CFR 1.7703–1), attests that he or she expects to file a joint tax return for the benefit year; (3) attests that he or she expects that no other taxpayer will be able to claim him or her as a tax dependent for the benefit year; and (4) attests that he or she expects to claim a personal exemption deduction on his or her tax return for the family members listed on his or her application, including the primary taxpayer and his or her spouse. We use this term in § 155.305 and § 155.320(c) of this subpart to describe the individual who would receive advance payments of the premium tax credit and would file a tax return to reconcile such advance payments.

We propose to define ''State CHIP Agency'' to mean the agency that administers a separate child health program established by the State under Title XXI of the Act in accordance with implementing regulations at 42 CFR part 457.

We propose to define ''State Medicaid Agency'' to mean the agency that administers a Medicaid program established by the State under Title XIX of the Act in accordance with implementing regulations at 42 CFR 430.

We propose to define ''tax dependent'' to mean a dependent in accordance with section 152 of the Code.

In paragraph (b), we propose to clarify that, in general, references to Medicaid and CHIP regulations in this subpart refer to Medicaid and CHIP State plan provisions implementing those regulations. To the extent that the regulations outlined in this section refer to Medicaid and CHIP regulations, the Exchange would adhere to the rules of the Medicaid and CHIP agencies operating within the service area of the Exchange.

Lastly, in paragraph (c)(1), we propose that except as specified in paragraph (c)(2), for purposes of this subpart, an attestation may be made by the applicant (self-attestation), an application filer, or in cases in which an

[1] Section 3308 of the Affordable Care Act also defines ''modified adjusted gross income''; this definition is different from the definitions that are applicable to advance payments of the premium tax credit, cost-sharing reductions, Medicaid, and CHIP.

individual cannot attest, the attestation of a parent, caretaker, or someone acting responsibly on behalf of such an individual. In paragraph (c)(2), we propose that the attestations specified in § 155.310(d)(2)(ii) and § 155.315(e)(4)(ii), which result in the authorization of advance payments of the premium tax credit, must be made by the primary taxpayer. This is because these attestations are designed to ensure that the primary taxpayer appreciates and accepts the tax consequences that follow from receipt of advance payments.

b. Eligibility Standards (§ 155.305)

In § 155.305, we propose to codify the eligibility standards for enrollment in a QHP and for insurance affordability programs.

In paragraph (a), we propose that the Exchange determine an applicant eligible for enrollment in a QHP if he or she meets the basic standards for enrollment in a QHP, which are taken from section 1312(f) of the Affordable Care Act. First, in paragraph (a)(1), we propose to codify section 1312(f)(3) that in order to be eligible for enrollment in a QHP, an individual must be a citizen, national, or a non-citizen lawfully present, and be reasonably expected to remain so for the entire period for which enrollment is sought. In proposed § 155.20, the term ''lawfully present'' is adopted as defined in 45 CFR 152.2. Since the Exchange will also be determining eligibility for Medicaid and CHIP, we intend to align the requirements for lawful presence with that of the State option for Medicaid and CHIP under section 1903(v)(4) of the Act, as added by section 214 of the Children's Health Insurance Program Reauthorization Act (Pub. L. 111–3, 123 Stat. 8); to the extent that the Secretary amends the definition for Medicaid and CHIP in future rulemaking, we intend to adjust the Exchange rules accordingly.

We solicit comments regarding the codified language in paragraph (a)(1) that an individual be ''reasonably expected,'' for the entire period for which enrollment is sought, to be a citizen, national, or non-citizen lawfully present, which comes directly from section 1312(f)(3) of the Affordable Care Act. We clarify that the period for which enrollment is sought does not have to be an entire benefit year. In particular, we seek comment on how this policy can be implemented in a way that is straightforward for individuals to understand and for the Exchange to implement.

In paragraph (a)(2), we propose to codify section 1312(f)(1)(B) that in order to be eligible for enrollment in a QHP, an individual must not be incarcerated, with the exception of incarceration pending the disposition of charges.

In paragraph (a)(3), we propose the standard regarding residency. Section 1312(f) of the Affordable Care Act provides that in order to enroll in a QHP, an individual must reside in the State that established the Exchange. When discussing the residency standard for the Exchange, we use the term ''service area of the Exchange'' to account for regional or subsidiary Exchanges that serve broader or narrower geographic areas than a single State, as well as for situations in which a Federally-facilitated Exchange is operating in a State. We clarify that this residency standard is designed to apply to all Exchanges, including regional and subsidiary Exchanges. In order to codify the residency standard of section 1312(f) to take account of the options under sections 1311(f)(1) and 1311(f)(2), in paragraph (a)(3)(i), we propose that an individual aged 21 or older who is not institutionalized, is capable of indicating intent, and is not receiving a State supplementary payment (State-funded cash assistance for certain individuals receiving SSI) meets the residency standard for enrollment in a QHP if the applicant intends to reside in the State within the service area of the Exchange through which the individual is requesting coverage.

In general, we propose to align the Exchange residency standard with the residency standards proposed for Medicaid, which are proposed in 42 CFR 435.403 of the Medicaid proposed rule. Such Medicaid residency standards include an ''intent to reside'' standard. This ''intent to reside'' standard applies to individuals 21 and over who are seeking coverage through the Exchange and who intend to reside within the service area of the Exchange provided that an individual does not fall into special residency categories described in paragraph (a)(3)(iii). This phrase precludes visitors to the service area of an Exchange from meeting the residency standard, but accommodates those individuals who may transition between service areas of different Exchanges, such as seasonal workers and individuals seeking employment in the State or service area of the Exchange. This also allows individuals who are absent temporarily from the service area of an Exchange to remain within the same Exchange during the temporary absence. Furthermore, while we do not include the words ''live'' or ''living'' in the proposed residency requirements, we will interpret these proposed regulations such that an adult's residency will be based on where he or she is living, and expect that he or she must also maintain the present intent to reside in the State within the service area of the Exchange that is being claimed. Along these lines and in accordance with the language in section 1312(f)(3) of the Affordable Care Act, which we interpret to allow an applicant to request coverage for less than a full calendar year, we clarify that this residency standard does not require an individual to intend to reside for the entire benefit year. In paragraph (a)(3)(ii), we propose that an individual under age 21 who is not institutionalized, is not receiving payments under Title IV–E of the Act (such as foster care assistance and adoption assistance), is not emancipated, and is not receiving a State supplementary payment, meets the residency standard for enrollment in a QHP if he or she resides within the service area of the Exchange through which he or she is requesting coverage, to account for situations in which an individual under age 21 is unable to express intent.

We note that Medicaid has adopted a number of additional rules regarding residency for special populations, including institutionalized individuals, individuals receiving Title IV–E payments, individuals receiving State supplementary payments, individuals incapable of expressing intent, and emancipated minors. In paragraph (a)(3)(iii) of this section, we propose that the Exchange follow these Medicaid residency standards (which are proposed in the Medicaid proposed rule at 42 CFR 435.403) and the policy of the State Medicaid or CHIP agency to the extent that an individual is specifically described in that section and not in paragraphs (a)(3)(i) or (ii). We continue to work across HHS to ensure that the Exchange, Medicaid, and CHIP can reach a definition or set of definitions of residency that will enable a uniform eligibility determination process for the vast majority of individuals to reduce complexity and confusion for all involved parties; we solicit comments on this topic.

We also recognize that there are a number of situations in which a tax household may include members residing in different service areas served by different Exchanges. In paragraph (a)(3)(iv) of this section, we propose that for a spouse or a tax dependent who resides outside the service area of the primary taxpayer's Exchange, such as when a non-custodial parent claims a child as a tax dependent, the spouse or tax dependent will be permitted to either: (1) Enroll in a QHP through the Exchange that services the area in which

he or she resides or intends to reside; or (2) enroll in a QHP through the Exchange that services the area in which his or her primary taxpayer intends to reside or resides, as applicable. In either case, if the spouse or tax dependent is covered, he or she will still count as part of the tax household and the advance payment calculation will take account of the policy or policies needed to cover the tax household consistent with the rules proposed in the Treasury proposed rule. We believe that this will provide flexibility to an individual who does not live in the service area of the Exchange in which his or her primary taxpayer lives but want to remain in the same Exchange as the primary taxpayer, including but not limited to students attending out-of-State schools or tax dependents who do not live with their primary taxpayer.

We note that section 1334 of the Affordable Care Act directs the Office of Personnel Management to contract with health insurance issuers to offer at least two private multi-State plans in each Exchange, which we believe may create opportunities for households with members in multiple States to remain covered by the same QHP. We also solicit comment as to whether there are any standards regarding in-network adequacy for out-of-State dependents we should consider.[2] We also note that the preamble to 42 CFR 435.403, proposed in the Medicaid proposed rule, clarifies that HHS intends to allow State Medicaid agencies to continue to have State-specific rules with respect to residency for students under the Medicaid program, which is not consistent with our approach for the Exchange. We recognize that under the Medicaid proposed rule, State Medicaid agencies will continue to have flexibility with regard to residency for students and we solicit comments on whether different rules should be maintained or whether a unified approach should be adopted.

In paragraph (b), we propose that the Exchange determine an applicant eligible for an enrollment period if he or she meets the criteria for an enrollment period, as specified in § 155.410 and § 155.420 of this part. The purpose of this provision is to clarify that in addition to determining whether an applicant meets the eligibility standards for enrollment in a QHP specified in paragraph (a) of this section, the Exchange will determine whether or not the applicant is permitted to enroll in a QHP at the time the applicant actually seeks coverage.

[2] Network adequacy is addressed in the Exchange proposed rule at 76 FR 41866, 41893–94.

Based on sections 1311(d)(4)(F) and 1413 of the Affordable Care Act and section 1943(b)(1)(B) of the Act, we propose that the Exchange determine applicants' eligibility for Medicaid and CHIP, and enroll eligible applicants into these programs. In paragraph (c), we propose the criteria under which the Exchange will determine eligibility for Medicaid for an applicant seeking an eligibility determination for insurance affordability programs as described in § 155.310(b). We propose that the Exchange determine an applicant's eligibility for Medicaid for eligibility categories that use the applicable Medicaid MAGI-based income standard defined in § 155.300.

Specifically, we propose that the Exchange determine an applicant eligible for Medicaid if he or she: (1) Meets the citizenship and immigration requirements described in 42 CFR 435.406 and 1903(v)(4) of the Social Security Act, as certified by the State Medicaid agency under 435.1200(c)(3); (2) meets the proposed requirements described in 42 CFR 435.403 regarding residency; (3) has a household income, as defined in proposed 42 CFR 435.911(b), that is at or below the applicable Medicaid MAGI-based income standard; and (4) falls into one of the categories described in the definition of ''applicable Medicaid MAGI-based income standard'' in § 155.300(a). We note that 42 CFR 435.406(a), 435.403, and 435.911(b) are proposed in the Medicaid proposed rule and we intend to fully align the standards to which the Exchange will adhere for purposes of Medicaid eligibility with those standards as implemented in the State Medicaid plan.

In paragraph (d), we propose that the Exchange determine an applicant eligible for CHIP if he or she meets the requirements of 42 CFR 457.310 through 457.320 and has a household income within the applicable CHIP MAGI-based income standard.

Section 1331 of the Affordable Care Act provides a State with the option to create a Basic Health Program to provide coverage to some qualified individuals in lieu of Exchange coverage. In paragraph (e), we propose to codify that if a Basic Health Program is operating in the service area of the Exchange, the Exchange will determine an individual's eligibility for the Basic Health Program. We intend to address policies for the Basic Health Program in future rulemaking.

Sections 1401, which creates a new section 36B of the Code, and 1402 of the Affordable Care Act establish a premium tax credit and cost-sharing reductions that are available to certain individuals, and section 1412 of the Affordable Care Act provides that advance payments of the premium tax credit may be made to QHP issuers on behalf of eligible individuals. In paragraph (f), we propose the eligibility standards for advance payments of the premium tax credit. These provisions are drawn from the standards in section 36B of the Code and implementing regulations at 26 CFR 1.36B–1 through 1.36B–5, in the Treasury proposed rule.

First, in paragraph (f)(1), we propose the eligibility standards for a primary taxpayer, as defined in § 155.300(a), to receive advance payments of the premium tax credit on behalf of him or herself, for his or her spouse, or for one or more of his or her tax dependents. We clarify that while these standards are described in terms of a primary taxpayer, because the primary taxpayer actually receives the premium tax credit on his or her tax return for the benefit year, an individual who is not a primary taxpayer may apply for coverage without the presence of a primary taxpayer throughout the application process. The primary taxpayer's involvement is necessary only at the point at which the Exchange will authorize an advance payment, which is discussed in § 155.310(d)(2)(ii).

We propose that the Exchange determine a primary taxpayer eligible to receive advance payments if the Exchange determines that he or she is expected to have a household income, as defined in proposed 26 CFR 1.36B–1(e), of at least 100 percent but not more than 400 percent of the FPL, as specified in proposed 26 CFR 1.36B–2(b)(1), for the benefit year for which coverage is requested, and one or more applicants for whom the primary taxpayer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the primary taxpayer and his or her spouse (1) meets the standards for eligibility for enrollment in a QHP through the Exchange; and (2) is not eligible for minimum essential coverage, in accordance with proposed 26 CFR 1.36B–2(a)(2) (which excludes coverage purchased through the individual market, as well as employer-sponsored minimum essential coverage for which the employee's contribution exceeds 9.5 percent (in 2014, and indexed in future years) of household income or for which the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, unless an individual is enrolled in such employer-sponsored minimum essential coverage). We clarify that the definition of household income in 26

CFR 1.36B–1(e) of the Treasury proposed rule does not include the income of an individual in a primary taxpayer's family who is not required to file.

In addition, in paragraph (f)(2), we propose that the Exchange determine a primary taxpayer eligible for advance payments of the premium tax credit if the Exchange determines that (1) he or she meets the standards specified in paragraph (f)(1) (regarding eligibility for advance payments of the premium tax credit) except for paragraph (f)(1)(i) (household income of at least 100 percent but not more than 400 percent of the FPL); (2) he or she is expected to have a household income of less than 100 percent of the FPL; and (3) one or more applicants, including the primary taxpayer and his or her spouse, for whom the primary taxpayer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the primary taxpayer and his or her spouse, is a non-citizen who is lawfully present and ineligible for Medicaid by reason of immigration status.

In paragraph (f)(3), we propose that the Exchange may provide advance payments of the premium tax credit only for an applicant who is enrolled in a QHP through the Exchange. The intent of this provision is to clarify that an applicant does not need to be enrolled in a QHP to be determined eligible for advance payments of the premium tax credit; however, an applicant must be enrolled prior to advance payments being made to a QHP issuer.

In paragraph (f)(4), we propose that the Exchange determine a primary taxpayer ineligible to receive advance payments of the premium tax credit if HHS notifies the Exchange that the primary taxpayer or his or her spouse received advance payments for a prior year for which tax data would be utilized for income verification and did not comply with the requirement to file a tax return for such year, as proposed in 26 CFR 1.6011–8. For example, this requirement means that for open enrollment for coverage in calendar year 2016, which will take place in the fall of 2015, a primary taxpayer on whose behalf advance payments were made for calendar year 2014 must have filed a tax return for 2014. This proposal is intended to prevent a primary taxpayer or spouse who has failed to comply with tax filing rules from accumulating additional Federal tax liabilities due to advance payments of the premium tax credit. An individual may remove this restriction by filing a tax return for the year in question.

In paragraph (f)(5), we propose that in the event the Exchange determines that a primary taxpayer is eligible to receive advance payments of the premium tax credit, the Exchange will calculate advance payments of the premium tax credit in accordance with 26 CFR 1.36B–3 of the Treasury proposed rule. Our proposal to adopt the IRS premium tax credit rules for advance payments ensures that, to the extent the information used to calculate a primary taxpayer's advance payments is consistent with the information reporting on the primary taxpayer's income tax return at the end of the taxable year, the advance payment calculation will be consistent with the ultimate premium tax credit calculation, reducing the potential for differences at the time of reconciliation. We also note that in § 155.310(d)(2), we propose the Exchange permit a primary taxpayer to accept less than the full amount of advance payments of the premium tax credit for which he or she is determined eligible.

Lastly, in paragraph (f)(6), we propose that the Exchange must require an application filer to provide the Social Security number (SSN) of the primary taxpayer if an application filer attests that the primary taxpayer has a SSN and filed a tax return for the year for which tax data would be utilized for verification of household income and family size. Sections 1412(b)(1) and 1411(b)(3) of the Affordable Care Act together provide that eligibility determinations for advance payments of the premium tax credit are to be made based on tax return data, to the extent that reasonably recent and representative tax return data is available; the Secretary of the Treasury is only able to provide tax data for primary taxpayers for whom the Exchange provides a SSN or an adoption taxpayer identification number (ATIN). We clarify that taxpayers who have SSNs and who have tax data available that would be used for verification of household income and family size must provide them to the Exchange for purposes of eligibility for advance payments of the premium tax credit. We note that, because the eligibility standards for cost-sharing reductions proposed at § 155.305(g) incorporate the eligibility standards for advance payments of the premium tax credit, this standard also applies for the purposes of eligibility for cost-sharing reductions. Like all other data collections, the use and disclosure of SSNs is subject to the privacy and security safeguards proposed in § 155.260 and § 155.270.

We highlight two key differences between Medicaid and CHIP and advance payments of the premium tax credit. First, while eligibility for Medicaid and CHIP is based on current income, eligibility for advance payments of the premium tax credit is based on annual income. Second, unlike Medicaid and CHIP, the premium tax credit is paid on an advance basis and then reconciled based on information reported on an individual's tax return for the entire year. That is, to the extent that an individual receives advance payments of the premium tax credit based on an initial eligibility determination at 150 percent of the FPL and his or her actual annual household income as reported on his or her tax return is 300 percent of the FPL, he or she will be liable to repay advance payments of the premium tax credit to reduce the credit to the 300 percent level, subject to the statutory caps on repayment proposed in 26 CFR 1.36B–4 of the Treasury proposed rule.

Commenters to the RFC raised concerns regarding the potential for the statutory reconciliation process, in combination with the annual basis of household income for advance payments of the premium tax credit, to render coverage unaffordable for individuals who have substantial decreases in income during the benefit year. A related concern is that the fear of large repayments due to reconciliation after an increase in income could deter enrollment. Both effects could result in a lower participation and a negative impact on the Exchange risk pool. To address these concerns, the Exchange can decrease the difference between the amount of advance payments and the premium tax credit amount based on actual income at the end of the year through a strong initial eligibility process that maximizes accuracy and a strong process by which individuals can report changes that occur during the year. We solicit comments on ways of achieving this outcome.

In paragraph (g), we propose that the Exchange determine an applicant eligible for cost-sharing reductions if he or she meets eligibility standards that we propose to codify from section 1402 of the Affordable Care Act. In accordance with sections 1402(b) and (c) of the Affordable Care Act, in paragraph (g)(1) of this section, we propose that the Exchange must determine an applicant eligible for cost-sharing reductions if he or she is (i) eligible for enrollment in a QHP in accordance with paragraph (a) of this section; (ii) is eligible for advance payments of the premium tax credit in

accordance with paragraph (f) of this section; and (iii) has household income for the taxable year that does not exceed 250 percent of the FPL. We note that there are also special eligibility standards for cost-sharing reductions based on Indian status, which are described in § 155.350 of this subpart.

Section 1402(b) of the Affordable Care Act explicitly provides that an individual is eligible for reduced cost-sharing if his or her household income exceeds 100 percent of the FPL, but does not exceed 400 percent of the FPL. However, section 1402(c)(1)(B)(i)(IV) specifies that cost-sharing reductions for an individual with household income that exceeds 250 percent of the FPL but does not exceed 400 percent of the FPL may not result in the QHP's share of costs exceeding 70 percent, which is the actuarial value standard for a silver-level QHP pursuant to section 1302(d)(1)(B) of the Affordable Care Act, regardless of cost-sharing reductions. Since an individual has to enroll in a silver-level QHP in order to receive cost-sharing reductions, and the actuarial value of a silver-level QHP without cost-sharing reductions is 70 percent, an individual with household income that exceeds 250 percent of the FPL who is not an Indian is not eligible for cost-sharing reductions, which is reflected in paragraph (g)(1)(iii).

Lastly, in paragraph (g)(2), we propose to codify section 1402(b)(1) of the Affordable Care Act, which specifies that an applicant must be enrolled in a QHP in the silver level of coverage in order to receive cost-sharing reductions.

In paragraph (h), we propose three eligibility categories for cost-sharing reductions in accordance with paragraph (g) and section 1402 of the Affordable Care Act. In § 155.340, we propose that the Exchange transmit information about an enrollee's category to his or her QHP issuer in order to enable the QHP issuer to provide the correct level of reductions. The proposed categories are as follows: In paragraph (h)(1), an individual who has household income greater than 100 percent of the FPL and less than or equal to 150 percent of the FPL; in paragraph (h)(2), an individual who has household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL; and in paragraph (h)(3), an individual who has household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL. Additional information regarding the implementation of cost-sharing reductions will be provided in the future. Eligibility standards for cost-sharing provisions that are based in whole and in part on whether an individual is an Indian are described in § 155.350 of this subpart.

c. Eligibility Determination Process (§ 155.310)

In § 155.310, consistent with sections 1411–1413 of the Affordable Care Act, we propose the process by which the Exchange will determine an individual's eligibility for enrollment in a QHP and for insurance affordability programs.

In paragraph (a)(1), we propose that the Exchange accept applications from individuals in the form and manner described in proposed 45 CFR § 155.405, published in the Exchange proposed rule at 76 FR 41866. Furthermore, in paragraph (a)(2), we propose to prohibit the Exchange from requiring an individual who is not seeking coverage for himself or herself (a 'non-applicant'), including an individual who is applying for coverage on behalf of another party, to provide information regarding the non-applicant's citizenship, status as a national, or immigration status on any application or supplemental form. We also propose that the Exchange may not require such an individual to provide a SSN, except as specified in § 155.305(f)(6), which addresses, for the purposes of eligibility for advance payments of the premium tax credit, primary taxpayers who have SSNs and have tax data on file with the IRS that would be used in the verification of household income and family size. This exception is based on sections 1412(b)(1) and 1411(b)(3) of the Affordable Care Act and is discussed further above.

In paragraph (b), we propose that the Exchange permit an individual to decline an eligibility determination for insurance affordability programs. This proposal is designed to ensure that an individual can bypass the additional steps required for such screening and proceed directly to selecting and enrolling in a QHP. We clarify that this proposal does not allow an applicant to choose to seek a determination only for advance payments of the premium tax credit and cost-sharing reductions (and not for Medicaid and CHIP) or vice versa. Section 36B(c)(2)(B) of the Code states that an applicant is ineligible for advance payments of the premium tax credit to the extent that he or she is eligible for other minimum essential coverage, which includes Medicaid and CHIP. This provision means that the Exchange will consider an applicant's eligibility for Medicaid and CHIP as part of an eligibility determination for advance payments of the premium tax credit.

In paragraph (c), we propose that the Exchange accept an application and make an eligibility determination for an applicant seeking an eligibility determination at any point in time during a benefit year. An eligibility determination is a necessary precursor to enrollment; after an applicant is determined eligible for enrollment in a QHP, he or she may select a QHP and will then be able to receive covered health care services. We clarify that this does not supersede the limited enrollment periods in 45 CFR subpart E. In addition, subpart E does not limit an applicant's ability to request and receive an eligibility determination, including an eligibility determination for advance payments of the premium tax credit or cost-sharing reductions, if he or she has previously declined such a determination. We also note that § 155.330 directs the Exchange to accept and process changes reported by enrollees during the benefit year as well.

In paragraph (d)(1), we propose that after the Exchange has collected and verified all necessary data, the Exchange conduct an eligibility determination in accordance with the standards described in § 155.305 of this part.

In paragraph (d)(2)(i), we propose that the Exchange allow an applicant who is determined eligible for advance payments of the premium tax credit to accept less than the expected annual amount of advance payments authorized. This proposal is designed to reduce the enrollee's risk of repayment at the point of reconciliation.

In paragraph (d)(2)(ii), we propose to clarify that the Exchange may provide advance payments on behalf of a primary taxpayer only if the primary taxpayer first attests that he or she will meet the tax-related provisions discussed in the definition of primary taxpayer, including that he or she will claim a personal exemption deduction on his or her tax return for the applicants identified as members of his or her tax family. In a scenario in which more than one tax household is covered through a single policy, 26 CFR 1.36B–3 of the Treasury proposed rule proposes that advance payments will be split between the two primary taxpayers; that is, a primary taxpayer may not receive advance payments for which another primary taxpayer is eligible. This proposal also clarifies that while an application filer who is not the primary taxpayer may complete the application process on the primary taxpayer's behalf, the primary taxpayer must actively attest that he or she will comply with the standards for advance payments that are related to tax filing prior to advance payments being made

for his or her family. This is designed to ensure that the primary taxpayer appreciates and accepts the tax consequences that follow from receipt of advance payments.

In paragraph (d)(3), we propose that if the Exchange determines an applicant is eligible for Medicaid or CHIP, the Exchange will notify the State Medicaid or CHIP agency and transmit relevant information, including information from the application and the results of verifications, to such agency promptly and without undue delay in order to enable the applicant to receive benefits.

In paragraph (e), we clarify that upon making eligibility determinations for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions, the Exchange will implement the eligibility determinations in accordance with the coverage effective dates specified in subpart E, which are found at 45 CFR 155.410(c) and (f), and 45 CFR 155.420(b). This is designed to ensure that an applicant's entire eligibility determination and any financial assistance to support the purchase of coverage are effective simultaneously.

After the Exchange determines eligibility, in paragraph (f) we propose that the Exchange provide an applicant with a timely, written notice of his or her eligibility determination. For an applicant who requests an eligibility determination for insurance affordability programs, the Exchange will provide information in the notice regarding the applicant's eligibility for all such programs. While we expect that the Exchange will provide an applicant who is applying online with information regarding his or her eligibility determination as the process progresses, we clarify that the Exchange must provide a single written notice to each applicant when the eligibility determination is final. The written notice of eligibility is intended to provide an individual with a record of the steps taken and remaining actions needed to complete the eligibility and enrollment process, as well as information regarding his or her right to appeal. We note that written notice is not necessary at every step of the eligibility process; rather, the Exchange will provide a single notice at the conclusion of the determination, as well as notices when additional information is required. We note that in § 155.230, we proposed general rules regarding notices under this part, which include provisions regarding ensuring that notices be written in plain language and in a manner that meets the needs of diverse populations by providing meaningful access to limited English proficient individuals and ensure effective communication for people with disabilities. We anticipate proposing additional information to be included in notices in future rulemaking.

In paragraph (g), we propose to codify the reporting rules in section 1411(e)(4)(B)(iii) of the Affordable Care Act, which support the employer responsibility provisions of the Affordable Care Act. We propose that when the Exchange determines an applicant is eligible to receive advance payments of the premium tax credit or cost-sharing reductions based in part on a finding that his or her employer does not provide minimum essential coverage, or provides coverage that is not affordable, as specified in section 36B(c)(2)(C)(i) of the Code, or does not meet the minimum value standard as specified in section 36B(c)(2)(C)(ii) of the Code, the Exchange will notify the employer and identify the employee. We anticipate providing additional information on the content of this notice in future rulemaking.

In paragraph (h), we propose rules regarding the duration of an eligibility determination for an applicant who is determined eligible for enrollment in a QHP but does not select a QHP within his or her enrollment period in accordance with subpart E of this part. The purpose of these proposed rules is to ensure that the information used to support an eligibility determination remains accurate, while limiting burden and creating consistency with the rules for the population that selects a QHP. First, in paragraph (h)(1), we propose that to the extent that such an individual seeks a new enrollment period prior to the date on which he or she would have been subject to an annual redetermination in accordance with § 155.335, the Exchange must receive an attestation from him or her as to whether information affecting his or her eligibility has changed prior to accepting such selection. Second, in paragraph (h)(2), we propose that to the extent than an applicant who is determined eligible for enrollment in a QHP does not select a QHP within his or her enrollment period, and seeks a new enrollment period on or after the date on which he or she would have been subject to an annual redetermination, the Exchange will conduct an annual redetermination in accordance with § 155.335 prior to determining the applicant's eligibility for an enrollment period.

We considered requiring a new determination after a specific period of time, but opted for the proposed language in order to create consistency with the process for an individual who has been determined eligible for enrollment in a QHP and who actually enrolls during an authorized enrollment period, and to minimize burden on applicants and the Exchange. We solicit comments on this approach, and whether the application process should begin anew in some or all of these situations.

d. Verification Process Related to Eligibility for Enrollment in a QHP (§ 155.315)

Sections 1411(c) and (d) of the Affordable Care Act require the verification of applicant information prior to using such information to determine eligibility. The statute is specific with regard to the verification process for some, but not all, information needed to determine eligibility. Section 1411(d) of the Affordable Care Act provides authority for the Secretary to establish verification procedures for certain categories of information described in section 1411 without a specific process established by the statute. In addition, section 1411(c)(4)(B) of the Affordable Care Act provides authority to the Secretary to modify the statutory verification methods in certain cases.

We propose to split the verification process of the Exchange into two main sections within this subpart: § 155.315, which contains the verification process related to eligibility for enrollment in a QHP, and § 155.320, which contains the verification process related to insurance affordability programs. We also note that § 155.350 contains a process for verification of whether an applicant is an Indian.

In general, the verification processes proposed in this subpart would have the Exchange first rely on sources of electronic data and, to the extent that the Exchange is unable to verify information through such sources, follow specific procedures that include requesting documentation from applicants. Data sources described in this section may include the records of the Social Security Administration (SSA), the Department of Homeland Security (DHS), and the Internal Revenue Service (IRS), as well as data sources maintained by other entities.

We also note that we propose to include authority for the Exchange to request documentation from an applicant when information provided by the applicant is not reasonably compatible with other information provided for an applicant or in the records of the Exchange for the applicant; this proposal is designed to enhance program integrity while

limiting additional requests to only those situations in which there is good cause for such requests. The preamble discussion associated with proposed 42 CFR 435.952(b) of the Medicaid proposed rule addresses the ''reasonably compatible'' standard, which is used throughout the Medicaid proposed rule as well. We intend to interpret this standard the same way here (in the context of the Exchange) as it is interpreted and applied in the context of Medicaid and CHIP.

In paragraph (a), we propose that the Exchange verify or obtain information to determine that an applicant is eligible for enrollment in a QHP as provided in this section, unless an Exchange's request for modification of the methods used for collection and verification of information is granted pursuant to paragraph (e). Under paragraph (e), described later, we propose the flexibility to develop alternative verification processes that achieve the same goals as those proposed for general use.

In paragraph (b), we propose the process that the Exchange follows to ensure that an individual is a citizen, national, or otherwise lawfully present individual in accordance with sections 1312(f)(3) and 1411(c) of the Affordable Care Act, respectively. This is the first of several proposals regarding verification with the records of Federal officials. For such verifications, we propose to codify the role of the Secretary (through HHS) as an intermediary between the Exchange and other Federal officials, as described in section 1411(c). This proposal is designed to simplify the process for the Exchange as well as for involved Federal agencies.

In paragraph (b)(1), we propose that for an applicant who attests to citizenship and has a Social Security number, the Exchange will transmit the applicant's Social Security number and other identifying information needed by the Social Security Administration (SSA) to SSA via HHS to verify whether the information matches SSA's records. We anticipate that SSA may revise its information requirements and that a level of flexibility will be necessary to efficiently use this process. If the information needed to perform this verification with SSA changes, HHS will issue guidance to Exchanges. We anticipate that the single, streamlined application proposed in 45 CFR § 155.405 will contain the necessary information. If SSA can match the individual's basic identifying information to an SSA record, HHS will notify the Exchange as to whether SSA can substantiate the applicant's citizenship. If SSA is unable to match the individual's basic identifying information to an SSA record, HHS will notify the Exchange regarding the inconsistency.

In paragraph (b)(2), and consistent with section 1411(c)(2)(B) of the Affordable Care Act, we propose that for an applicant who has documentation that can be verified through the Department of Homeland Security (DHS) and who attests to lawful presence, or who attests to citizenship and for whom the Exchange cannot substantiate citizenship through SSA, including an applicant who does not attest to citizenship or does not have a Social Security number, the Exchange will transmit information from the applicant's documentation and basic identifying information to HHS, which will submit a request to DHS and return the response to the Exchange. Several commenters to the RFC recommended that we utilize the DHS Systematic Alien Verification for Entitlements (SAVE) system to satisfy this standard. The proposed language supports the use of SAVE, and we are working closely with DHS to identify the best technological option available to maximize accuracy and minimize delay.

Section 1411(e)(3) of the Affordable Care Act specifies that in a situation in which the Exchange is unable to verify an applicant's claim of citizenship, status as a national, or lawful presence through either SSA or DHS, the applicant's eligibility must be determined in the same manner as an applicant's eligibility under the Medicaid program under section 1902(ee) of the Act. Section 1902(ee) of the Act includes a number of provisions related to the verification of citizenship, including a process by which a Medicaid agency can request that SSA verify whether an applicant's attestation of citizenship matches SSA's records. If such substantiation is unsuccessful, section 1902(ee) of the Act directs the Medicaid agency to: (1) Make a reasonable effort to identify and address the causes of the inconsistency; (2) notify the applicant of the inconsistency if the inconsistency cannot be resolved through this step, provide the applicant with a period of 90 days from receipt of the notice to present satisfactory documentation of citizenship or resolve the inconsistency with SSA, and provide Medicaid coverage during this period; and (3) if the inconsistency is not resolved after the close of the period, disenroll the individual. Section 1902(ee) of the Act also includes details of the relationship between a State Medicaid agency and SSA, as well as the calculation of a payment to the Secretary related to how often eligibility is provided to applicants who are ultimately determined ineligible, when a State is not using the option to communicate with SSA on a real-time basis. We intend for the process proposed under this section to be near real-time, and therefore, we believe that this calculation does not apply to the Exchange. Further, unlike the choice provided to a State Medicaid agency pursuant to section 1902 of the Act, the Exchange will not automatically have the ability to implement a different verification process; therefore, the use of a penalty provision appears inappropriate here.

This inconsistency process is substantially similar to the inconsistency process for information not related to citizenship, status as a national, or lawful presence, which is described in section 1411(e)(4) of the Affordable Care Act, codified in paragraph (e) of this section, and discussed below. As such, in paragraph (b)(3), we specify that in the case of an inconsistency related to citizenship, status as a national, or lawful presence, the Exchange will follow the procedures specified in paragraph (e), except that the time period for the resolution of inconsistencies related to citizenship, status as a national, or lawful presence is 90 days from the date on which the notice of inconsistency is received, rather that the date on which it is sent, as required by the law. We clarify that the date on which the notice is received means 5 days after the date on the notice, unless the applicant shows that he or she did not receive the notice within the 5-day period. This 5-day period is the standard period used by SSA for the Supplemental Security Income (Title XVI) and Old Age and Disability (Title II) programs to account for mailing a notice and receipt by the individual, and we believe this reasonable standard to adopt for the inconsistency process. We note that this process covers situations in which an applicant has neither a Social Security number nor documentation that can be verified with DHS. Future rulemaking will address the standards that the Exchange will use to adjudicate documentary evidence of citizenship provided by an applicant within this inconsistency process.

In paragraph (c), we propose the verification process to be used by the Exchange to ensure that an individual meets the residency standard specified in § 155.305(a)(3) of this part. This process is parallel to that proposed for Medicaid.

In paragraph (c)(1), to verify residency, we propose that the

Exchange accept an applicant's attestation as to residency without further verification unless, as described in paragraph (c)(2), the State Medicaid or CHIP agency operating in the State in which the Exchange operates chooses not to allow verification of residency based solely on attestation, in which case the Exchange will verify residency in accordance with 42 CFR 435.956(c) and 42 CFR 457.380(c), which are proposed in the Medicaid proposed rule.

Furthermore, in paragraph (c)(3), we propose that the Exchange may examine data sources regarding residency to the extent that information provided for an applicant regarding residency is not reasonably compatible with other information provided for the applicant or in the records of the Exchange. Examples of such data sources include State tax returns, Supplemental Nutrition Assistance Program or Temporary Assistance for Needy Families eligibility information, motor vehicles administration information, or other local, State or Federal sources of information.

In paragraph (c)(4), we propose that to the extent information in the data sources examined by the Exchange in accordance with paragraph (c)(3) of this section is not reasonably compatible with information provided for the applicant, the Exchange will request additional documentation in accordance with § 155.315(e) of this section. We also propose that a document that provides evidence of immigration status may not be used alone to determine State residency. As discussed in the preamble to proposed 42 CFR 435.956(c) of the Medicaid proposed rule, this provision is intended to ensure that while documents which provide information regarding immigration status should be used as a source of evidence to verify satisfactory immigration status, they may not, by themselves, be used to demonstrate a lack of residency.

In paragraph (d), we propose that the Exchange verify an applicant's attestation that he or she is not incarcerated, with the exception of incarceration pending the disposition of charges. In paragraph (d)(1), we propose that the Exchange implement this policy by first relying on any electronic data sources that are available to the Exchange and which have been authorized by HHS for verification of incarceration. HHS will approve electronic data sources based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification; we note that this allows for the possibility that no electronic data source will be authorized. In paragraph (d)(2), we propose that to the extent that approved electronic data sources are unavailable, the Exchange accept the applicant's attestation without further verification, except as provided in paragraph (d)(3). In paragraph (d)(3), we propose that in the event that an applicant's attestation is not reasonably compatible with information from the data sources specified in paragraph (d)(1) or with other information provided by the applicant or in the records of the Exchange, the Exchange follow the inconsistency procedures described in § 155.315(e) of this section, in accordance with section 1411(e)(4)(A)(ii)(II) of the Affordable Care Act.

We solicit comment as to what electronic data sources are available and should be authorized by HHS for Exchange purposes, including whether access to such data sources should be provided as a Federally-managed service like citizenship and immigration status information from SSA and DHS. We also note that the proposal regarding documentation is designed only to account for situations in which an attestation is not reasonably compatible with information contained in approved electronic data sources.

In paragraph (e), we propose to codify sections 1411(e)(3) and 1411(e)(4) of the Affordable Care Act to address situations in which an applicant attests to information needed to determine eligibility, and such attestation is inconsistent with other information in the records of the Exchange, including information maintained in the records of applicable Federal officials. As such, we cross-reference this paragraph for a number of verifications within § 155.315 and § 155.320 of this subpart. Such sections may also have specific standards for the adjudication of relevant documentation by the Exchange that are tailored to specific inconsistencies. We also note that given that the process in this paragraph is applied to more than one piece of information, it is possible for an applicant to have multiple inconsistencies simultaneously. In such a situation, the Exchange will continue to use an applicant's attestations for any information that is subject to the inconsistency process in accordance with paragraph (e)(4)(ii) of this section.

Section 1411(e)(3) of the Affordable Care Act, which covers inconsistencies related to citizenship, status as a national, and lawful presence, is substantially similar to section 1411(e)(4) of the Affordable Care Act, which covers other inconsistencies. The process described in this paragraph is the process under section 1411(e)(4) of the Affordable Care Act; as noted above, paragraph (b)(3) of this section details the modifications required to the procedures described in this section to accommodate the process for inconsistencies related to citizenship, status as a national, and lawful presence.

First, under paragraph (e)(1), the Exchange will make a reasonable effort to identify and resolve the issues. Second, in paragraph (e)(2)(i), if the Exchange is unable to resolve the inconsistencies, the Exchange will notify the applicant of the inconsistency. After providing this notice, in paragraph (e)(2)(ii), the Exchange will provide 90 days from the date on which the notice is sent for the applicant to resolve the issues, either with the Exchange or with the agency or office that maintains the data source that is inconsistent with the attestation.

In paragraph (e)(3), we propose that the period during which an applicant may resolve the inconsistency may be extended by the Exchange if the applicant can provide evidence that a good faith effort has been made to obtain additional documentation. We are adopting this provision in order to align with current Medicaid policy which offers States the flexibility to allow for a good faith extension for individuals to provide documentary evidence of citizenship or immigration status.

In paragraph (e)(4), we propose to codify the provision of sections 1411(e)(3) and 1411(e)(4) of the Affordable Care Act that the Exchange must allow an individual who is otherwise eligible for enrollment in a QHP, advance payments of the premium tax credit or cost-sharing reductions to receive such coverage and financial assistance during the resolution period. However, in paragraph (e)(4)(ii), we clarify that the Exchange will ensure that the primary taxpayer attests to the Exchange that he or she understands that any advance payments of the premium tax credit received during the resolution period are subject to reconciliation in order to receive such advance payments of the premium tax credit.

Lastly, in paragraph (e)(5), we propose that if after the conclusion of the resolution period, the Exchange is unable to verify the applicant's attestation, the Exchange will determine the applicant's eligibility based on the information available from the data sources specified in this subpart, and notify the applicant of such

determination in accordance with the notice standards in § 155.310(f) of this subpart, including notice that the Exchange is unable to resolve the inconsistency. We further propose that the Exchange then implement this eligibility determination no earlier than 10 days after and no later than 30 days after the date on which such notice is sent. We note that we intend to address in the future the timing of notices, including standards related to the time between a notice of an adverse action and the effective date of such action, and we intend to coordinate such requirements with Medicaid. We note that like all other eligibility determinations, an eligibility determination in accordance with paragraph (e)(5)(i) of this section is subject to appeal.

In addition to the authority proposed for the Exchange in paragraph (e)(3), section 1411(b)(4)(A)(ii)(II) of the Affordable Care Act also provides HHS with the authority to extend the resolution period for inconsistencies not involving citizenship, status as a national, or lawful presence for coverage in 2014. We are considering whether and how to implement this authority, such as whether to create a uniform standard or a rule to be applied on a case-by-case basis; we solicit comments on these alternatives to inform our final adoption of these rules.

Lastly, we note that this paragraph does not apply in the event that an application filer attests to household income for an applicant that is at or below the applicable Medicaid or CHIP MAGI-based income standards. Rather, the Exchange will follow the process described in paragraph (c)(2)(ii)(C) for such individuals.

In paragraph (f), we propose to codify section 1411(c)(4)(B) of the Affordable Care Act regarding flexibility in verification methods. We propose that HHS may approve an Exchange plan or a significant change to an Exchange plan to modify the methods for the collection and verification of information as described in this subpart, as well as the specific information to be collected, based on a finding by HHS that the requested modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that it would not undermine coordination with Medicaid and CHIP, and that any applicable requirements under this subpart and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of information will be met. We also note that all information exchanges specified in this section must comply with § 155.260 and § 155.270. We solicit comment regarding likely proposals from Exchanges that would meet these criteria.

Section 1411(g)(1) and 1413(b)(2) of the Affordable Care Act direct the Secretary to ensure that an applicant be asked only to provide the minimum amount of information and paperwork needed for purposes of making an eligibility determination. In paragraph (g), we propose to codify section 1411(g)(1) of the Affordable Care Act by specifying that the Exchange must not require an applicant to provide information beyond what is necessary to support the eligibility and enrollment processes of the Exchange, Medicaid, and CHIP, including the process for resolving inconsistencies described in § 155.315(e).

e. Verification Process Related to Eligibility for Insurance Affordability Programs (§ 155.320)

In § 155.320, we outline the verification process that supports eligibility determinations for insurance affordability programs. To implement section 1411 of the Affordable Care Act, we propose a general policy in paragraph (a)(1), that the Exchange verify information in accordance with this section only for an applicant who is requesting an eligibility determination for insurance affordability programs. In this section, we propose standards related to the verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan; household income and household size; enrollment in or eligibility for qualifying coverage in an eligible employer-sponsored plan; and Medicaid and CHIP immigration status requirements. These verification processes apply to eligibility determinations for insurance affordability programs. These verification processes do not apply to eligibility determinations solely for the purpose of enrollment or to eligibility determinations for benefits provided to Indians based on status as an Indian, which are addressed elsewhere.

Section 36B(c)(2)(B) of the Code specifies that an individual who is eligible for minimum essential coverage through sources other than the Exchange and the individual market is ineligible for advance payments of the premium tax credit. Therefore, in order to accurately determine eligibility for advance payments of the premium tax credit, the Exchange needs to rule out eligibility for other minimum essential coverage. We propose paragraphs (b), (d), and (e) of this section to meet this standard. First, in paragraph (b)(1), we propose that the Exchange verify whether an individual is eligible for minimum essential coverage other than through an eligible employer-sponsored plan or Medicaid, CHIP, or the Basic Health Program within the State in which the Exchange operates using information obtained from HHS, which will obtain relevant information from selected Federal offices. We are currently working with other Federal agencies to determine where relevant records are maintained, and we solicit comments about specific data sources that HHS should integrate in to this process, as well as data sources that should be utilized directly by the Exchange, keeping in mind the direction from section 1413(c) of the Affordable Care Act regarding the use of data currently authorized for use in Medicaid and CHIP determinations.

In paragraph (b)(2), we propose that the Exchange verify whether an applicant has already been determined eligible for coverage through Medicaid, CHIP, or a Basic Health Program, if applicable, within the State in which the Exchange operates. We believe that this will result in limited, if any additional burden on the Exchange given the high degree of coordination between the Exchange, Medicaid, and CHIP. We also solicit comments as to options for supporting verification across States with the goal of crafting a solution that maximizes accuracy while minimizing administrative burden for applicants and Exchanges.

In paragraph (c), we propose the verification process related to income and family/household size. As discussed earlier, while the statute specifies that income for advance payments of the premium tax credit and cost-sharing reductions is calculated on an annual basis, section 1902(e)(14)(H) of the Act, as added by section 2002(a) of the Affordable Care Act, provides that income for Medicaid is calculated on a current basis. Consequently, in this section, we propose to require the Exchange to verify both annual household income information and current household income information. We also note that the Medicaid proposed rule proposes certain variations from the methodology used for advance payments of the premium tax credit and cost-sharing reductions for both income and household size, which are discussed further in the preamble to 42 CFR 435.603. These differences include the treatment of qualifying relatives claimed as tax dependents by another taxpayer; children claimed as tax dependents by non-custodial parents; pregnant women; lump sum payments; scholarships or

fellowship grants that are used for educational purposes; and certain American Indian/Alaska Native income. We solicit comments regarding how best to ensure a streamlined eligibility process given these underlying differences.

In this section we use the term, application filer, as defined in § 155.300(a). We note that the application filer does not necessarily have to be the primary taxpayer. We believe that the proposed process will support applications received through all channels, including electronically and on paper, although we discuss certain modifications that may be needed to accommodate paper applications later in this section.

First, in paragraph (c)(1)(i)(A), we propose that for all individuals whose income is counted in calculating a primary taxpayer's household income, in accordance with 26 CFR 1.36B–1(e) of the Treasury proposed rule, or an applicant's household income, in accordance with 42 CFR 435.603(d) of the Medicaid proposed rule, and for whom the Exchange has a Social Security number or an adoption taxpayer identification number, the Exchange will request tax return data from the Secretary of the Treasury by submitting identifying information to HHS, which will in turn submit it to the Secretary of the Treasury. This identifying information will include name, Social Security number, and relationship to the primary taxpayer (filer, spouse, dependent), and like all other information submissions, will only include the minimum information needed to complete the verification. In paragraph (c)(1)(i)(B), we propose that in the event that the identifying information for one or more individuals does not match a tax record on file with the Secretary of the Treasury that may be disclosed pursuant to the Code, HHS will notify the Exchange, and the Exchange must make a reasonable effort to confirm that the lack of a match is not due to an error in individual identifying information. This proposal is consistent with our proposal in § 155.315(e)(1) and is designed to ensure that the Exchange can maximize the use of available electronic data sources in order to facilitate a streamlined eligibility process.

We solicit comments regarding how the Exchange can best use available data to assist an application filer in navigating the components of the eligibility process related to household income and family/household size. We are particularly interested in comments regarding how to help an application filer determine whether available tax information is representative of a primary taxpayer's likely situation for the year for which coverage is requested.

We note that this proposal represents a modification of the statutory verification process, based on the authority granted to the Secretary in section 1411(c)(4)(B) to modify the methods for obtaining data, including allowing an applicant to request that the Secretary of the Treasury provide return information directly to the Exchange through the Secretary of HHS. We believe that this approach will be far more efficient for applicants, the Exchange, and the Federal government than the basic procedure described in the statute, which would require an application filer to state MAGI and then have the Exchange check with the Secretary of the Treasury through HHS to see if this was consistent with the records of the Secretary of the Treasury. We believe that requiring an application filer to state MAGI would deter applications by essentially requiring an application filer to possess a copy of the relevant tax return at the point of application, and would also reduce sharply the ability of the Exchange to assist application filers in completing the eligibility process. Further, without the proposed modification, we believe that a large number of applicants would be subject to the inconsistency process for income and household size, which would then drive a rise in the amount of paper documentation required, slowing down the overall eligibility process.

In accordance with the statute, we propose this modification after determining that any applicable requirements under section 1411 of the Affordable Care Act and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, and use of information can and will be met. To this end, we are already working with the Secretary of the Treasury and States to ensure that Treasury-required safeguards for tax information will be met across the Exchange information technology architecture, as specified in 45 CFR 155.260(d).

In order to incorporate Medicaid and CHIP into the streamlined eligibility process, it is necessary to have readily available current income data to fill a similar role to that proposed for Treasury data in paragraph (c)(1)(i) of this section. Medicaid regulations at 42 CFR 435.948(a), proposed in the Medicaid NPRM, specify that a State Medicaid agency must request State quarterly wage information, as well as other sources of current income, for use in verifying an individual's MAGI-based income information, to the extent that such information is useful in conducting this verification. In this rule, we propose that the Exchange utilize this data for purposes of Exchange determinations of eligibility for Medicaid and CHIP in a similar manner to how we propose the Exchange use tax data for purposes of Exchange determinations of eligibility for advance payments of the premium tax credit and cost-sharing reductions. That is, consistent with Medicaid regulations, we propose that the Exchange treat the list of current data sources described in 42 CFR 435.948(a), proposed in the Medicaid NPRM, as primary sources of MAGI-based income data for purposes of verification.

In paragraph (c)(1)(ii), we propose that the Exchange obtain the most recent income information for all individuals whose income is counted in calculating a primary taxpayer's household income, in accordance with 26 CFR 1.36B–1(e), or an applicant's household income, in accordance with 42 CFR 435.603(d), from the data sources described in 42 CFR 435.948(a) of the Medicaid proposed rule, which lists the data sources for Medicaid eligibility determinations. We believe that this step is necessary to implement our interpretation of the Affordable Care Act regarding the Exchange's role in determining Medicaid eligibility, and does not create significant additional burden as it is an existing procedure in Medicaid programs. We recognize that 42 CFR 435.948(a) includes multiple data sources, and we intend to provide subregulatory guidance regarding how such information can be utilized in a manner that is straightforward and helpful to application filers. We also solicit comment on this topic.

In paragraphs (c)(2) and (c)(3) of this section, we propose the verification process for Medicaid and CHIP and for advance payments of the premium tax credit and cost-sharing reductions, respectively. We note that while we have drafted these sections separately, we expect the Exchange to implement them in an integrated, streamlined process that will avoid redundancy and minimize confusion for applicants.

We also note that the proposed process in these paragraphs are designed to minimize burden on application filers by only requiring an applicant to provide an attestation regarding income if he or she attests that available data sources are not representative of an applicant or primary taxpayer's current or projected financial situation, as applicable. For an electronic application, we believe that

the attestations required can be part of a real-time process, in which an application filer would be shown information computed by the Exchange regarding MAGI-based income and annual household income and then offered the opportunity to affirm it or provide different information. For a paper application, this approach will not be possible, and so the Exchange will instead check the information provided by an application filer on a paper application against data regarding MAGI-based income and annual household income or provide the information computed based on data from sources to the application filer on paper and request confirmation. We solicit comments as to how this process can work most smoothly for both electronic and paper applications.

First, in paragraph (c)(2)(i), we propose the Exchange direct an application filer to attest to the specific individuals who comprise an applicant's household for Medicaid and CHIP, within the meaning proposed in 42 CFR 435.603(f) of the Medicaid NPRM. This provision is designed to define the relevant Medicaid and CHIP household, which is necessary to determine income. We also propose that Exchange accept an application filer's attestation regarding the members of his or her household without further verification, unless the Exchange finds that the attestation is not reasonably compatible with other information provided by the application filer for the applicant or in the records of the Exchange, in which case the Exchange may utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the application filer's attestation, the Exchange may request additional documentation to support the attestation within the procedures specified in 45 CFR 435.952.

Second, in paragraph (c)(2)(ii), we propose that the Exchange verify MAGI-based income for purposes of determining eligibility for Medicaid and CHIP by following the procedures described in 42 CFR 435.948 and 42 CFR 435.952. We solicit comments as to how the Exchange process and the Medicaid and CHIP processes can be streamlined to ensure consistency and maximize the portion of eligibility determinations that can be completed in a single session.

In paragraph (c)(3), we propose the verification process for advance payments of the premium tax credit and cost-sharing reductions, First, in paragraph (c)(3)(i), we propose the Exchange direct an application filer to attest to the specific individuals who comprise an applicant's family for advance payments of the premium tax credit and cost-sharing reductions, within the meaning proposed in 26 CFR 1.36B–1(d) of the Treasury proposed rule. This provision is designed to define the relevant primary taxpayer's family, which is necessary to determine income. We also propose the Exchange accept an application filer's attestation of family size without further verification, except as provided in cases in which information is not reasonably compatible with other data. We anticipate that the Exchange will provide education and assistance to an application filer such that attestations will be as close as possible to the ultimate tax filing family. We believe that requiring further verification of this is extremely difficult and may not be possible and that any verification would be of limited use while adding significant burden and delay to the process. We also propose that to the extent the Exchange finds that an application filer's attestation of family size is not reasonably compatible with other information provided by the application filer for the family, the Exchange may utilize data obtained through electronic data sources to verify the attestation. We also propose that if such data sources are unavailable or not reasonably compatible with the attestation, the Exchange will follow the procedures specified in § 155.315(e) of this subpart.

In paragraphs (c)(3)(ii)–(vi), we propose the verification process for income for purposes of advance payments of the premium tax credit and cost-sharing reductions. In paragraph (c)(3)(ii)(A), we propose the Exchange compute annual household income for the family defined by the application filer, based on the electronic data acquired pursuant to paragraph (c)(1)(i) of this section, and that the application filer validate this information by attesting whether it represents an accurate projection of the family's household income for the benefit year for which coverage is requested.

In paragraph (c)(3)(ii)(B), we propose that if tax data are unavailable, or if an application filer attests that the Exchange's computation does not represent an accurate projection of the family's household income for the benefit year for which coverage is requested, the Exchange will direct the application filer to attest to the family's projected household income for the benefit year for which coverage is requested. Lastly, in paragraph (c)(3)(ii)(C), we propose that if the Exchange finds that an application filer's attestation to a family's projected annual household income is not reasonably compatible with the information regarding projected annual household income computed by the Exchange, including as a result of tax return data being unavailable, the Exchange will proceed in accordance with paragraphs (c)(3)(iii), (c)(3)(iv), and (c)(3)(vi), as applicable, which describe alternate verification processes. Section 1412(b)(2) of the Affordable Care Act provides that the Secretary provide procedures for making advance determinations for advance payments of the premium tax credit and cost-sharing reductions on the basis of information other than a primary taxpayer's most recent tax return, ''in cases where information included with an application form demonstrates substantial changes in income, changes in family size or other household circumstances, change in filing status, the filing of an application for unemployment benefits, or other significant changes affecting eligibility.'' The statute specifies that these alternate procedures should apply to a primary taxpayer whose income has decreased by at least 20 percent, is filing an application for unemployment benefits, or is not required to file a tax return, as well as to other primary taxpayers specified by the Secretary.

In paragraphs (c)(3)(iii) and (c)(3)(iv), we propose to codify this provision of the statute by directing that the Exchange use an alternate process for determining income for purposes of advance payments of the premium tax credit and cost-sharing reductions for primary taxpayers in certain situations. In both (c)(3)(iii) and (c)(3)(iv), as section 1412(b)(2) specifies that the alternate process is limited to eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions, we propose that the alternate processes are only available to a primary taxpayer for whom an application filer (who can be the primary taxpayer) has not established MAGI-based household income that is at or below the applicable Medicaid or CHIP MAGI-based income standard. That is, if an individual is or may be eligible for Medicaid or CHIP, this step in the verification process is not applicable because the applicant will not be eligible for advance payments of the premium tax credit or cost-sharing reductions.

First, in paragraph (c)(3)(iii), we propose procedures for situations in which an application filer attests that a primary taxpayer's annual household income has increased or is reasonably

expected to increase from the information obtained from his or her tax return. In such a situation, we propose the Exchange accept the application filer's attestation without further verification, except as provided in paragraph (c)(3)(iii)(B). This approach to verification is proposed because such attestation would result in the Federal government providing a lower advance payment than would otherwise be provided based on the primary taxpayer's most recent available tax return.

However, in order to ensure that such an attestation does not understate income, in paragraph (c)(3)(iii)(B), we propose that if the Exchange finds that the application filer's attestation is not reasonably compatible with other information provided by the application filer or the MAGI-based income information acquired by the Exchange pursuant to paragraph (c)(1)(ii), the Exchange may utilize data obtained through electronic data sources to verify the attestation. If this approach is unsuccessful, the Exchange may request additional information in accordance with the procedures specified in § 155.315(e) of this subpart.

In paragraph (c)(3)(iv), we propose to codify the minimum requirements of section 1412(b)(2) of the Affordable Care Act, described above, regarding the circumstances under which an application filer who is attesting to a decrease in income for a primary taxpayer, or is attesting to income because tax return data is unavailable, may utilize an alternate income verification process. We clarify that this provision does not supersede § 155.305(f)(4), which prohibits the Exchange from determining a primary taxpayer eligible for advance payments of the premium tax credit if advance payments were made on behalf of the primary taxpayer or his or her spouse for a year for which tax data would be utilized for verification of household income and family size and the primary taxpayer or his or her spouse did not comply with the requirement to file a tax return for that year as required by 26 CFR 1.6011–8 (proposed in the Treasury proposed rule).

We anticipate that this alternate process may also accommodate a situation in which an applicant does not have a Social Security number or a non-applicant who is listed on an application as a family member does not have or does not provide a Social Security number. We solicit comment on what other situations should justify use of the alternate process. One potential approach is to allow a primary taxpayer with a decrease in income that does not meet the 20 percent threshold offered in the statute, but meets some other threshold, to use the alternate process. This would create a greater possibility that a primary taxpayer with a fairly significant decrease in income would be able to purchase coverage.

In paragraph (c)(3)(v), we propose the alternative process for verifying income for primary taxpayers for whom an application filer attested to a decrease in household income or for whom tax return data is unavailable, as described in paragraph (c)(3)(iv) of this section. Under these proposed procedures, the Exchange will first attempt to verify the application filer's attestation of projected annual household income for the primary taxpayer by using an annualized version of the MAGI-based income data obtained in accordance with paragraph (c)(1)(ii). In the event that this is unsuccessful, we propose that the Exchange attempt to verify the application filer's attestation using any other electronic data sources that have been approved by HHS. HHS will approve other electronic data sources based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification. In paragraph (c)(3)(v)(C), if such steps are unsuccessful, we propose the Exchange follow the procedures specified in § 155.315(e) of this subpart.

In paragraph (c)(3)(v)(D), we propose to clarify that if at the conclusion of the 90-day period, an application filer has not responded to a request for additional information from the Exchange in accordance with this section and the data sources specified in paragraph (c)(1) indicate that an applicant in the primary taxpayer's family is eligible for Medicaid or CHIP, the Exchange will not provide the applicant with eligibility for advance payments of the premium tax credit or cost-sharing reductions based on the application, in order to ensure that applicants who are eligible for Medicaid or CHIP are not determined eligible for advance payments or cost-sharing reductions as a result of non-compliance. In paragraph (c)(3)(v)(E), we propose that in other situations in which the Exchange remains unable to verify an application filer's attestation, it will determine an applicant's eligibility based on the information described in paragraph (c)(3)(ii)(A). In paragraph (c)(3)(vi), we propose to codify section 1412(b)(1)(B) of the Affordable Care Act regarding primary taxpayers who do not meet the criteria specified in paragraph (c)(3)(iii) or (c)(3)(iv) for use of an alternate income verification process. We propose the Exchange determine eligibility for these primary taxpayers for advance payments of the premium tax credit and cost-sharing reductions based on the income from the primary taxpayer's tax data. At a minimum, the tax return data used for this purpose should be from the taxable year ending with or within the second calendar year preceding the calendar year in which the benefit year begins.

In paragraph (c)(4), we propose the Exchange provide education and assistance to an application filer regarding the verification process for income and family/household size. We solicit comments as to strategies that the Exchange can employ to ensure that application filers understand the validation process and provide well-informed validations and attestations, including, but not limited to, developing ways to best display the data acquired from data sources and potentially accessing other data sources that might be informative. We intend to provide subregulatory guidance on this topic.

In paragraph (d), we propose that the Exchange verify whether an applicant is enrolled in an eligible employer-sponsored plan by accepting his or her attestation without further verification, except as provided in paragraph (d)(2) in cases in which information is not reasonably compatible with other data. Although section 36B(c)(2)(C) of the Code provides that an individual is eligible for the premium tax credit provided that his or her coverage through an eligible employer-sponsored plan is not affordable or does not provide minimum value, clause (iii) of that subparagraph prohibits eligibility for the premium tax credit if the individual is enrolled in an eligible employer-sponsored plan, regardless of the cost or value of that plan. We propose that the Exchange accept an applicant's attestation without further verification, with provisions in cases in which the attestation is not reasonably compatible with other data, because we believe that an applicant generally understands whether or not he or she is enrolled in an eligible employer-sponsored plan. We solicit comments as to whether this is a reasonable assumption. Similar to the provisions regarding residency and income verification, we propose to allow the Exchange to request additional information regarding whether an applicant is enrolled in an eligible employer-sponsored plan if an applicant's attestation is not reasonably compatible with other information provided by the applicant or in the records of the Exchange. We solicit

comments regarding the best data sources for this element of the process.

In paragraph (e)(1), we propose that the Exchange require an applicant to attest to his or her eligibility for qualifying coverage in an eligible employer-sponsored plan for the purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions.

In paragraph (e)(2), we propose that the Exchange verify this information. We solicit comments regarding how the Exchange may handle a situation in which it is unable to gain access to authoritative information regarding an applicant's eligibility for qualifying coverage in an eligible employer-sponsored plan.

Exchanges will interact with employees and their employers in order to make a determination of eligibility for advance payments of the premium tax credit and cost-sharing reductions. Specifically sections 1401 and 1402 of the Affordable Care Act establish that an applicant is eligible for advance payments of the premium tax credit or cost-sharing reductions only if he or she is not eligible for qualifying coverage in an eligible employer-sponsored plan that meets a minimum value standard and is affordable under section 36B(c)(2)(C) of the Code, as added by the Affordable Care Act. Section 1411(b) of the Affordable Care Act directs an applicant seeking advance payments of the premium tax credit and cost-sharing reductions through the Exchange to provide to the Exchange specific information for purposes of determining eligibility, including (1) The name, address and Employer Identification Number (if available) of the employer; (2) whether the applicant is a full-time employee and whether the employer provides minimum essential coverage; and (3) if the employer provides minimum essential coverage, the lowest cost option for the applicant's enrollment status and the applicant's contribution under the employer-sponsored plan. Additionally, we recognize that Exchanges may need additional information about employer-sponsored health plans to complete eligibility determinations such as information about whether such plans are available to spouses and dependents and whether they meet the minimum value standard.

Under several statutory reporting provisions, employers already will provide much, if not all, of the information the Exchanges will need to determine eligibility for advance payments of the premium tax credit and cost-sharing reductions. Under these provisions, employers will provide information either directly to their employees, to the IRS and/or to the Department of Labor. These provisions include, but are not limited to, section 6056 of the Code, as added by section 1514 of the Affordable Care Act (requiring employers to report to the IRS specific information related to employer-sponsored health coverage provided to employees); section 2715 of the PHS Act, as amended by section 1001 of the Affordable Care Act (requiring group health plans and health insurance issuers to disclose to eligible individuals information about the employer-sponsored health plan(s) or coverage option(s) available to them); and section 18B of the Fair Labor Standards Act, as added by section 1512 of the Affordable Care Act (requiring employers to disclose to employees information regarding Exchange coverage options).

In developing the standards for Exchange verification of eligibility for qualifying coverage in an eligible employer-sponsored plan, HHS and the Departments of the Treasury and Labor are working together to coordinate how needed information could be reported in order to make it efficient and easy for employees to access it and to minimize burden on employers. For example, consideration is being given to whether Exchanges could provide a template that both employers and employees could use to capture information already reported under the provisions cited above. A template might help employees to have ready-access to the plan-level information they need for the Exchange application process, and for employers, it might support a uniform verification process that would simplify employers' interactions with the Exchanges.

We are also considering the feasibility of a central database that employers voluntarily could populate as a potential resource for the verification process. A consolidated database could be drawn upon for the purposes of verifying the information provided by applicants seeking eligibility for advance payments of the premium tax credit and cost-sharing reduction. Such database would include the appropriate privacy and security safeguards necessary to protect the information provided. We recognize that employers will need to accumulate both plan-level and employee-level information for purposes of reporting under section 6056 of the Code (as added by section 1514 of the Affordable Care Act). We are considering whether and how the same plan-level information could be incorporated into such a database.

We invite comment on the timing and reporting of information needed to verify whether an employed applicant is eligible for an advance payment of the premium tax credit and cost-sharing reductions and how best for Exchanges to interact and communicate with employers to verify information regarding employer-sponsored coverage. Specifically, we invite comment on (1) whether a template would be helpful and, if so, how it could be designed to capture plan-level information that is already reported to employees, the IRS and/or the Department of Labor, and (2) whether the development of a central database is an attractive option for employers to provide information about the coverage offered under eligible employer-sponsored plans. We note that the Treasury Department and the IRS also intend to request comments on the employer information reporting required under section 6056 of the Code.

In paragraph (f), we propose a process regarding the verification of specific immigration status standards for Medicaid and CHIP. The immigration status standards for eligibility for enrollment in a QHP differ from those for Medicaid and CHIP, with the exception of the standard for pregnant women and children in certain States that have adopted the State option under section 1903(v)(4) of the Act, as added by section 214 of the Children's Health Insurance Program Reauthorization Act (Pub. L. 111–3, 123 Stat. 8), further, the 'reasonably expected' element discussed in § 155.305(a)(1) does not apply to any population in Medicaid or CHIP. In paragraph (f), we propose that the Exchange verify whether an applicant requesting an eligibility determination for insurance affordability programs under § 155.310(b) who is not a citizen or national meets the immigration status and five-year waiting period for Medicaid and CHIP as specified under 42 CFR 435.406, 42 CFR 457.320, 1903(v)(4) of the Act, section 2107(e)(1)(J) of the Act, and section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–493, 110 Stat. 2105), as applicable. We clarify that we do not consider eligibility for Medicaid coverage that is restricted to emergency services to qualify an individual as eligible for Medicaid. We anticipate that the Exchange will determine whether an individual meets this standard while verifying the individual's citizenship, status as a national, or lawful presence as required in § 155.315(b).

As section 36B(c)(1)(B) of the Code, which is also referenced in section 1402 of the Affordable Care Act in defining eligibility for cost-sharing reduction, provides that an applicant who is lawfully present in the United States, has household income below 100 percent of the FPL, and is not eligible for Medicaid based on immigration status is eligible for the premium tax credit, we believe that 42 CFR 435.406(a)(2) and section 403 of PRWORA do not apply to advance payments of the premium tax credit and cost-sharing reductions. Therefore, we propose a definition of ''lawfully present'' that is not limited to ''qualified alien'' as defined in PRWORA.

f. Eligibility Redetermination During a Benefit Year (§ 155.330)

Section 1411(f)(1)(B) of the Affordable Care Act specifies that the Secretary shall establish procedures by which the Secretary or another Federal official redetermines an individual's eligibility on a periodic basis. Consistent with our proposal that the Exchange conduct initial eligibility determinations, in § 155.330, we outline procedures for redeterminations during a benefit year consistent with section 1411(f)(1)(B) of the Affordable Care Act. We note that the goal of the eligibility redetermination process is to ensure that an individual's eligibility reflects his or her circumstances with respect to the eligibility standards specified in § 155.305, while minimizing administrative complexity for enrollees and the Exchange.

The redetermination process that we propose in this section relies primarily on the individual to provide the Exchange with updated information during the benefit year, as opposed to having the Exchange examine electronic data sources and/or contact the individual in order to determine whether a change has occurred during the year. This primary reliance on individuals would eliminate much of the administrative burden associated with periodic electronic data matching and any follow-up with individuals. That said, we have included a provision for State flexibility in this area, and we solicit comments as to whether there should be an ongoing role for Exchange-initiated data matching beyond what is proposed in this rule and the allowance for flexibility. We also solicit comments as to whether the Exchange should offer an enrollee an option to be periodically reminded to report any changes that have occurred.

In paragraph (a), we propose that the Exchange redetermine the eligibility of an enrollee in a QHP during the benefit year in two situations: first, if an enrollee reports updated information and the Exchange verifies it; and second, if the Exchange identifies updated information through the limited data matching to identify individuals who have died or gained eligibility for a public health insurance program, as described in paragraph (c) of this section.

In paragraph (b)(1), we propose that an individual who enrolls in a QHP with or without advance payments of the premium tax credit or cost-sharing reductions must report any changes to the Exchange with respect to the eligibility standards specified in § 155.305 within 30 days of such change. In paragraph (b)(2), we propose that the Exchange use the verification procedures at the point of initial application for any changes reported by an individual prior to using the self-reported data in an eligibility determination. These changes could include, but are not limited to, changes in incarceration status, residency, immigration status, household income or household size, or in the availability of qualifying coverage in an eligible employer-sponsored plan, which could be driven by changes in employment.

We solicit comments regarding whether we should require or allow the Exchange to limit the requirement on an individual to report changes in income to changes of a certain magnitude. For example, one alternative would be for the Exchange to require an individual to report all changes to non-income information that affect his or her eligibility within 30 days of a change, but only require an individual to report changes of greater than five, ten, or 15 percent of income. This could limit the number of changes reported, but also could add to enrollee confusion regarding when a change is required to be reported. We also note that this provision would have no effect on whether an individual was liable for repayment of excess advance payments of the premium tax credit.

In paragraph (c), we propose that the Exchange periodically examine certain data sources used to support the initial eligibility process, specifically those data sources described in § 155.315(b)(1) and § 155.320(b) of this part, to identify death and eligibility determinations for Medicare, Medicaid, or CHIP. We propose to limit proactive examination to these pieces of information as they come from these data sources and provide clear-cut indications of eligibility for enrollment in a QHP and advance payments of the premium tax credit and cost-sharing reductions. Consequently, in paragraph (d), we do not propose to require the Exchange to seek or receive an affirmation from an enrollee that such information is accurate prior to using it in an eligibility determination. We note, however, that like all eligibility determinations, such a determination would result in a notice to an enrollee and would be subject to appeal.

In paragraph (c)(2), we propose to allow the Exchange to make additional efforts to identify and act on changes that may affect an enrollee's eligibility to the extent that HHS approves an Exchange Plan in accordance with § 155.105(d) or a significant change to the Exchange Plan in accordance with § 155.105(e) to modify the process.[3] We propose that such approval would be granted if HHS finds that such a modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that such changes would not undermine coordination with Medicaid and CHIP, and that any applicable provisions under § 155.260, § 155.270, § 155.310(f), and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of information will be met. This provision is consistent with our proposal in § 155.315(e).

As an alternative, we also considered directing the Exchange to use electronic data sources to determine whether other pieces of information regarding an enrollee's eligibility have changed from the prior eligibility determination in any way that would affect his or her eligibility, or to allow this without the process described in paragraph (c)(2). Under such a scenario, the Exchange could either take action without seeking the enrollee's confirmation or notify the enrollee of the change and provide him or her with an opportunity to affirm the information. We solicit comments regarding whether and how we should approach additional data matching, whether the Exchange should modify an enrollee's eligibility based on electronic data in the event that he or she did not respond to a notice regarding the updated information, and whether there are other procedures that could support the goals of the redetermination process for changes during the benefit year.

In paragraph (d), we propose that to the extent that the Exchange verifies updated information reported by an enrollee or identifies updated information through data matching in accordance with paragraph (c), the Exchange determine the enrollee's

[3] This provision is proposed in the Exchange NPRM at 76 FR 41866 (July 15, 2011).

eligibility and provide an eligibility notice in accordance with the process described in § 155.305 and § 155.310(f), respectively. We also note that in accordance with § 155.340(a), the Exchange will notify an enrollee's QHP if it determines that his or her eligibility has changed.

In paragraph (e)(1), we propose that changes resulting from a redetermination during the benefit year be effective for the first day of the month following the notice of eligibility determination described in paragraph (d)(2). In paragraph (e)(2), we allow an exception, subject to the authorization of HHS, in which the Exchange could establish a ''cut-off date'' for changes resulting from a redetermination during the coverage year to be considered effective for the first day of the month following the month in which changes would otherwise be effective, if not for the existence of the cut-off date. For example, under this proposal, the Exchange could determine that in order to be effective on October 1, a redetermination would have to be completed by September 15th. We solicit comment as to whether this should or should not necessitate an authorization from HHS, and if there should be a uniform timeframe across all Exchanges. In addition, we solicit comment as to whether this is the appropriate policy for the effective date for changes.

In paragraph (e)(3), we propose that if the eligibility determination results in an individual being ineligible to continue his or her enrollment in a QHP, the Exchange will maintain his or her eligibility for enrollment in a QHP for a full month after the month in which the determination notice described in paragraph (d) is sent by the Exchange, although it will discontinue advance payments of the premium tax credit and cost-sharing reductions in accordance with the effective dates specified in paragraphs (e)(1) and (e)(2). We believe that allowing for this continuity of coverage allows for adequate time for an enrollee to conduct necessary follow-up with the Exchange without providing financial assistance that would later have to be recouped at the point of reconciliation. We note that this does not preclude an enrollee from terminating coverage prior to the termination of his or her eligibility, provided that the termination is permissible under § 155.430. Alternative options could include a shorter or longer time period, or different time periods for specific types of changes. We solicit comment on this topic, as well as on approaches to ensuring that transitions between insurance affordability programs do not create coverage gaps for individuals.

g. Annual Eligibility Redetermination (§ 155.335)

In § 155.335, we outline procedures for annual redeterminations, consistent with section 1411(f)(1)(B) of the Affordable Care Act. Similar to our rationale for redeterminations during the coverage year, we believe that conducting annual redeterminations at the Exchange level would ensure that the eligibility process for the Exchange, Medicaid, and CHIP is streamlined and seamless.

In paragraph (a), we propose that the Exchange redetermine the eligibility of an enrollee in a QHP on an annual basis, which would ensure that eligibility determinations remain current and follow the process proposed for the Medicaid program in 42 CFR 435.916. We clarify that this redetermination will consider eligibility for enrollment in a QHP, and to the extent that an enrollee has a request for an eligibility determination for insurance affordability programs on file with the Exchange, as described in § 155.310(b), consider his or her eligibility for such programs. We solicit comments on whether the procedures proposed in § 155.330 should satisfy the annual redetermination as well, and if so, whether this should be a Federal standard or an Exchange option. Permitting or requiring a redetermination that occurs during the coverage year to take the place of the annual redetermination could spread some of the eligibility workload for the Exchange across the year and reduce the number of times when an individual has to review and potentially affirm or update eligibility information but might take away from the simplicity offered by a process that occurs at a consistent point in the year for all individuals. Furthermore, determinations of eligibility for advance payments of the premium tax credit and cost-sharing reductions are based on the most recent tax data available, so these determinations need to be made on an annual basis as more recent information becomes available. We solicit comment on how this interaction can be streamlined, and at what point annual redeterminations should occur.

In paragraph (b), we propose that in the case of an annual redetermination for an enrollee who has a request for an eligibility determination for insurance affordability programs on file with the Exchange, the Exchange conduct electronic data matching to obtain updated tax return information and current household income information from the Secretary of Treasury and other data sources as described in § 155.320(c)(1), and provide such updated information to the enrollee in the notice described in § 155.335(c). We solicit comment regarding whether and how we should approach additional data matching, and whether there are alternatives that could support the goals of the redetermination process.

In paragraph (c), we propose that the Exchange provide an enrollee with an annual redetermination notice. Such notice will include: any updated tax return data and current household income data obtained by the Exchange, if the enrollee requested an eligibility determination for insurance affordability programs; the data used in the enrollee's most recent eligibility determination; and the enrollee's ''projected eligibility determination'' incorporating any updated income information obtained under paragraph (b), and including, if applicable, the amount of the advance payments of the premium tax credit or level of any cost-sharing reductions for which he or she would be eligible. We solicit comment regarding the contents of the notice and whether additional information should be provided.

In paragraph (d), we propose that the Exchange direct an individual to report any changes relative to the information listed on the redetermination notice within 30 days of the date of the notice. Our goal is to ensure that the timeframe is long enough for individuals to reply, but short enough to serve the purpose of timely redeterminations; we solicit comments as to whether this is an appropriate timeframe. In paragraph (e), we propose that the Exchange verify any changes reported by the individual under paragraph (d) using the same verification procedures used at the point of initial application, including the provisions regarding inconsistencies, with the procedures modified for the specific type of information subject to the inconsistency process.

In paragraph (f)(1), we propose that the Exchange require an enrollee to sign and return the notice specified in paragraph (c). However, in paragraph (f)(2), we propose that if an enrollee does not sign and return the notice, the Exchange will proceed in accordance with the procedures specified in paragraph (g)(1) of this section, meaning that it will redetermine his or her eligibility based on the information provided in the notice. This proposal is designed to minimize the risk of individuals losing coverage when they remain eligible. It is one strategy that has been proven to increase retention rates, and would reduce the

administrative burden and associated costs for the Exchange, as is outlined in several studies that found a majority of individuals were disenrolled based on a failure to return requests for information rather than for no longer meeting the substantive eligibility standards.[4]

We recognize that advance payments of the premium tax credit are subject to reconciliation by the Treasury. If advance payments are made where an enrollee does not respond to a notice to tell the Exchange that he or she will no longer be eligible for advance payments for the coming year (such as where the enrollee has new employment that will provide minimum essential coverage), the enrollee may have to repay some or all of the advance payments as additional tax. Thus, an enrollee has an interest in actively reviewing his or her annual redetermination notice and managing his or her eligibility information to ensure that his or her eligibility for advance payments of the premium tax credit is updated as quickly as possible after a change occurs. We solicit comment on policy and operational strategies to improve the accuracy of determinations and policy options that could allow an individual the choice to opt out of having his or her eligibility redetermined based on the information contained in the annual redetermination notice. We also solicit comment as to what steps the Exchange could take to ensure that redetermination minimizes burden on individuals, QHPs, and the Exchange without increasing inaccuracies.

In paragraph (g)(1), we propose that after the 30-day period specified in paragraph (c) of § 155.335 concludes, the Exchange (i) determine an enrollee's eligibility based on the information provided to the enrollee in the redetermination notice, along with any information that an enrollee has provided in response to such notice that the Exchange has verified; (ii) notify the enrollee in accordance with the procedures in § 155.310(f); and (iii) if applicable, notify the enrollee's employer, in accordance with the procedures in § 155.310(g). In paragraph (g)(2), we propose that to the extent that the Exchange is unable to verify a change reported by an enrollee as of the close of the 30-day period, the Exchange redetermine the enrollee's eligibility after completing verification. We expect that this redetermination would occur as soon as the verification process is completed.

In paragraph (h), we propose that changes resulting from an enrollee's annual eligibility redetermination follow the same rules regarding effective dates as those proposed in § 155.330. We solicit comment as to whether the effective dates for changes made as a result of an annual redetermination should be different from the effective dates for changes made as a result of a redetermination that occurs during the coverage year.

In paragraph (i), we propose that if an enrollee remains eligible for coverage in a QHP upon annual redetermination, the enrollee will remain in the QHP selected the previous year unless the enrollee takes action to select a new QHP within an enrollment period or terminate coverage in accordance with 45 CFR 155.430, as proposed at 76 FR 41866.

h. Administration of Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions (§ 155.340)

Sections 1412(a) and (c) of the Affordable Care Act direct the Secretary to notify the Secretary of the Treasury of advance determinations for advance payments of the premium tax credit and cost-sharing reductions so that the Secretary of the Treasury may make advance payments of such credit or reductions to the issuer of the QHP selected by an individual. Sections 1311(d)(4)(I)–(J) of the Affordable Care Act also direct that the Exchange report certain information to the Secretary of the Treasury and to employers to facilitate the employer responsibility provisions in the Affordable Care Act. In § 155.340, we propose to codify these reporting provisions for the Exchange, consistent with our proposal that the Exchange conduct eligibility determinations. We also propose that the Exchange simultaneously provide relevant information to the issuer of the QHP selected by an applicant in order to ensure that the issuer can effectuate any required changes within the effective dates specified in § 155.330 and § 155.335.

In paragraph (a)(1), we propose that in the event of a determination of an individual's eligibility or ineligibility for advance payments of the premium tax credit or cost-sharing reductions, including a change in the level of advance payments of the premium tax credit or cost-sharing reductions for which he or she is eligible, the Exchange provide information to the issuer of the QHP selected by the individual or in which the individual is enrolled.

In paragraph (a)(2), we propose that the Exchange provide eligibility and enrollment information to HHS to enable HHS to begin, end, or adjust advance payments of the premium tax credit and cost-sharing reductions. We solicit comment on whether the information could be used by HHS to support any reporting necessary for monitoring, evaluation, and program integrity. We solicit comment as to how this interaction can work as smoothly as possible and the scope of information that should be transmitted among the relevant agencies.

In paragraph (a)(3), we propose that the notification specified in paragraph (a) include the information necessary to enable the issuer of the QHP to implement or discontinue the implementation of an individual's advance payments of the premium tax credit or cost-sharing reductions, or modify the level of an individual's advance payments of the premium tax credit or cost-sharing reductions. By implementing, we mean that the issuer of the QHP will adjust an enrollee's net premium to reflect the advance payments of the premium tax credit, as well as make any changes needed to ensure that cost-sharing reflects the appropriate level of reductions.

In paragraph (b), we propose to codify the reporting rules in sections 1311(d)(4)(I)(ii)–(iii) and 1311(d)(4)(J), which support the employer responsibility provisions of the Affordable Care Act. Each of the proposed standards in paragraph (b) relates to information about enrollees who are receiving advance payments of the premium tax credit and cost-sharing reductions.

In paragraph (b)(1), we propose that when the Exchange determines that an applicant is eligible to receive advance payments of the premium tax credit based in part on a finding that his or her employer does not provide minimum essential coverage, or provides minimum essential coverage that is unaffordable, as described in 26 CFR

[4] ''MaxEnroll Minute: Cutting Red Tape to Keep Eligible Families Enrolled in Massachusetts''. Maximizing Enrollment for Kids. *http://www.maxenroll.org/resource/maxenroll-minute-cutting-red-tape-keep-eligible-families-enrolled-massachusetts.* Also see, ''Stability and Churning in Medi-Cal and Healthy Families''. Fairbrother and Schucter, Child Policy Research Center, Cincinnati Children's Hospital Medical Center. *http://www.cincinnatichildrens.org/assets/0/78/1067/1395/1833/1835/9811/9813/9819/48b3047a-79ac-4e52–9ed8-b7824db1cec3.pdf;* ''Instability of Public Health Insurance Coverage for Children and Their Families: Causes, Consequences, and Remedies''. Summer, Laura, and Mann, Cindy. The Commonwealth Fund. *http://www.commonwealthfund.org/Content/Publications/Fund-Reports/2006/Jun/Instability-of-Public-Health-Insurance-Coverage-for-Children-and-Their-Families—Causes—Consequence.aspx),* and (''Enrollment and Disenrollment in MassHealth and Commonwealth Care''. Seifert, Robert, Kirk, Garrett, and Oakes, Margaret. Massachusetts Medicaid Policy Institute. *http://www.massmedicaid.org/~/media/MMPI/Files/2010_4_21_disenrollment_mh_cc.pdf.*

1.36B–2(c)(3)(v) of the Treasury proposed rule, or does not meet the minimum value standard, as described in 26 CFR 1.36B–2(c)(3)(vi) of the Treasury proposed rule, the Exchange will provide this information to the Secretary of the Treasury. In paragraph (b)(1), we propose that the Exchange transmit such applicant's name and Social Security number to HHS, which will transmit it to the Secretary of the Treasury. This proposed pathway is consistent with our proposals throughout this part that HHS serve as an intermediary between the Exchange and the various Federal agencies with which the Exchange communicates. We note that § 155.310(g) specifies that the Exchange notify the employer of certain information regarding an employee's eligibility for advance payments of the premium tax credit.

In paragraph (b)(2), we propose that in the event that an enrollee for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions notifies the Exchange that he or she has changed employers, the Exchange transmit the enrollee's name and Social Security number to HHS, which will transmit it to Treasury. We note that such a change may also trigger a redetermination of eligibility during the benefit year for advance payments of the premium tax credit and cost-sharing reductions pursuant to § 155.330.

In paragraph (b)(3), we propose that in the event an enrollee for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions terminates coverage in a QHP during a benefit year, the Exchange transmit his or her name and Social Security number and the effective date of the termination of coverage to HHS, which will transmit it to Treasury, and transmit his or her name and the effective date of the termination of coverage to his or her employer.

Section 36B(f) of the Code directs the Secretary of the Treasury reconcile the amount of advance payments of the premium tax credit received by an individual with the amount allowed based on his or her tax return for the tax year that includes the benefit year. In order to support this reconciliation, section 1412(c)(1) of the Affordable Care Act directs the Secretary to provide information to the Secretary of the Treasury regarding advance determinations. In addition, section 36B(f)(3) of the Code requires the Exchange to provide information to the Treasury Secretary, including an identification of coverage provided, QHP premiums, aggregate amounts of the premium tax credit provided during the tax year, identifying information, information supporting eligibility determinations, and any information necessary to determine whether excess advance payments of the premium tax credit have been made. The Treasury Secretary is proposing to implement this provision in 26 CFR 1.36B–5 of the Treasury proposed rule; to reinforce this provision and clarify it as a standard for approval of an Exchange, in paragraph (c), we propose that the Exchange comply with the Treasury regulation.

i. Coordination With Medicaid, CHIP, the Basic Health Program, and the Pre-Existing Conditions Insurance Program (§ 155.345)

In § 155.345, we propose standards for coordination across the Exchange, Medicaid, and CHIP in order to implement a streamlined, simplified system for eligibility determinations and enrollment. In this section, we also propose standards for coordination between the Exchange and the Pre-Existing Conditions Insurance Program (PCIP), established pursuant to section 1101 of the Affordable Care Act.

In paragraph (a) of this section, we propose that the Exchange enter into agreements with the Medicaid or CHIP agencies as necessary to fulfill this subpart. Such agreements could support ensuring that Exchange determinations of eligibility for Medicaid and CHIP are consistent with the methods, standards and procedures set forth in the approved State plan and the interpretive policies and procedures of the State agency or agencies administering the Medicaid or CHIP programs. We anticipate that Medicaid and CHIP eligibility determination activities conducted by the Exchange will be conducted in cooperation and coordination with the agency or agencies administering those programs, and will utilize the single eligibility system or shared eligibility service discussed later in this section.

In paragraph (d)(1) of § 155.310 of this subpart, we propose that as part of the eligibility determination process, the Exchange determine an applicant eligibility for Medicaid and CHIP, in accordance with standards described in § 155.305 of this subpart, and as described in (d)(3), notify the State agency administering Medicaid or CHIP and transmit relevant information. Upon making a determination of eligibility for Medicaid or CHIP, the Exchange will also notify the applicant of the determination, as described in § 155.310(f). The agency administering Medicaid or CHIP would then provide the individual with his or her choices of available delivery systems (such as a managed care organization, a primary care case management program, or other option) and notify the chosen health plan or delivery system of the individual's selection.

The Exchange may also facilitate delivery system and health plan selection, including transmitting enrollment transactions to health plans, if applicable, for individuals determined eligible for Medicaid or CHIP, if the agencies administering Medicaid or CHIP enter into an agreement authorizing the Exchange to perform this function. A greater level of integration in this area could offer an opportunity to reduce administrative costs associated with a two-step process for applicants who are determined eligible for Medicaid or CHIP, particularly because the Exchange will already have the capacity to allow delivery system selection for individuals determined eligible to enroll in a QHP. We solicit comments regarding whether and how this integration could best work for the Exchange, Medicaid, and CHIP.

In paragraph (b)(1), we propose that the Exchange perform a ''screen and refer'' function for those applicants who may be eligible for Medicaid in a MAGI-exempt category, as described in section 1902(e)(14)(D) of the Act or an applicant that is potentially eligible for Medicaid based on factors not otherwise considered in this subpart. We propose that the Exchange transmit eligibility information related to such applications to the applicable State agency(ies) promptly and without undue delay to complete the remainder of the eligibility determination process.

We also note that a State may choose to establish an eligibility system that conducts all eligibility determinations for the Exchange, Medicaid, and CHIP, including those Medicaid determinations that are based on factors beyond the MAGI-based income standard.

We note that section 36B(c)(2)(B)(i) of the Code provides that an applicant is not eligible for advance payments of the premium tax credit or cost-sharing reductions to the extent that he or she is eligible for other minimum essential coverage, including coverage under Medicaid. We do not believe this provision is intended to exclude an applicant who is otherwise eligible for advance payments of the premium tax credit or cost-sharing reductions from receiving such advance payments or reductions during the time needed for Medicaid or CHIP to complete and effectuate an eligibility determination, particularly an eligibility determination that may involve the review of clinical

information. As such, in paragraph (b)(2), we propose that the Exchange provide advance payments of the premium tax credit and cost-sharing reductions to an individual who is found to be otherwise eligible for advance payments of the premium tax credit and cost-sharing reductions while the agency administering Medicaid completes a more detailed determination. We note that 26 CFR 1.36B–2(c)(2) of the Treasury proposed rule, specifies that if an individual receiving advance payments is approved for government-sponsored minimum essential coverage (including Medicaid), the individual is treated as eligible for minimum essential coverage no earlier than the first day of the first calendar month after approval; that is, an applicant who is referred to the Medicaid agency for additional screening and provided with advance payments in the interim while he or she is enrolled in a QHP would be eligible for the premium tax credit for such months and therefore, would not be liable to repay advance payments upon retroactive eligibility for Medicaid for the period of retroactive eligibility.

In paragraph (c) we propose the Exchange provide an opportunity for an applicant who is not automatically referred to the State Medicaid agency for an eligibility determination under paragraph (b) of this section to request a full screening of eligibility for Medicaid by such agency. Because Medicaid may provide different benefits or greater protections for certain individuals, those applicants who believe they may be eligible for such programs should have the opportunity to receive a conclusive determination of eligibility based on all available eligibility criteria. In paragraph (c)(2), we propose that to the extent that an applicant requests such a determination, the Exchange transmit the applicant's information to the State Medicaid agency promptly and without undue delay. We note that 26 CFR 1.36B–2(c)(2) of the Treasury proposed rule, discussed above, applies to applicants who are determined eligible for retroactive Medicaid coverage.

In order to implement section 1413 of the Affordable Care Act, in paragraph (d), we propose that the Exchange work with the agencies administering Medicaid and CHIP, to establish procedures through which an application that is submitted directly to an agency administering Medicaid or CHIP initiates an eligibility determination for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions. This is designed to ensure that an application that is submitted to an agency administering Medicaid or CHIP follows the same processes for a complete MAGI-based determination of eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions, in a manner identical to that of an application submitted directly to the Exchange.

We encourage States to develop integrated IT systems across the Exchange, Medicaid, and CHIP, which could allow States to leverage administrative functions and resources across coverage programs and ensure a consistent, seamless experience for consumers. We also expect that States will utilize a common or shared eligibility system or service across the Exchange and Medicaid.

Section 1413(c) of the Affordable Care Act provides for secure interfaces and standards for data matching arrangements between the Exchange and the agencies administering Medicaid, and CHIP. In paragraph (e)(1), we propose to codify that the Exchange must utilize a secure, electronic interface for the exchange of data for the purpose of determining eligibility, including verifying whether an applicant requesting an eligibility determination for advance payments of the premium tax credit and cost-sharing reductions has been determined eligible for Medicaid or CHIP, and other functions specified under this subpart. We also note that the standards specified in § 155.260 and § 155.270 regarding privacy and security apply to any data sharing agreements under this section. Lastly, in paragraph (e)(2), we propose that the Exchange utilize any model agreements established by HHS for the purpose of sharing data as described in this section. We solicit comment as to the content of these model agreements.

We propose in paragraph (f), standards for coordination between the Exchange and the Pre-Existing Conditions Insurance Program (PCIP), established pursuant to section 1101 of the Affordable Care Act, which will end coverage for its enrolled population effective January 1, 2014. In accordance with 45 CFR 152.45, we propose to develop procedures for the transition of PCIP enrollees to coverage in QHPs offered through the Exchanges to ensure that PCIP enrollees do not experience a lapse in coverage. We solicit comment on additional responsibilities that should be assigned to Exchanges as part of this process, such as providing dedicated customer service staff for PCIP enrollees or actions that may accelerate or further streamline eligibility determinations for PCIP enrollees.

j. Special Eligibility Standards and Process for Indians (§ 155.350)

Section 1402(d) of the Affordable Care Act includes special rules regarding cost-sharing for Indians. First, section 1402(d)(1) of the Affordable Care Act specifies that a QHP issuer may not impose any cost-sharing on an Indian who has household income at or below 300 percent of the FPL and is enrolled in a QHP at any level of coverage. We note that this is different from the cost-sharing rules for non-Indians, which specifies that an individual be enrolled in a silver-level plan in order to receive cost-sharing reductions. Second, section 1402(d)(2) of the Affordable Care Act specifies that a QHP may not impose any cost-sharing on an Indian for services furnished directly by the Indian Health Service, an Indian tribe, tribal Organization, or Urban Indian Organization, or through referral under contract health services. This provision applies regardless of an Indian's income or plan level. We note that as defined in § 155.300(a), for the purposes of this section, ''Indian'' means any individual defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638, 88 Stat. 2203), in accordance with section 1402(d)(1) of the Affordable Care Act.

In paragraph (a), we propose to codify section 1402(d)(1) of the Affordable Care Act by requiring the Exchange to determine an applicant who is an Indian eligible for cost-sharing reductions if he or she (i) meets the standards of § 155.305 (related to eligibility for enrollment in a QHP) and (ii) has household income that does not exceed 300 percent of the FPL. We also propose in paragraph (a)(2) to clarify that the Exchange may only provide cost-sharing reductions to an individual who is an Indian if he or she is enrolled in a QHP.

In paragraph (b), we propose to codify section 1402(d)(2) of the Affordable Care Act by requiring the Exchange to determine an applicant eligible for the special cost-sharing rule described in that section if he or she is an Indian, without requiring the applicant to request an eligibility determination that requires collection or verification of income. This special cost-sharing reduction rule is not tied to income.

In paragraph (c), we propose that the Exchange verify an individual's attestation that he or she is an Indian for purposes of determining whether he or she qualifies for the cost-sharing rules described in paragraphs (a) and (b) of this section. We propose that this

process consist of two phases. First, in paragraph (c)(1), we propose that the Exchange use any relevant documentation verified to support an attestation of citizenship or lawful presence in accordance with § 155.315(e) of this subpart. This is designed to ensure that the Exchange and an application filer will not duplicate the effort related to collecting and processing documentation if an application filer submitted documentation to support an applicant's attestation to citizenship or lawful presence that also satisfies the requirement of this paragraph.

Second, in paragraph (c)(2), we propose that the Exchange rely on any electronic data sources that are available and have been authorized by HHS. HHS will approve electronic data sources based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification.

If an applicant has not submitted satisfactory documentation in accordance with paragraph (c)(1) and the verification process described in paragraph (c)(2) is not applicable (such as because the data are unavailable, do not contain an applicant's information, or are not reasonably compatible with an applicant's attestation), we propose that the Exchange follow the standard inconsistency procedures proposed in § 155.315(e) of this subpart. Within these procedures, we propose that the Exchange follow the standards for acceptable documentation provided in section 1903(x)(3)(B)(v) of the Act. We note that to the extent that the Exchange is unable to verify an applicant's attestation that he or she is an Indian, and the applicant is otherwise eligible for enrollment in a QHP or insurance affordability programs, the Exchange determine the applicant eligible accordingly.

We solicit comment on the availability and usability of electronic data sources, as well as best practices for accepting and verifying documentation related to Indian status. We note that this provision is also intended to facilitate data sharing between tribes and the Exchange for the purposes of this section, to the extent that tribes are willing and able to engage in such data sharing.

k. Right to Appeal (§ 155.355)

Section 1411(f) of the Affordable Care Act directs the Secretary to establish a process for a Federal official to hear and make decisions on appeals of eligibility determinations. Section 1411(e)(4)(C) of the Affordable Care Act also provides that the Exchange notify applicants and employers of appeal processes when notifying the applicant or employer of an eligibility determination. As described in § 155.200(d) of the Exchange NPRM, published at 76 FR 41866, the Exchange will establish a process to hear individual appeals of eligibility determinations. We propose that an individual may appeal any eligibility determination or redetermination made by the Exchange under subpart D, including determinations of eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions. We intend to propose the details of the individual eligibility appeals processes, including standards for the Federal appeals process, in future rulemaking.

Pursuant to 1411(f)(2) of the Affordable Care Act, we intend to propose through future rulemaking standards for a process through which an employer would be able to appeal a determination that an employee of the employer is eligible for advance payments of the premium tax credit or cost-sharing reductions based in part on a finding that the employer did not offer qualifying coverage to the employee.

C. Part 157—Employer Interactions With Exchange and SHOP Participation

1. Subpart A—General Provisions

The Affordable Care Act contains a number of provisions related to employers with respect to employee health coverage. While a number of them are incorporated into the Code, at sections 4980H and 6056, several are to be implemented by the Secretary. In part 157, we propose standards that address qualified employer participation in SHOP. Also, in the preamble, we briefly discuss employer interactions with Exchanges related to the verification of employees' eligibility for qualifying coverage in an eligible employer-sponsored plan. Subpart A outlines the basis and scope for part 157 and defines terms used throughout part 157.

a. Basis and Scope (§ 157.10)

Section 157.10 of subpart A specifies the general statutory authority for the proposed regulations and indicates that the scope of part 157 is to establish the standards for employers in connection with Exchanges.

b. Definitions (§ 157.20)

Under § 157.20, we propose definitions for terms used in part 157 that require clarification. The definitions presented in § 157.20 are taken directly from the statute or based on definitions we propose in other parts of this proposed rule. The terms ''qualified employer,'' ''qualified employee'' and ''small employer'' have the meaning given to the terms in § 155.20.

We recognize that employers may need to interact with Exchanges for the express purpose of verifying employees' eligibility for qualifying coverage in an eligible employer-sponsored plan for those employees who seek eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions, as described in § 155.320(e). We solicit comment earlier in the preamble on the timing of the interactions between employers and Exchanges and how these interactions might be structured.

2. Subpart B—Reserved

3. Subpart C—Standards for Qualified Employers

Section 1311(b)(1)(B) of the Affordable Care Act directs each State that operates an Exchange to provide for the establishment of a Small Business Health Options Program (SHOP), which we describe in subpart H of part 155. Subpart C of this part outlines the general provisions for employer participation in SHOPs. To a significant extent, the proposal for this subpart mirrors and complements subpart H of part 155, proposed in the Exchange NPRM, published at 76 FR 41866.

a. Eligibility of Qualified Employers to Participate in SHOP (§ 157.200)

In § 157.200, we propose the standards for an employer that seeks to offer health coverage to its employees through a SHOP. In paragraph (a), we propose that only qualified employers may participate in a SHOP. SHOP eligibility standards for qualified employers are proposed in 45 CFR 155.710.

In paragraph (b), as proposed in 45 CFR 155.710, a qualified employer participating in the SHOP may continue to participate if it ceases to be a small employer solely because of an increase in the number of employees. In such instances, the employer will continue to be treated as a qualified employer and may continue its participation until the employer either fails to meet the other eligibility criteria or elects to no longer participate in the SHOP.

We note that some small employers may have employees in multiple States or SHOP service areas. In 45 CFR 155.710, we proposed to allow multi-State employers flexibility in offering coverage to their employees. While large employers are more likely than small

employers to have employees in multiple States or SHOP jurisdictions, it is important that the health insurance options available to small employers participating in the SHOP are not limited by the SHOP's geographic location. We note that this does not exempt an employer from the size standard of the SHOP. If an employer has more than 100 employees divided among multiple SHOP service areas, such an employer is still a large employer.

Unlike the individual market, in the SHOP there are no statutory residency standards for either the qualified employer or qualified employee. However, in 45 CFR 155.710, we proposed that small employers either offer employees coverage through the SHOP serving the employer's principle business address or offer coverage to an employee through the SHOP serving the employee's primary worksite. We propose parallel standards here to coordinate with that proposal.

b. Employer Participation Process in the SHOP (§ 157.205)

We propose the process for employer participation in the SHOP in § 157.205. Paragraph (a), directs an employer to adhere to the standards, process, and deadlines set by this part and by the SHOP to maintain eligibility as a qualified employer and have employees enroll in QHPs. As proposed in 45 CFR 155.720, the SHOP will set a uniform process and timeline for each employer seeking to become a qualified employer through the SHOP.

In paragraph (b), we propose that a qualified employer make available QHPs to employees in accordance with the process developed by the SHOP pursuant to 45 CFR 155.705.

In paragraph (c), we propose that a qualified employer participating in SHOP disseminate information to its employees about the methods for selecting and enrolling in a QHP. To address the needs of qualified employees seeking assistance, the information disseminated by qualified employers should include at least the timeframes for enrollment, instructions for how to access the SHOP Web site and other tools to compare QHPs, and the SHOP toll-free hotline. We propose to establish this as a responsibility of the qualified employer because the SHOP will not have employee contact information until employees apply for coverage. However, the SHOP may assist qualified employers, for example by providing an easy to use toolkit to qualified employers explaining the key pieces of information to disseminate to its employees.

In paragraph (d), we propose that a qualified employer submit premium payments according to the process proposed in 45 CFR 155.705. In paragraph (e), we propose that qualified employers provide an employee hired outside of the initial enrollment or annual open enrollment period with information described in paragraph (c). As proposed in 45 CFR 155.725(g), the SHOP will establish a window of time in which a newly hired employee may select coverage through a QHP.

In paragraph (f), we propose that qualified employers provide the SHOP with information about individuals or employees whose eligibility to purchase coverage through the employer has changed. This notice would apply both to newly eligible employees and dependents as well as those no longer eligible for coverage. This includes a COBRA qualifying event, as described in 29 U.S.C. 1163. The SHOP may in turn notify the QHP to process the change in enrollment. The employer retains all notice responsibilities under Federal and State law. We suggest that SHOPs direct employers to provide such notices within thirty (30) days of the change in eligibility.

In paragraph (g), we propose that a qualified employer adhere to the annual employer election period to change program participation for the next plan year. As proposed in 45 CFR 155.725, an employer may begin participating in the SHOP at any time. However, once an employer begins participating, it will adhere to an annual employer election period during which it may change employee offerings.

In paragraph (h), we propose that if an employer remains eligible for coverage and does not take action during the annual employer election period, such employer would continue to offer the same plan, coverage level or plans selected the previous year for the next plan year unless the QHP or QHPs are no longer available. We invite comments regarding the feasibility of the processes established in this section and the implications for small employers and their employees.

III. Collection of Information Requirements

We recognize that this proposed rule contains items that are subject to the Paperwork Reduction Act of 1995. We intend to estimate the burden of complying with the provisions of this rule as part of future rulemaking, per the Paperwork Reduction Act.

IV. Summary of Preliminary Regulatory Impact Analysis

The summary analysis of benefits and costs included in this proposed rule is drawn from the detailed Preliminary Regulatory Impact Analysis (PRIA) that evaluates the impacts of the Exchange proposed rule and the related Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (Premium Stabilization) proposed rule, available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' This proposed rule proposes the specific standards for the Exchange eligibility process in order to implement the sections related to eligibility in the Affordable Care Act. As performing eligibility determinations is a minimum function of the Exchange, the costs and benefits of these eligibility provisions are inherently tied to the costs and benefits of the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans (Exchange) proposed rule.

A. Introduction

HHS has examined the impact of the proposed rule under Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits (both quantitative and qualitative) of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an ''economically'' significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Using the Small Business Administration (SBA) definitions of small entities for agents and brokers, providers, QHPs, and employers—HHS tentatively concludes that a significant number of firms affected by this proposed rule are not small businesses.

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 approximately $136 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product.[5] HHS does not expect this proposed rule to result in one-year expenditures that would meet or exceed this amount.

B. Need for This Regulation

A central aim of Title I of the Affordable Care Act is to expand access to health insurance coverage through the establishment of Exchanges. The number of uninsured Americans is rising due to lack affordable insurance, barriers to insurance for people with pre-existing conditions, and high prices due to limited competition and market failures. Millions of people without health insurance use health care services for which they do not pay, shifting the uncompensated cost of their care to health care providers. Providers pass much of this cost to insurance companies, resulting in higher premiums that make insurance unaffordable to even more people. The Affordable Care Act includes a number of policies to address these problems, including the creating of Affordable Insurance Exchanges.

Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges.'' Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs. And Exchanges will give individuals and small businesses the same purchasing clout as big businesses.

This proposed rule provides standards for the Exchange eligibility process, in order to implement sections 1311, 1411, 1412, and 1413 of the Affordable Care Act. Further, it supports and complements rulemaking conducted by the Secretary of the Treasury with respect to section 36B of the Code, as added by section 1401(a) of the Affordable Care Act, and by the Secretary of HHS with respect to several sections of the Affordable Care Act that create new law and amend existing law regarding Medicaid and CHIP. This proposed rule also contains standards for employers with respect to participation in the Small Business Health Options Program.

C. Summary of Costs and Benefits

This proposed regulation is being published to provide the specific standards for the Exchange eligibility process in order to implement the sections related to eligibility in the Affordable Care Act. As performing eligibility determinations is a minimum function of the Exchange, the costs and benefits of these eligibility provisions are inherently tied to the costs and benefits of the Establishment of Exchanges and Qualified Health Plans (Exchange) proposed rule. A detailed PRIA, available at *http://cciio.cms.gov* under ''Regulations and Guidance,'' evaluates the impacts of the Exchange proposed rule and the related Premium Stabilization proposed rule. This section summarizes benefits and costs of this proposed rule.

Methods of Analysis

The detailed PRIA references the estimates of the CMS Office of the Actuary (OACT) (CMS, April 22, 2010),[6] but primarily uses the underlying assumptions and analysis done by the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation. Their modeling effort accounts for all of the interactions among the interlocking pieces of the Affordable Care Act including its tax policies, and estimates premium effects that are important to assessing the benefits of the proposed rule. A description of CBO's methods used to estimate budget and enrollment impacts is available.[7] The CBO estimates of enrollment in Exchanges are not significantly different than the comparable estimate produced by OACT. Based on our review, we expect that the provisions of these proposed rules will not substantially alter CBO's estimates of the budget impact of Exchanges or enrollment. The proposed provisions are well within the parameters used in the CBO modeling of the Affordable Care Act and do not diverge from assumptions embedded in the CBO model. Our review and analysis of the proposed provisions indicate that the impacts are within the model's margin of error.

Benefits in Response to the Proposed Regulation

This summary focuses on the effects of implementing the provisions of the Affordable Care Act related to eligibility. In this section, we provide evidence on the benefits of increased health insurance coverage and reduced transaction costs. Simple eligibility processes will increase take-up of health insurance leading to improved health. In a recent study, compared to the uninsured group, the insured received more hospital care, more outpatient care, had lower medical debt, better self-reported health, and other health related benefits.[8] The evaluation concluded that for low-income uninsured adults, coverage has the following benefits:

- Significantly higher utilization of preventive care (mammograms, cholesterol monitoring, etc.),
- A significant increase in the probability of having a regular office or clinic for primary care, and
- Significantly better self-reported health.

In addition, the use of electronic records among State and Federal agencies with information to verify eligibility will minimize the transaction costs of purchasing health insurance improving market efficiency and minimizing time cost for enrollees on enrollment.

Costs in Response to the Proposed Regulation

To support this new eligibility structure, States are expected to build new or modify existing information technology systems. How each State constructs and assembles the components necessary to support its Exchange and Medicaid infrastructure will vary and depend on the level of maturity of current systems, current governance and business models, size, and other factors. Administrative costs to support the vision for a streamlined and coordinated eligibility and enrollment process will also vary for each State depending on the specific approaches taken regarding the integration between programs and its decision to build a new system or use existing systems; while the Affordable Care Act requires a high level of integration, States have the option to go beyond the requirements of the Act. We also believe that overall administrative costs may increase in the short term as

[5] *http://research.stlouisfed.org/fred2/data/GDPDEF.txt.* Accessed on 7/26/2011.

[6] Foster, Richard ''Estimated Financial Effects of the Patient Protection and Affordable Care Act as Amended ''April 2011. CMS''.

[7] Congressional Budget Office. (2007) ''CBO's Health Insurance Simulation Model: A Technical Description.'' October.

[8] Finkelstein, A. et al., (2011). The Oregon Health Insurance Experiment: Evidence from the First Year,'' *National Bureau of Economic Research Working Paper Series,* 17190.

States build information technology systems; however, in the long-term States will see savings through the use of more efficient systems.

As noted in the preamble, we believe the approach we are taking to supporting the verification of applicant information with SSA, IRS, and DHS reduces administrative complexity and associated costs. Administrative costs incurred in the development of information technology infrastructure to support the Exchange are funded wholly through State Exchange Planning and Establishment Grants. Costs for information technology infrastructure that will also support Medicaid must be allocated to Medicaid, but are eligible for a 90 percent Federal matching rate to assist in development.[9]

Summary of Costs and Benefits

CBO estimated program payments and receipts for outlays related to grants for Exchange startup. States' initial costs to the creation of Exchanges will be funded by these grants. Eligibility determination is a minimum function of the Exchange, therefore the Exchange costs related to develop the infrastructure for this function these eligibility provisions are covered by these grant outlays.

TABLE 1—ESTIMATED OUTLAYS FOR THE AFFORDABLE INSURANCE EXCHANGES FY 2012–FY 2016, IN BILLIONS OF DOLLARS

Year	2012	2013	2014	2015	2016
Grant Authority for Exchange Start up[10]	0.6	0.8	0.4	0.2	0.0

Source: Congressional Budget Office. (2011). *Cost Estimate of H.R. 1213 A bill to repeal mandatory funding provided to states in the Patient Protection and Affordable Care Act to establish American Health Benefit Exchanges.* April 27, 2011. *http://www.cbo.gov/ftpdocs/121xx/doc12158/hr1213.pdf.*

Regulatory Options Considered

In addition to a baseline, HHS has identified two regulatory options for this propose rule as required by Executive Order 12866.

(1) Require Exchanges To Conduct Eligibility Determinations for the MAGI-Exempt Population

Under the proposed rule, the Exchange will determine eligibility for Medicaid and CHIP for eligibility categories that use a MAGI-based income standard. In this NPRM, we propose the Exchange perform a ''screen and refer'' function for those applicants who may be eligible for Medicaid in a category that does not use a MAGI-based income standard. For these applicants, we propose that the Exchange transmit eligibility information to the State Medicaid agency to complete the remainder of the eligibility determination process.

This alternative would require the Exchange to determine eligibility for applicants that may fall into Medicaid eligibility categories that do not use a MAGI-based income standard. It would require Exchanges to conduct lengthier investigations of these applications than what is required for eligibility determinations for applicants eligible based on MAGI. It would also require Exchanges develop the capability to evaluate this information and other income information not required for MAGI-based eligibility determinations. This would require additional resources and increase costs to Exchanges and Federal agencies.

(2) Require a Paper-Driven Process for Conducting Eligibility Determinations

In the proposed rule, to verify applicant information used to support an eligibility determination, we generally propose the Exchange first use electronic data, where available, prior to requesting paper documentation. Under this proposal, individuals will be asked to provide only the minimum amount of information necessary to complete an eligibility determination, and will only be required to submit paper if electronic data cannot be used to complete the verification process.

We believe using technology to minimize burden on individuals and States will help increase access to coverage by streamlining the eligibility process, and will reduce administrative burden on Exchanges, while increasing accuracy by relying on trusted data for eligibility.

Under this alternative, the Exchange would require individuals to submit paper documentation to verify information necessary for an eligibility determination. This would not only increase the amount of burden placed on individuals to identify and collect this information, which may not be readily available to the applicant, but would also necessitate additional time and resources for Exchanges to accept and verify the paper documentation needed for an eligibility determination.

Summary of Costs for Each Option

While it would extend a more streamlined eligibility process to individuals ineligible for a MAGI-based eligibility determination, option 1 would require the Exchange to generate additional resources and funds to be able to determine eligibility for applicants that may fall into an eligibility category that does not use a MAGI-based income standard, including one that involves the consideration of clinical or other income information. The paper-driven process outlined under option 2 would ultimately increase the amount of time it would take for an individual to receive health coverage, would reduce the number of States likely to operate an Exchange due to increased administrative costs, and would dissuade individuals from seeking coverage through the Exchange.

D. Accounting Statement

For full documentation and discussion of these estimated costs and benefits, see the detailed Exchange PRIA, available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' Since eligibility determination is a minimum function of the Exchange, the costs and benefits of these eligibility provisions are included in the costs and benefits of Exchange establishment. Therefore, this accounting statement is identical to the one published in the Establishment of Exchanges and Qualified Health Plans (Exchange) proposed rule.

[9] Federal Funding for Medicaid Eligibility Determination and Enrollment Activities; Final Rule, April 19, 2011 [42 CFR part 433 page 21950].

[10] OACT estimates that the initial start-up costs for Exchanges will be $4.4 billion for 2011–2013 (Sisko, A.M., *et al.,* ''National Health Spending Projections: The Estimated Impact of Reform through 2019,'' *Health Affairs,* 29, no. 10 (2010): 1933–1941.

Category	Primary estimate	Year dollar	Units discount rate	Period covered
Benefits:				
Annualized Monetized ($millions/year)	Not estimated	2011	7%	2012–2016
	Not estimated	2011	3%	2012–2016
Qualitative	The Exchanges, combined with other actions being taken to implement the Affordable Care Act, will improve access to health insurance, with numerous positive effects, including earlier treatment and improved morbidity, fewer bankruptcies and decreased use of uncompensated care. The Exchange will also serve as a distribution channel for insurance reducing administrative costs as a part of premiums and providing comparable information on health plans to allow for a more efficient shopping experience.			
Costs:				
Annualized Monetized ($millions/year)	424	2011	7%	2012–2016
	410	2011	3%	2012–2016
Qualitative	These costs include grant outlays to States to establish Exchanges.			

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed above, this proposed rule is necessary to implement certain standards related to the establishment and operation of Exchanges as authorized by the Affordable Care Act. Specifically, this rule proposes standards for Exchanges related to eligibility determinations for enrollment in a QHP, advance payments of the premium tax credit, cost-sharing reductions, Medicaid, and CHIP; and qualified employer participation in SHOP.

For the purposes of the regulatory flexibility analysis, we expect the following types of entities to be affected by this proposed rule—(1) QHP issuers; and (2) employers. We believe that health insurers would be classified under the North American Industry Classification System (NAICS) Code 524114 (Direct Health and CMS–9989–P 166 Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities this NAICS code. Health issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $10 million or less.

QHP Issuers

This rule proposes standards on Exchanges that address eligibility determinations for enrollment in a QHP, advance payments of the premium tax credit, cost-sharing reductions, Medicaid, and CHIP. Although these standards are for Exchanges, they also affect health plan issuers that choose to participate in an Exchange. QHP issuers receive information from an Exchange about an enrollee's category in order to enable the QHP issuer to provide the correct level of cost-sharing reductions. The issuer of the QHP will adjust an enrollee's net premium to reflect the advance payments of the premium tax credit, as well as make any changes required to ensure that cost-sharing reflects the appropriate level of reductions. Issuers benefit significantly from advance payments of the premium tax credit and cost-sharing reductions, but may face some administrative costs relating to receiving enrollee information from an Exchange.

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis we determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA (currently $7 million in annual receipts for health insurers, based on North American Industry Classification System Code 524114).[11]

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), the Department used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. The Department estimated that there were 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage; however, this estimate may

[11] ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective November 5, 2010, U.S. Small Business Administration, available at *http://www.sba.gov.*

overstate the actual number of small health insurance issuers offering such coverage, because it does not include receipts from these companies' other lines of business.

Employers

The establishment of SHOP in conjunction with tax incentives for some employers will provide new opportunities for employers to offer affordable health insurance to their employees. A detailed discussion of the impact on employers related to the establishment of the SHOP is found in the PRIA, available at *http://cciio.cms.gov* under ''Regulations and Guidance.''

Subpart D of part 157 proposes standards that address qualified employer participation in SHOP. This rule proposes standards for employers that choose to participate in a SHOP. The SHOP is limited by statute to employers with at least one but not more than 100 employees. For this reason, we expect that many employers would meet the SBA Standard for small entities. Since participation in the SHOP is voluntary, this proposed rule does not place any requirements on small employers.

We request comment on whether the small entities affected by this rule have been fully identified. We also request comment and information on potential costs for these entities and on any alternatives that we should consider.

VI. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing proposed rule (and subsequent final rule) that includes any Federal mandate that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. Because States are not required to set up an Exchange, and because grants are available for funding of the establishment of an Exchange by a State, we anticipate that this proposed rule would not impose costs above that $136 million UMRA threshold on State, local, or tribal governments.

VII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, pre-empts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchange, State decisions will ultimately influence both administrative expenses and overall premiums. However, because States are not required to create an Exchange, these costs are not mandatory. For States electing to create an Exchange, the initial costs of the creation of the Exchange will be funded by Exchange Planning and Establishment Grants. After this time, Exchanges will be financially self-sustaining with revenue sources left to the discretion of the State. In the Department's view, while this proposed rule does not impose substantial direct on State and local governments, it has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance coverage (that is, for QHPs) that is offered in the individual and small group markets. Each State electing to establish a State-based Exchange must adopt the Federal standards contained in the Affordable Care Act and in this proposed rule, or have in effect a State law or regulation that implements these Federal standards. However, the Department anticipates that the Federalism implications (if any) are substantially mitigated because States have choices regarding the structure and governance of their Exchanges. Additionally, the Affordable Care Act does not require States to establish an Exchange; but if a State elects not to establish an Exchange or the State's Exchange is not approved, HHS must establish and facilitate an Exchange in that State. Additionally, States will have the opportunity to participate in State Partnership Exchanges.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policymaking discretion of the States, the Department has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department certifies that CMS has complied with the requirements of Executive Order 13132 for the attached proposed regulation in a meaningful and timely manner.

List of Subjects

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Technical assistance, Women, and Youth.

45 CFR Part 157

Employee benefit plans, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below:

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—REQUIREMENTS RELATING TO HEALTH CARE ACCESS

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

1. Part 155, as proposed to be added at 76 FR 13564, March 14, 2011 is amended by adding subpart D to read as follows:

Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

Sec.

Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

§ 155.300 Definitions and General Standards for Eligibility Determinations

(a) *Definitions.* In addition to those definitions proposed in 45 CFR 155.20, for purposes of this subpart, the following terms have the following meaning:

Adoption taxpayer identification number has the same meaning as it does in 26 CFR 301.6109–3(a).

Applicable Children's Health Insurance Program (CHIP) MAGI-based income standard means the applicable income standard applied under the State plan under title XXI of the Act, or waiver of such plan, as defined at 42 CFR 457.305(a), and as certified by the State CHIP Agency pursuant to 42 CFR 457.348(d), for determining eligibility for child health assistance and enrollment in a separate child health program.

Applicable Medicaid modified adjusted gross income (MAGI)-based income standard has the same meaning as ''applicable modified adjusted gross income standard,'' as defined at 42 CFR 435.911(b), applied under the State Medicaid plan or waiver of such plan, and as certified by the State Medicaid agency pursuant to 42 CFR 435.1200(c)(3) for determining eligibility for Medicaid.

Application filer means an individual who submits an application for health insurance coverage to the Exchange and responds to inquiries about the application, regardless of whether he or she is seeking health insurance coverage for him or herself.

Federal poverty level means the most recently published federal poverty level, updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a qualified health plan through the Exchange, as specified in 45 CFR 155.410.

Indian means any individual as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2203).

Insurance affordability programs means advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP, and the Basic Health Program, as applicable, in accordance with 42 CFR 435.4.

Minimum value, in connection with an eligible employer-sponsored plan, has the meaning given to the term in section 36B(c)(2)(C) of the Code.

Non-citizen means an individual who is not a citizen or national of the United States, in accordance with section 101(a)(3) of the Immigration and Nationality Act.

Primary taxpayer. (1) *Primary taxpayer* means an individual who indicates that he or she expects—

(i) To file a tax return for the benefit year, in accordance with 26 CFR 1.6011–8;

(ii) If married (within the meaning of 26 CFR 1.7703–1), to file a joint tax return for the benefit year;

(iii) That no other taxpayer will be able to claim him or her as a tax dependent for the benefit year; and

(iv) That he or she expects to claim a personal exemption deduction under section 151 of the Code on his or her tax return for one or more applicants, including himself or herself and his or her spouse.

(2) This term can mean either spouse within a married couple.

Qualifying coverage in an eligible employer-sponsored plan means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards specified in 26 CFR 1.36B–2(c)(3).

State CHIP Agency means the agency that administers a separate child health program established by the State under title XXI of the Act in accordance with implementing regulations at 42 CFR 457.

State Medicaid Agency means the agency established by the State under title XIX of the Act that administers the Medicaid program in accordance with implementing regulations at 42 CFR parts 430 through 456.

Tax dependent has the same meaning as the term dependent under section 152 of the Code.

(b) *Medicaid and CHIP.* In general, references to Medicaid and CHIP regulations in this subpart refer to those regulations as implemented by the State Medicaid or CHIP agency.

(c) *Attestation.*

(1) Except as specified in paragraph (c)(2) of this section, for the purposes of this subpart, an attestation may be made by the applicant (self-attestation), an application filer, or in cases in which an individual cannot attest, the attestation of a parent, caretaker, or someone acting responsibly on behalf of such an individual.

(2) The attestations specified in § 155.310(d)(2)(ii) and § 155.315(e)(4)(ii) of this subpart must be provided by a primary taxpayer.

§ 155.305 Eligibility standards.

(a) *Eligibility for enrollment in a QHP through the Exchange.* The Exchange must determine an applicant eligible for enrollment in a QHP through the Exchange if he or she meets the following requirements:

(1) *Citizenship, status as a national, or lawful presence.* Is a citizen or national of the United States or a non-citizen lawfully present in the United States, and is reasonably expected to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(2) *Incarceration.* Is not incarcerated, other than incarceration pending the disposition of charges; and

(3) *Residency.*

(i) In the case of an individual age 21 and over who is not institutionalized, is capable of indicating intent, and is not receiving an optional State supplementary payment, intends to reside in the State within the service area of the Exchange, including without a fixed address, in which the applicant is requesting coverage.

(ii) In the case of an individual under the age of 21, who is not institutionalized, is not receiving assistance pursuant to Title IV–E of the Social Security Act, is not emancipated, and is not receiving an optional State supplementary payment, resides in the State within the service area of the Exchange in which he or she is requesting coverage, including with a parent or caretaker or without a fixed address.

(iii) *Other special circumstances.* In the case of an individual who is not described in paragraphs (a)(3)(i) or (ii) of this section, the Exchange must apply the residency requirements described in 42 CFR 435.403 with respect to the service area of the Exchange.

(iv) *Special rule for family members living outside the service area of the Exchange of the primary taxpayer.* A tax dependent or spouse who lives outside the service area of the Exchange of the primary taxpayer may request coverage through either the Exchange that services the area in which the spouse or tax dependent resides or intends to reside, as applicable pursuant to the standard identified in paragraphs (a)(3)(i), (ii), or (iii) of this section, or the

Exchange that services the area in which the primary taxpayer resides or intends to reside, as applicable pursuant to the standard identified in subparagraphs (a)(3)(i), (ii), or (iii).

(b) *Eligibility for QHP enrollment periods.* The Exchange must determine an applicant eligible for an enrollment period if he or she meets the criteria for an enrollment period, as specified in § 155.410 and § 155.420 of this part.

(c) *Eligibility for Medicaid.* The Exchange must determine an applicant eligible for Medicaid if he or she meets the citizenship and satisfactory immigration status requirements of 42 CFR 435.406, the residency requirements of 42 CFR 435.403, has a household income, as defined in 42 CFR 435.911(b), that is at or below the applicable Medicaid MAGI-based income standard and—

(1) Is pregnant, as defined in the Medicaid State Plan pursuant to 42 CFR 435.4;

(2) Is under age 19;

(3) Is a parent or caretaker relative of a dependent child, as defined in the Medicaid State plan pursuant to 42 CFR 435.4; or

(4) Is not described in paragraph (b)(1), (b)(2), or (b)(3) of this section, is under age 65 and is not entitled to or enrolled for benefits under part A of title XVIII of the Social Security Act, or enrolled for benefits under part B of title XVIII of the Social Security Act.

(d) *Eligibility for CHIP.* The Exchange must determine an applicant eligible for CHIP if he or she meets the requirements of 42 CFR 457.310 through 457.320 and has a household income within the applicable CHIP MAGI-based income standard.

(e) *Eligibility for Basic Health Program.* If a Basic Health Program is operating in the service area of the Exchange, the Exchange must determine an applicant eligible for the Basic Health Program if he or she meets the requirements specified in section 1331(e) of the Affordable Care Act and regulations implementing that section.

(f) *Eligibility for advance payments of the premium tax credit.*

(1) *In general.* The Exchange must determine a primary taxpayer eligible for advance payments of the premium tax credit if the Exchange determines that—

(i) He or she is expected to have a household income, as defined in 26 CFR 1.36B–1(e), of at least 100 percent but not more than 400 percent of the FPL, as specified in 26 CFR 1.36B–2(b)(1), for the benefit year for which coverage is requested; and

(ii) One or more applicants for whom the primary taxpayer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the primary taxpayer and his or her spouse—

(A) Meets the requirements for eligibility for enrollment in a QHP through the Exchange, as specified in paragraph (a) of this section; and

(B) Is not eligible for minimum essential coverage, in accordance with 26 CFR 1.36B–2(a)(2).

(2) *Special rule for non-citizens lawfully present who are ineligible for Medicaid.* The Exchange must determine a primary taxpayer eligible for advance payments of the premium tax credit if the Exchange determines that—

(i) He or she meets the requirements specified in paragraph (f)(1) of this section, except for paragraph (f)(1)(i);

(ii) He or she is expected to have a household income, as defined in 26 CFR 1.36B–1(e), of less than 100 percent of the FPL, as specified in 26 CFR 1.36B–2(b)(5), for the benefit year for which coverage is requested; and

(iii) One or more applicants for whom the primary taxpayer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the primary taxpayer and his or her spouse, is a non-citizen who is lawfully present and ineligible for Medicaid, as specified in 26 CFR 1.36B–2(b)(5)(i), by reason of immigration status.

(3) *Enrollment required.* The Exchange may provide advance payments of the premium tax credit only on behalf of a primary taxpayer if one or more applicants for whom the primary taxpayer attests that he or she expects to claim a personal exemption deduction for the benefit year, including the primary taxpayer and his or her spouse, is enrolled in a QHP through the Exchange.

(4) *Compliance with filing requirement.* The Exchange may not determine a primary taxpayer eligible for advance payments of the premium tax credit if HHS notifies the Exchange as part of the process described in § 155.320(c)(4) of this subpart that advance payments of the premium tax credit were made on behalf of the primary taxpayer or his or her spouse for a year for which tax data would be utilized for verification of household income and family size and the primary taxpayer or his or her spouse did not comply with the requirement to file a tax return for that year as required by 26 CFR 1.6011–8.

(5) *Calculation of advance payments of the premium tax credit.* The Exchange must calculate advance payments of the premium tax credit in accordance with the rules specified in 26 CFR 1.36B–3.

(6) *Collection of Social Security numbers.* The Exchange must require an application filer to provide the Social Security number of the primary taxpayer if an application filer attests that the primary taxpayer has a Social Security number and filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(g) *Eligibility for cost-sharing reductions.*

(1) The Exchange must determine an applicant eligible for cost-sharing reductions if he or she—

(i) Meets the requirements for eligibility for enrollment in a QHP through the Exchange, as specified in paragraph (a) of this section;

(ii) Meets the requirements for advance payments of the premium tax credit, as specified in paragraph (f) of this section; and

(iii) Has household income for the taxable year that does not exceed 250 percent of the Federal Poverty Level (FPL).

(2) The Exchange may only provide cost-sharing reductions to an enrollee who is not an Indian if he or she is enrolled in a silver-level QHP, as defined by section 1302(d)(1)(B) of the Affordable Care Act, purchased through the Exchange.

(h) *Eligibility categories for cost-sharing reductions.* The Exchange must use the following eligibility categories for cost-sharing reductions when making eligibility determinations under this section—

(1) An individual who has household income greater than 100 percent of the FPL and less than or equal to 150 percent of the FPL;

(2) An individual who has household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL; and

(3) An individual who has household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL.

§ 155.310 Eligibility determination process.

(a) *Application.*

(1) The Exchange must accept applications from individuals in the form and manner proposed in 45 CFR 155.405.

(2) *Information collection from non-applicants.* The Exchange may not require an individual who is not seeking coverage for himself or herself to provide information regarding his or her citizenship, status as a national, or immigration status on any application

or supplemental form. The Exchange may not require such an individual to provide a Social Security number, except as described in § 155.305(f)(6) of this subpart.

(b) *Choice to request determination of eligibility for insurance affordability programs.* The Exchange must permit an applicant to decline an eligibility determination for the programs described in paragraphs (c) through (g) of § 155.305 of this subpart; however, the Exchange may not permit an applicant to decline an eligibility determination for a subset of the programs listed in those paragraphs.

(c) *Timing.* The Exchange must accept an application and make an eligibility determination for an applicant seeking an eligibility determination at any point in time during the year.

(d) *Determination of eligibility.*

(1) The Exchange must determine an applicant's eligibility in accordance with the standards specified in § 155.305 of this subpart.

(2) *Special rules relating to advance payments of the premium tax credit.*

(i) The Exchange must permit an enrollee to accept less than the full amount of advance payments of the premium tax credit for which he or she is determined eligible.

(ii) The Exchange may authorize advance payments of the premium tax credit on behalf of a primary taxpayer only if the primary taxpayer first attests that—

(A) He or she will file a tax return for the benefit year, in accordance with 26 CFR 1.6011–8;

(B) If married (within the meaning of 26 CFR 1.7703–1), he or she will file a joint tax return for the benefit year;

(C) No other taxpayer will be able to claim him or her as a tax dependent for the benefit year; and

(D) He or she will claim a personal exemption deduction on his or her tax return for the applicants identified as members of his or her family, including the primary taxpayer and his or her spouse, in accordance with § 155.320(c)(3)(i).

(3) *Special rule relating to Medicaid and CHIP.* To the extent that the Exchange determines an applicant eligible for Medicaid or CHIP, the Exchange must notify the State Medicaid or CHIP agency and transmit relevant information to such agency promptly and without undue delay.

(e) *Effective dates.* Upon making an eligibility determination, the Exchange must implement the eligibility determination under this section for enrollment in a QHP through the Exchange, advance payments of the premium tax credit, and cost-sharing reductions in accordance with the dates specified in 45 CFR 155.410(c) and (f), and 45 CFR 155.420(b).

(f) *Notification of eligibility determination.* The Exchange must provide timely notice to an applicant of any eligibility determination made in accordance with this subpart.

(g) *Notice of an employee's eligibility for advance payments of the premium tax credit and cost-sharing reductions to an employer.* The Exchange must notify an employer that an employee has been determined eligible for advance payments of the premium tax credit or cost-sharing reductions upon determination that an employee is eligible for advance payments of the premium tax credit or cost-sharing reductions. Such notice must identify the employee.

(h) *Duration of eligibility determinations without enrollment.* To the extent that an applicant who is determined eligible for enrollment in a QHP does not select a QHP within his or her enrollment period in accordance with subpart E of this part, and seeks a new enrollment period—

(1) Prior to the date on which he or she would have been redetermined in accordance with § 155.335 of this subpart had he or she enrolled in a QHP, the Exchange must require the applicant to attest as to whether information affecting his or her eligibility has changed since his or her most recent eligibility determination before determining his or her eligibility for an enrollment period, and must process any changes reported in accordance with the procedures specified in § 155.330 of this subpart.

(2) On or after the date on which he or she would have been redetermined in accordance with § 155.335 of this subpart had he or she enrolled in a QHP, the Exchange must apply the procedures specified in § 155.335 of this subpart before determining his or her eligibility for an enrollment period.

§ 155.315 Verification process related to eligibility for enrollment in a QHP through the Exchange.

(a) *General requirement.* Unless a request for modification is granted pursuant to paragraph (e) of this section, the Exchange must verify or obtain information as provided in this section in order to determine that an applicant is eligible for enrollment in a QHP through the Exchange.

(b) *Verification of citizenship, status as a national, or lawful presence.*

(1) *Verification with records from the Social Security Administration.* For an applicant who attests to citizenship and has a Social Security number, the Exchange must transmit the applicant's Social Security number and other identifying information to HHS, which will submit it to the Social Security Administration.

(2) *Verification with the records of the Department of Homeland Security.* For an applicant who has documentation that can be verified through the Department of Homeland Security and who attests to lawful presence, or who attests to citizenship and for whom the Exchange cannot substantiate a claim of citizenship through the Social Security Administration, the Exchange must transmit information from the applicant's documentation and other identifying information to HHS, which will submit necessary information to the Department of Homeland Security.

(3) *Inconsistencies and inability to verify information.* For an applicant who attests to citizenship, status as a national, or lawful presence, and for whom the Exchange cannot verify such attestation through the Social Security Administration or the Department of Homeland Security, the Exchange must follow the procedures specified in paragraph (e) of this section, except that the Exchange must provide the applicant with a period of 90 days from the date on which the notice described in § 155.315(e)(2)(i) of this section is received for the application filer to provide satisfactory documentary evidence or resolve the inconsistency with the Social Security Administration or the Department of Homeland Security, as applicable. The date on which the notice is received means 5 days after the date on the notice, unless the applicant shows that he or she did not receive the notice within the 5-day period.

(c) *Verification of residency.*

(1) Except as provided in paragraphs (c)(2) through (c)(4) of this section, the Exchange must verify an applicant's residency in the service area of the Exchange by accepting his or her attestation without further verification.

(2) If the State Medicaid or CHIP agency operating in the State in which the Exchange operates elects to examine electronic data sources for all applicants to verify residency, the Exchange must proceed in accordance with 42 CFR 435.956(c) and 42 CFR 457.380(c), and the policy of the State Medicaid or CHIP agency.

(3) If information provided by an applicant regarding residency is not reasonably compatible with other information provided by the individual or in the records of the Exchange the Exchange may examine information in data sources.

(4) If the information in such data sources is not reasonably compatible with the information provided by the applicant, the Exchange must follow the procedures specified in § 155.315(e) of this section. A document that provides evidence of immigration status may not be used alone to determine State residency.

(d) *Verification of incarceration status.* The Exchange must verify an applicant's attestation that he or she meets the requirements of § 155.305(a)(2) of this subpart by—

(1) Relying on any electronic data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently current, accurate, and offer less administrative complexity than paper verification; or

(2) Except as provided in paragraph (d)(3) of this section, if an approved data source is unavailable, accepting his or her attestation without further verification.

(3) To the extent that an applicant's attestation is not reasonably compatible with information from approved data sources described in paragraph (d)(1) of this section or other information provided by the applicant or in the records of the Exchange, the Exchange must follow the procedures specified in § 155.315(e) of this subpart.

(e) *Inconsistencies.* Except as otherwise specified in this subpart, for an applicant for whom the Exchange cannot verify information required to determine eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions, the Exchange—

(1) Must make a reasonable effort to identify and address the causes of such inconsistency, such as by contacting the application filer to confirm the accuracy of the information submitted by the application filer;

(2) If the Exchange is unable to resolve the inconsistency through the process described in paragraph (e)(1) of this section, must—

(i) Notify the applicant of the inconsistency; and

(ii) Provide the applicant with a period of 90 days from the date on which the notice described in paragraph (e)(2)(i) of this section is sent to the applicant to either present satisfactory documentary evidence or otherwise resolve the inconsistency.

(3) The Exchange may extend the period described in paragraph (e)(3) for an applicant if the applicant demonstrates that a good faith effort has been made to obtain the required documentation during the period.

(4) During the period described in paragraph (e)(2)(ii) of this section, must—

(i) Proceed with all other elements of eligibility determination using the application filer's attestation for the applicant, and provide eligibility for enrollment in a QHP to the extent that an applicant is otherwise qualified; and

(ii) Ensure that advance payments of the premium tax credit and cost-sharing reductions are provided on behalf of an applicant within this period who is otherwise qualified for such payments and reductions, as described in § 155.305 of this subpart, if the primary taxpayer attests to the Exchange that he or she understands that any advance payments of the premium tax credit received are subject to reconciliation.

(5) If, after the period described in paragraph (e)(2)(ii) of this section, the Exchange remains unable to verify the attestation, the Exchange must—

(i) Determine the applicant's eligibility based on the information available from the data sources specified in this subpart, and notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(f) of this subpart, including notice that the Exchange is unable to verify the attestation; and

(ii) Implement the determination specified in paragraph (e)(5)(i) of this section no earlier than 10 days after and no later than 30 days after the date on which the notice in paragraph (e)(5)(i) of this section is sent.

(f) *Flexibility in information collection and verification.* HHS may approve an Exchange Plan in accordance with § 155.105(d) or a significant change to the Exchange Plan in accordance with § 155.105(e) of this part to modify the methods to be used for collection of information and verification of information as set forth in this subpart, as well as the specific information required to be collected, provided that HHS finds that such modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that it would not undermine coordination with Medicaid and CHIP, and that any applicable requirements under § 155.260, § 155.270, paragraph (g) of this section, and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of information will be met.

(g) *Applicant information.* The Exchange must not require an applicant to provide information beyond the minimum necessary to support the eligibility and enrollment processes of the Exchange, Medicaid, CHIP, and the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange, described in this subpart.

§ 155.320 Verification process related to eligibility for insurance affordability programs.

(a) *General requirements.*

(1) The Exchange must verify information in accordance with this section only for an applicant who is requesting an eligibility determination for insurance affordability programs in accordance with § 155.310(b) of this subpart.

(2) Unless a request for modification is granted pursuant to § 155.315(e) of this subpart, the Exchange must verify or obtain information in accordance with this section before making an eligibility determination for insurance affordability programs, and must use such information in such determination.

(b) *Verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan.*

(1) The Exchange must verify whether an applicant is eligible for minimum essential coverage other than through an eligible employer-sponsored plan, Medicaid, CHIP, or the Basic Health Program, using information obtained by transmitting identifying information specified by HHS to HHS.

(2) The Exchange must verify whether an applicant has already been determined eligible for coverage through Medicaid, CHIP, or the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange, within the State or States in which the Exchange operates using information obtained from the agencies administering such programs.

(c) *Verification of household income and family/household size.*

(1) *Data.*

(i) *Tax return data.*

(A) For all individuals whose income is counted in calculating a primary taxpayer's household income, in accordance with 26 CFR 1.36B–1(e), or an applicant's household income, in accordance with 42 CFR 435.603(d), and for whom the Exchange has a Social Security number or an adoption taxpayer identification number, the Exchange must request tax return data regarding MAGI and family size from the Secretary of the Treasury by transmitting identifying information specified by HHS to HHS.

(B) If the identifying information for one or more individuals does not match a tax record on file with the Secretary of the Treasury that may be disclosed pursuant to section 6103(l)(21) of the

Code and its accompanying regulations, the Exchange must proceed in accordance with § 155.315(e)(1) of this subpart.

(ii) *Data regarding MAGI-based income.* For all individuals whose income is counted in calculating a primary taxpayer's household income, in accordance with 26 CFR 1.36B–1(e), or an applicant's household income, in accordance with 42 CFR 435.603(d), the Exchange must request data regarding MAGI-based income in accordance with 42 CFR 435.948(a).

(2) *Verification process for Medicaid and CHIP.*

(i) *Household size.*

(A) The Exchange must require an application filer to attest to the individuals that comprise an applicant's household for Medicaid and CHIP, within the meaning of 42 CFR 435.603(f).

(B) The Exchange must verify the information in paragraph (c)(2)(i)(A) of this section by accepting an application filer's attestation without further verification, unless the Exchange finds that an application filer's attestation to the individuals that comprise an applicant's household for Medicaid and CHIP is not reasonably compatible with other information provided by the application filer for the applicant or in the records of the Exchange, in which case the Exchange may utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the application filer's attestation, the Exchange may request additional documentation to support the attestation within the procedures specified in 45 CFR 435.952.

(ii) *Verification process for MAGI-based household income.* The Exchange must verify MAGI-based income, within the meaning of 42 CFR 435.603(d), for the household described in paragraph (c)(2)(i)(A) of this section in accordance with the procedures specified in 42 CFR 435.948 and 42 CFR 435.952.

(3) *Verification process for advance payments of the premium tax credit and cost-sharing reductions.*

(i) *Family size.*

(A) The Exchange must require an application filer to attest to the individuals that comprise an applicant's family for advance payments of the premium tax credit and cost-sharing reductions, within the meaning of 26 CFR 1.36B–1(d).

(B) The Exchange must verify an applicant's family size for advance payments of the premium tax credit and cost-sharing reductions by accepting an application filer's attestation without further verification, unless the Exchange finds that an application filer's attestation of family size is not reasonably compatible with other information provided by the application filer for the family or in the records of the Exchange, in which case the Exchange may utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the application filer's attestation, the Exchange may request additional documentation to support the attestation within the procedures specified in § 155.315(e) of this subpart.

(ii) *Basic verification process for annual household income.*

(A) The Exchange must compute annual household income for the family described in paragraph (c)(3)(i)(A) of this section based on the tax return data described in paragraph (c)(1)(i) of this section, and require the application filer to validate this information, by attesting whether it represents an accurate projection of the family's household income for the benefit year for which coverage is requested.

(B) To the extent that the data described in paragraph (c)(1)(i) of this section is unavailable, or an application filer attests that it does not represent an accurate projection of the family's household income for the benefit year for which coverage is requested, the Exchange must require the application filer to attest to the family's projected household income for the benefit year for which coverage is requested and accept the application filer's attestation without further verification, except as provided in paragraph (c)(3)(ii)(C) of this section.

(C) If the Exchange finds that an application filer's attestation to the family's projected household income for the benefit year for which coverage is requested is not reasonably compatible with the information described in paragraph (c)(3)(ii)(A) of this section, including as a result of data under paragraph (c)(1)(i) of this section being unavailable, the Exchange must proceed in accordance with paragraphs (c)(3)(iii), (c)(3)(iv), and (c)(3)(vi) of this section, as applicable.

(iii) *Verification process for increases in household income.*

(A) If an application filer attests that a primary taxpayer's annual household income has increased or is reasonably expected to increase from the data described in paragraph (c)(3)(ii)(A) of this section to the benefit year for which the applicant(s) in the primary taxpayer's family are requesting coverage and have not established MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section that is within the applicable Medicaid or CHIP MAGI-based income standard, the Exchange must accept the application filer's attestation for the primary taxpayer's family without further verification, except as provided in paragraph (c)(3)(iii)(B) of this section.

(B) If the Exchange finds that an application filer's attestation of annual household income is not reasonably compatible with other information provided by the application filer or available to the Exchange in accordance with paragraph (c)(1)(ii) of this section, the Exchange may utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the application filer's attestation, the Exchange must request additional documentation using the procedures specified in § 155.315(e) of this subpart.

(iv) *Eligibility for alternate verification process for decreases in annual household income and situations in which tax return data is unavailable.* The Exchange must determine a primary taxpayer's annual household income for advance payments of the premium tax credit and cost-sharing reductions based on the alternate verification procedures described in paragraph (c)(3)(v) of this section, if an application filer attests to projected annual household income in accordance with paragraph (c)(3)(ii)(B) of this section, the primary taxpayer does not meet the criteria specified in paragraph (c)(3)(iii) of this section, the applicants in the primary taxpayer's family have not established MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section that is within the applicable Medicaid or CHIP MAGI-based income standard, and

(A) The Secretary of the Treasury does not have tax return data for the primary taxpayer that is at least as recent as the calendar year two years prior to the calendar year for which advance payments of the premium tax credit or cost-sharing reductions would be effective, including a situation in which this is as a result of an individual not being required to file;

(B) The application filer attests that the primary taxpayer's applicable family size has changed or is reasonably expected to change for the benefit year for which the applicants in his or her family are requesting coverage;

(C) The application filer attests that the primary taxpayer's annual household income has decreased or is reasonably expected to decrease from the data described in paragraph (c)(1)(i)

of this section by 20 percent or more to the benefit year for which the applicants in his or her family are requesting coverage; or

(D) An applicant in the primary taxpayer's family has filed an application for unemployment benefits.

(v) *Alternate verification process for decreases in annual household income and situations in which tax return data is unavailable.* If a primary taxpayer qualifies for an alternate verification process based on the requirements specified in paragraph (c)(3)(iv) of this section, the Exchange must attempt to verify the application filer's attestation of projected annual household income for the primary taxpayer by—

(A) Using annualized data from the MAGI-based income sources specified in paragraph (c)(1)(ii) of this section;

(B) Using other electronic data sources that have been approved by HHS, based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification; or

(C) If electronic data are unavailable or do not support an application filer's attestation, the Exchange must follow the procedures specified in § 155.315(e) of this subpart.

(D) If, following the 90-day period described in paragraph (c)(3)(v)(C) of this section, an application filer has not responded to a request for additional information from the Exchange and the data sources specified in paragraph (c)(1) of this section indicate that an applicant in the primary taxpayer's family is eligible for Medicaid or CHIP, the Exchange must not provide the applicant with eligibility for advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP or the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange.

(E) If, at the conclusion of the period specified in paragraph (c)(3)(v)(C) of this section, the Exchange remains unable to verify the application filer's attestation, the Exchange must determine an applicant's eligibility based on the information described in paragraph (c)(3)(ii)(A) of this section, notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(f) of this subpart, and implement such determination in accordance with the effective dates specified in § 155.330(e)(1)–(2) of this subpart.

(vi) *Primary taxpayers not meeting criteria for use of the alternate verification process.* For a primary taxpayer who does not qualify for the alternate verification process based on the requirements specified in paragraph (c)(3)(iv) of this section, the Exchange must determine household income for purposes of advance payments of the premium tax credit and cost-sharing reductions based on the information specified in paragraph (c)(3)(ii)(A) of this section.

(4) The Exchange must provide education and assistance to an application filer regarding the process specified in this paragraph.

(d) *Verification related to enrollment in an eligible employer-sponsored plan.*

(1) Except as provided in paragraph (d)(2) of this section, the Exchange must verify whether an applicant requesting an eligibility determination for advance payments of the premium tax credit or cost-sharing reductions is enrolled in an eligible employer-sponsored plan by accepting his or her attestation without further verification.

(2) If the Exchange finds that an applicant's attestation of enrollment in an eligible employer-sponsored plan is not reasonably compatible with other information provided by the applicant or in the records of the Exchange, the Exchange may utilize data obtained through data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the individual's attestation, the Exchange may request additional documentation to support the attestation within the procedures specified in paragraph (g) of this subpart.

(e) *Verification related to eligibility for qualifying coverage in an eligible employer-sponsored plan.*

(1) The Exchange must require an applicant to attest to his or her eligibility for qualifying coverage in an eligible employer-sponsored plan for the purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions, and to provide information identified in section 1411(b)(4) of the Affordable Care Act.

(2) The Exchange must verify whether an applicant is eligible for qualifying coverage in an eligible employer-sponsored plan for the purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions.

(f) *Additional verification related to immigration status for Medicaid and CHIP.*

(1) For purposes of determining eligibility for Medicaid, the Exchange must verify whether an applicant who is not a citizen or a national meets the requirements of 42 CFR 435.406 and section 1903(v)(4) of the Social Security Act, in accordance with the Medicaid State Plan.

(2) For purposes of determining eligibility for CHIP, the Exchange must verify whether an applicant who is not a citizen or a national meets the requirements of 42 CFR 457.320(d) and section 2107(e)(1)(J) of the Social Security Act, in accordance with the State Child Health Plan.

§ 155.330 Eligibility redetermination during a benefit year.

(a) *General requirement.* The Exchange must redetermine the eligibility of an enrollee in a QHP through the Exchange during the benefit year if it receives and verifies new information reported by an enrollee or identifies updated information through the data matching described in paragraph (c) of this section.

(b) *Requirement for individuals to report changes.* The Exchange must—

(1) Require an enrollee to report changes with respect to the eligibility standards specified in § 155.305 of this subpart within 30 days of such change; and

(2) Verify any information reported by an enrollee in accordance with the processes specified in § 155.315 and § 155.320 of this subpart prior to using such information in an eligibility redetermination.

(c) *Requirement for Exchange to periodically examine certain data sources.*

(1) The Exchange must periodically examine available data sources described in § 155.315(b)(1) and § 155.320(b) of this subpart to identify the following changes:

(i) Death; and

(ii) Eligibility determinations for Medicare, Medicaid, CHIP, or the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange.

(2) *Flexibility.* The Exchange may make additional efforts to identify and act on changes that may affect an enrollee's eligibility for enrollment in a QHP through the Exchange if HHS approves an Exchange Plan in accordance with § 155.105(d) or a significant change to the Exchange Plan in accordance with § 155.105(e) of this part to modify the requirements, based on the criteria specified in § 155.315(e) of this subpart.

(d) *Redetermination and notification of eligibility.* If the Exchange verifies updated information reported by an enrollee or identifies updated information through the data matching described in paragraph (c) of this section, the Exchange must:

(1) Redetermine the enrollee's eligibility in accordance with the

standards specified in § 155.305 of this subpart, and

(2) Notify the enrollee regarding the determination in accordance with the requirements specified in § 155.310(f) of this subpart and notify the enrollee's employer, as applicable, in accordance with the requirements specified in § 155.310(g) of this subpart.

(e) *Effective dates.*

(1) In general, changes resulting from a redetermination under this section are effective on the first day of the month following the date of the notice described in paragraph (d)(2) of this section.

(2) Subject to the authorization of HHS, the Exchange may determine a reasonable point in a month after which a change captured through a redetermination will not be effective until the first day of the month after the month specified in paragraph (e)(1) of this section.

(3) In the case of a redetermination that results in an enrollee being ineligible to continue his or her enrollment in a QHP through the Exchange, the Exchange must maintain his or her eligibility for enrollment in a QHP without advance payments of the premium tax credit and cost-sharing reductions, for a full month following the month in which the notice described in paragraph (d)(2) of this section is sent.

§ 155.335 Annual eligibility redetermination.

(a) *General requirement.* The Exchange must redetermine the eligibility of an enrollee in a QHP through the Exchange on an annual basis.

(b) *Updated income and family size information.* In the case of an enrollee who requests an eligibility determination for insurance affordability programs in accordance with § 155.310(b) of this subpart, the Exchange must request updated tax return information and data regarding MAGI-based income as described in paragraph (c)(1) of § 155.320 of this subpart for use in the enrollee's eligibility redetermination.

(c) *Notice to enrollee.* The Exchange must provide an enrollee with an annual redetermination notice including the following:

(1) The data obtained under paragraph (b) of this section, if applicable; and

(2) The data used in the enrollee's most recent eligibility determination; and

(3) The enrollee's projected eligibility determination for the following year, after considering any updated information described in paragraph (c)(1) of this section, including, if applicable, the amount of any advance payments of the premium tax credit and level of cost-sharing reductions.

(d) *Changes reported by enrollees.* The Exchange must require an enrollee to report any changes with respect to the information listed in the notice within 30 days from the date of the notice.

(e) *Verification of reported changes.* The Exchange must verify any information reported by an enrollee under paragraph (d) of this section in accordance with § 155.315 and § 155.320 of this subpart, including the relevant provisions in those sections regarding inconsistencies, before using such information to determine eligibility.

(f) *Response to redetermination notice.*

(1) The Exchange must require an enrollee to sign and return the notice described in paragraph (c) of this section.

(2) To the extent that an enrollee does not sign and return the notice described in paragraph (c) of this section within the 30-day period specified in paragraph (d) of this section, the Exchange must proceed in accordance with the procedures specified in paragraph (h)(1) of this section.

(g) *Redetermination and notification of eligibility.*

(1) After the 30-day period specified in paragraph (d) of this section has elapsed, the Exchange must—

(i) Redetermine the enrollee's eligibility in accordance with the standards specified in § 155.305 of this subpart using the information provided to the individual in the notice specified in paragraph (c) of this section, as supplemented with any information reported by the enrollee and verified by the Exchange pursuant to paragraphs (d) and (e) of this section;

(ii) Notify the enrollee in accordance with the requirements specified in § 155.310(f) of this subpart; and

(iii) If applicable, notify the enrollee's employer, in accordance with the requirements specified in § 155.310(g) of this subpart.

(2) If an enrollee reports a change with respect to the information provided in the notice specified in paragraph (c) of this section that the Exchange has not verified as of the end of the 30-day period specified in paragraph (d) of this section, the Exchange must redetermine the enrollee's eligibility after completing verification.

(h) *Effective dates.* The rules specified in § 155.330(e) of this part regarding effective dates apply to changes resulting from a redetermination under this section.

(i) *Renewal of coverage.* If an enrollee remains eligible for coverage in a QHP upon annual redetermination, such enrollee will remain in the QHP selected the previous year unless such enrollee terminates coverage from such plan, including termination of coverage in connection with enrollment in a different QHP, in accordance with 45 CFR § 155.430.

§ 155.340 Administration of advance payments of the premium tax credit and cost-sharing reductions.

(a) *Requirement to provide information to enable advance payments of the premium tax credit and cost-sharing reductions.* In the event that the Exchange determines that an applicant is eligible for advance payments of the premium tax credit or cost-sharing reductions or that an enrollee's eligibility has changed, the Exchange must, simultaneously and at such time and in such manner as HHS may specify—

(1) Notify the issuer of the applicable QHP;

(2) Transmit eligibility and enrollment information to HHS necessary to enable HHS to begin, end, or change the individual's advance payments of the premium tax credit or cost-sharing reductions;

(3) Transmit information necessary to enable the issuer of the QHP to implement, discontinue the implementation, or modify the level of an individual's advance payments of the premium tax credit or cost-sharing reductions, as applicable, including:

(i) The dollar amount of the individual's advance payment; and

(ii) The individual's cost-sharing reductions eligibility category.

(b) *Requirement to provide information related to employer responsibility.*

(1) In the event that the Exchange determines that an individual is eligible for advance payments of the premium tax credit or cost-sharing reductions based in part on a finding that an individual's employer does not provide minimum essential coverage, or provides minimum essential coverage that is unaffordable, as specified in 26 CFR 1.36B–2(c)(3)(v), or does not meet the minimum value requirement specified in 26 CFR 1.36B–2(c)(3)(vi), the Exchange must transmit the individual's name and taxpayer identification number to HHS.

(2) If an enrollee for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions notifies the Exchange that he

or she has changed employers, the Exchange must transmit the enrollee's name and Social Security number to HHS.

(3) In the event that an individual for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions disenrolls from a QHP through the Exchange during a benefit year, the Exchange must—

(i) Transmit the individual's name and Social Security number, and the effective date of coverage termination, to HHS, which will transmit it to the Secretary of the Treasury; and

(ii) Transmit the individual's name and the effective date of the termination of coverage to his or her employer.

(c) *Requirement to provide information related to reconciliation of advance payments of the premium tax credit.* The Exchange must comply with the requirements specified in section 36B(f)(3) of the Code and 26 CFR 1.36B–5 regarding reporting to the IRS and to taxpayers.

§ 155.345 Coordination with Medicaid, CHIP, the Basic Health Program, and the Pre-existing Condition Insurance Program.

(a) *Agreements.* The Exchange must enter into agreements with Medicaid or CHIP agencies as are necessary to fulfill the requirements of this subpart.

(b) *Responsibilities related to individuals potentially eligible for Medicaid based on other information or through other coverage groups.*

(1) The Exchange must conduct basic screening for an applicant requesting an eligibility determination for insurance affordability programs under § 155.310(b) of this subpart to determine if an applicant is potentially eligible for Medicaid based on factors not otherwise considered in this subpart, including disability, and must transmit to the State Medicaid agency promptly and without undue delay the name of such applicant, other identifying information, and all other information provided on the application submitted by or on behalf of such applicant to, and obtained and verified by, the Exchange.

(2) If the applicant is otherwise eligible for advance payments of the premium tax credit and cost-sharing reductions, the Exchange must provide the applicant with such advance payments of the premium tax credit or cost-sharing reductions until the other program notifies the Exchange that the applicant is eligible for such program.

(c) *Individuals requesting additional screening.* The Exchange must—

(1) Provide an opportunity for an applicant to request a full determination of eligibility for Medicaid based on eligibility criteria that are not described in § 155.305.

(2) If an applicant requests such a determination, transmit promptly and without undue delay the applicant's name, other identifying information, and all other information provided on the application submitted by or on behalf of such applicant to, and obtained and verified by, the Exchange to the State Medicaid agency.

(d) *Determination of eligibility for individuals submitting applications directly to an agency administering Medicaid, CHIP, or the Basic Health Program.* The Exchange, in consultation with the agencies administering Medicaid, CHIP, and the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange, must establish procedures to ensure that an eligibility determination for enrollment in a QHP, advance payments of the premium tax credit and cost-sharing reductions is performed when an application is submitted directly to an agency administering Medicaid, CHIP, or the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange, and the applicant is determined ineligible for such programs based on the applicable MAGI. Such procedures must—

(1) Not require the Exchange to duplicate any eligibility and verification findings already made by the agency administering Medicaid, CHIP, or the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange, for enrollment in a QHP through the Exchange, advance payments of the premium tax credit, or cost-sharing reductions; and

(2) Provide for following the same eligibility determination processes for eligibility determinations regardless of the agency that initially receives an application.

(e) *Standards for sharing information between the Exchange and the agencies administering Medicaid, CHIP, and the Basic Health Program.*

(1) The Exchange must utilize a secure electronic interface to exchange data with the agencies administering Medicaid, CHIP, and the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange, for the purpose of determining eligibility, including verification as to whether an applicant for advance payments of the premium tax credit or cost-sharing reductions has been determined eligible for Medicaid, CHIP, or the Basic Health Program as specified in § 155.320(b)(2) of this subpart and other functions required under this subpart.

(2) *Model agreements.* The Exchange may utilize any model agreements as established by HHS for the purpose of sharing data as described in this section.

(f) *Transition from the Pre-existing Condition Insurance Program (PCIP).* The Exchange must follow procedures established in accordance with 45 CFR 152.45 to transition PCIP enrollees to the Exchange to ensure that there are no lapses in health coverage.

§ 155.350 Special eligibility standards and process for Indians.

(a) *Eligibility for cost-sharing reductions.*

(1) The Exchange must determine an applicant who is an Indian eligible for cost-sharing reductions if he or she—

(i) Meets the requirements specified in § 155.305(a) of this subpart; and

(ii) Has household income for the taxable year that does not exceed 300 percent of the FPL.

(2) The Exchange may only provide cost-sharing reductions to an individual who is an Indian if he or she is enrolled in a QHP through the Exchange.

(b) *Special cost-sharing rule for Indians regardless of income.* The Exchange must determine an applicant eligible for the special cost-sharing rule described in section 1402(d)(2) of the Affordable Care Act if he or she is an Indian, without requiring the applicant to request an eligibility determination for cost-sharing reductions in accordance with § 155.310(b) of this subpart in order to qualify for this rule.

(c) *Verification related to Indian status.* To the extent that an applicant attests that he or she is an Indian, the Exchange must verify such attestation by—

(1) Utilizing any relevant documentation verified in accordance with § 155.315(e) of this subpart;

(2) Relying on any electronic data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification; or

(3) To the extent that approved data sources are unavailable, an individual is not represented in available data sources, or data sources conflict with an applicant's attestation, the Exchange must follow the procedures specified in § 155.315(e) of this subpart and verify documentation provided by the applicant in accordance with the standards for acceptable documentation provided in section 1903(x)(3)(B)(v) of the Social Security Act.

§ 155.355 Right to appeal.

(a) *Individual appeals.* The Exchange must include the notice of the right to appeal and instructions regarding how to file an appeal in any determination notice issued to the applicant pursuant to § 155.310(f), § 155.330(d), or § 155.335(h) of this subpart.

(b) [Reserved]

2. Part 157 is added as follows:

PART 157—EMPLOYER INTERACTIONS WITH EXCHANGES AND SHOP PARTICIPATION

Subpart A—General Provisions

Sec.

Subpart B—[Reserved]

Subpart C—Standards for Qualified Employers

Authority: Title I of the Affordable Care Act, Sections 1311, 1312, 1321, 1411, 1412.

Subpart A—General Provisions

§ 157.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act:

1311. Affordable choices of health benefits plans.

1312. Consumer Choice.

1321. State flexibility in operation and enforcement of Exchanges and related requirements.

1411. Procedures for determining eligibility for Exchange participation, advance payments of the premium tax credit and cost-sharing reductions, and individual responsibility exemptions.

1412. Advance determination and payment of the premium tax credit and cost-sharing reductions.

(b) *Scope.* This part establishes the requirements for employers in connection with the operation of Exchanges.

§ 157.20 Definitions.

The following definitions apply to this part, unless otherwise indicated:

Qualified employee has the meaning given to the term in § 155.20.

Qualified employer has the meaning given to the term in § 156.20.

Small employer has the meaning given to the term in § 155.20.

Subpart B—[Reserved]

Subpart C—Standards for Qualified Employers

§ 157.200 Eligibility of qualified employers to participate in a SHOP.

(a) *General requirement.* Only a qualified employer may participate in the SHOP in accordance with 45 CFR 155.710.

(b) *Continuing participation for growing small employers.* A qualified employer may continue to participate in the SHOP if it ceases to be a small employer pursuant to 45 CFR 155.710.

(c) *Participation in multiple SHOPs.* A qualified employer may participate in multiple SHOPs pursuant to 45 CFR 155.710.

§ 157.205 Qualified employer participation process in a SHOP.

(a) *General requirements.* When joining the SHOP, a qualified employer must comply with the requirements, processes, and timelines set forth by this part and must remain in compliance for the duration of the employer's participation in the SHOP.

(b) *Selecting QHPs.* During an election period, a qualified employer may make coverage in a QHP available through the SHOP in accordance with the processes developed by the SHOP pursuant to 45 CFR 155.705.

(c) *Information dissemination to employees.* A qualified employer participating in the SHOP must disseminate information to its qualified employees about the process to enroll in a QHP through the SHOP.

(d) *Payment.* A qualified employer must submit any contribution towards the premiums of any qualified employee according to the standards and processes described in 45 CFR 155.705.

(e) *Employees hired outside of the initial or annual open enrollment period.* Qualified employers must provide employees hired outside of the initial or annual open enrollment period with a specified period to seek coverage in a QHP beginning on the first day of employment and information about the enrollment process pursuant to 45 CFR 155.725.

(f) *New employees and changes in employee eligibility.* Qualified employers participating in the SHOP must provide the SHOP with information about individuals or employees whose eligibility status for coverage purchased through the employer in the SHOP has changed, including:

(1) Newly eligible individuals and employees; and

(2) Loss of qualified employee status.

(g) *Annual employer election period.* Qualified employers must adhere to the annual employer election period to change the program participation for the next plan year described in 45 CFR 155.725(c).

(h) *Employer participation renewal.* If a qualified employer does not take action during the annual employer election period, and remains eligible to continue participating in the SHOP, such qualified employer will, for the next plan year, continue to offer the same plan, coverage level (as defined by section 1302(d)(1) of the Affordable Care Act), or combination of plans at the same contribution level as selected during the previous year, if such options remain available.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 4, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 9, 2011

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–20776 Filed 8–12–11; 8:45 am]

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Part IV

Office of Management and Budget

North American Industry Classification System; Revision for 2012; Notice

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System; Revision for 2012

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of NAICS 2012 Final decisions.

SUMMARY: The North American Industry Classification System (NAICS) is a system for classifying establishments (individual business locations) by type of economic activity. Mexico's Instituto Nacional de Estadística y Geografía (INEGI), Statistics Canada, and the United States Office of Management and Budget (OMB), through its Economic Classification Policy Committee (ECPC), collaborate on NAICS to make the industry statistics produced by the three countries comparable. Under 31 U.S.C. 1104(d) and 44 U.S.C. 3504(e), the Office of Management and Budget is announcing its final decisions for adoption of NAICS revisions for 2012 as recommended by the Economic Classification Policy Committee in OMB's notice for solicitation of comments published in Part IV of the May 12, 2010, **Federal Register** (75 FR 26856–26869). In the May 12, 2010, notice, OMB's ECPC recommended classification guidance for distribution centers, logistics service providers, sales offices of publishers, and units that outsource physical transformation activities. The ECPC also provided a list of recommended changes to the utilities, construction, manufacturing, wholesale trade, retail trade, and food services and accommodations sectors of NAICS United States for 2012. In response to public comments received on the recommendations, the ECPC withdrew the proposal to split the semiconductor industry into two new industries and OMB is modifying two additional ECPC recommendations to better align with the public comments. More details on these decisions are presented in the **SUPPLEMENTARY INFORMATION** section below.

DATES: *Effective Date:* Federal statistical establishment data published for reference years beginning on or after January 1, 2012, should be published using the 2012 NAICS United States codes. Publication of a *2012 NAICS United States Manual* or supplement is planned for January 2012.

ADDRESSES: You should send correspondence about the adoption and implementation of the 2012 NAICS as shown in the May 12, 2010, **Federal Register** notice, and modified by Attachments 1 and 2 of this notice, to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, *telephone number*: (202) 395–3093, *FAX number*: (202) 395–7245. Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an e-mail comment, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice. You may send comments via e-mail to *naics@omb.eop.gov* with subject NAICS12. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

You should address inquiries about the content of industries or requests for electronic copies of the 2012 NAICS tables to: John B. Murphy, Assistant Division Chief for Classification Activities, Service Sector Statistics Division, Bureau of the Census, Room 8K157, Washington, DC 20233, *telephone number*: (301) 763–5172, *FAX number*: (301) 763–8636, or by *e-mail: John.Burns.Murphy@census.gov.*

Electronic Availability and Comments:

This document and the May 12, 2010, **Federal Register** notice are available on the Census Bureau's Web site at *http://www.census.gov/naics*. The revision for 2012 will result in a number of code and title changes for NAICS. For that reason, a full list of NAICS 2012 industry codes and titles will be posted on the web site prior to publication of the *NAICS United States, 2012 Manual* for reference and implementation planning. This WWW page also links to previous NAICS **Federal Register** notices and related documents.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, 10201 New Executive Office Building, Washington, DC 20503, *e-mail address*: *pbugg@omb.eop.gov* with subject NAICS12, *telephone number*: (202) 395–3095, *FAX number*: (202) 395–7245. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: NAICS was jointly developed by Canada, Mexico, and the United States for the 1997 NAICS. For the 2012 revision, the three countries focused on refining the structure of the manufacturing sector and providing additional classification guidance in response to observed changes in the economies of each country.

The May 12, 2010, **Federal Register** notice: (1) Summarized the background for the proposed revisions to NAICS 2012 in Part I; (2) contained a summary of public comments to the first **Federal Register** notice (74 FR 764–768, January 7, 2009) for the 2012 NAICS revision process in Part II; (3) detailed the structure changes recommended by the ECPC in Part III; and (4) provided a comprehensive listing of changes for national industries and their links to NAICS 2007 industries in Part IV.

In response to the ECPC recommendations in the May 12, 2010, **Federal Register**, the Semiconductor Industry Association (SIA) expressed opposition to the recommended split of NAICS 334413, Semiconductor and Related Device Manufacturing. The ECPC withdrew the recommended split based on those comments. The Semiconductor and Related Device Manufacturing industry will remain unchanged for NAICS 2012.

OMB will modify two additional ECPC recommendations as published in the May 12, 2010, **Federal Register** based on comments from the public. The first modification is for the structure but not the content of the ECPC recommendation for the printing industries. The following industries for printing will be used in NAICS United States, 2012: 323111, Commercial Printing (except Screen and Book); 323113, Screen Printing; and 323117, Book Printing. The second modification is to the structure and content of the industries for nonferrous foundries. OMB will retain NAICS 331524, Aluminum Foundries (except Die-Casting) and will create a residual industry, 331529 for Other Nonferrous Metal Foundries (except Die-Casting).

Two final changes are the correction of typographical errors in Tables 1 and 2 of the May 12, 2010, **Federal Register** notice. In Table 1, NAICS 2007 industry 443111, Household Appliance Stores is being recoded to NAICS 2012 443141, Household Appliance Stores with no change in content. The May 12, 2010, **Federal Register** incorrectly included a ''pt.'' indicator on that recoded industry. In Table 2, the titles for the 4-digit and

5-digit Restaurants and Other Eating Places were incorrectly listed as 7225 Restaurants and 72251 Restaurants. In fact, the titles should be 7225 Restaurants and Other Eating Places, and 72251 Restaurants and Other Eating Places. Each of these changes from the May 12, 2010, **Federal Register** is shown in the corresponding Table 1 or 2 at the end of this notice.

Factoryless Goods Producers

Recent years have witnessed the rapid and widespread incorporation of specialization into goods manufacturing as global competition has motivated producers to seek more efficient production methods. This has resulted in outsourcing manufacturing transformation activities (i.e., the actual physical, chemical or mechanical transformation of inputs into new outputs) to specialized establishments, both foreign and domestic. Such outsourcing can lead to inconsistent classification of business establishments in official statistics when the standard classification systems used by those programs do not provide sufficient guidance.

NAICS 2007 does not provide clear guidance on classification of units that control the entire process but subcontract out all manufacturing transformation activities. To address this shortcoming, the ECPC chartered a subcommittee to study the issue and provide classification guidance that will result in consistent classification of outsourcing establishments and comparable data for these outsourcing establishments across various statistical programs. The work involved defining the types of outsourcing units that exist and that require classification guidance, examining alternative classification schemes, and identifying their effects on existing economic statistics. As a result of this research, the ECPC decided to recommend classification of establishments that bear the overall responsibility and risk for bringing together all processes necessary for the production of a good in the manufacturing sector, even if the actual transformation is 100 percent outsourced.

OMB recognizes that, from a conceptual standpoint, at the most aggregate level, goods producers arrange for and bring together all of the factors of production necessary to produce a good. Goods producers accept the entrepreneurial risk of producing and bringing goods to market. When individual steps in the complete process are outsourced, an establishment should remain classified in the manufacturing sector. Accordingly, OMB has accepted the ECPC recommendation that factoryless goods producers (FGPs) be classified in manufacturing.

Data users should note that the classification of establishments that outsource manufacturing transformation in the Manufacturing Sector of NAICS 2012 affects multiple agencies and programs within those agencies. OMB recognizes that, as with any new concept, there will likely be some differences in interpretation across agencies during the implementation process, and that differences in interpretation may lead to data inconsistencies. To address this challenge, OMB fostered the formation of a multi-agency subgroup of the ECPC to ensure consistent implementation of this clarification to the manufacturing sector of NAICS 2012. The implementation group includes members from various program offices in the Bureau of Economic Analysis, the Bureau of Labor Statistics, and the Census Bureau.

It is important to both statistical agencies and other data users to be able to distinguish between definitional and economic changes so that they can create continuous time series and accurately analyze data changes over time. The inclusion of revenues from FGP activities in manufacturing will effectively change the traditional definition of manufacturing, and is expected to affect statistical estimates at the national, State and regional levels. This includes statistical outputs such as the value of shipments for manufacturing industries, value of sales for wholesale trade industries, product data, material costs and other expenses, price indexes, labor and multifactor productivity series, and the national accounts. The definitional clarification will be particularly important for industries that are characterized by significant amounts of manufacturing transformation outsourcing as indicated in the examples below.

The following paragraphs present a partial list of the statistics that will be affected by the classification guidance for establishments that outsource transformation activities.

Bureau of Labor Statistics Producer Price Index Program (PPI)

For lower level price indexes where the PPI does not currently price products that are produced using foreign contractors, products will be moved from wholesale trade with margin prices to manufacturing with product prices. For these products, the PPI will be able to reflect price changes when an establishment begins to outsource some of its production.

The PPI uses Economic Census data to calculate weights for its aggregation structures. As a result, the price movements for products and industries with significant FGP activity will increase in relative importance and represent a greater share of aggregate price index movement.

Bureau of Labor Statistics Major Sector Productivity and Industry Productivity

Manufacturing and wholesale trade industry outputs and inputs (quantity, cost) will be affected by the shift of establishments identified as FGPs from wholesale trade to manufacturing. This will affect both labor productivity and multifactor productivity measures. These changes will require a transitional adjustment (bridge) to exclude production that occurs in a foreign country for historical consistency in time series.

Bureau of Labor Statistics Quarterly Census of Employment and Wages

The classification of FGP establishments in manufacturing will potentially shift monthly employment, total quarterly wages, and the number of establishments from other NAICS sectors into the manufacturing sector.

Bureau of Economic Analysis Industry Accounts

In the Bureau of Economic Analysis (BEA) industry accounts, gross output for the manufacturing sector will be higher because FGP output will move from the wholesale trade sector to the manufacturing sector. Theoretically, the combined manufacturing and wholesale trade value added would remain unchanged. However, because shipments of FGPs that own their material inputs are currently not included in the Census manufacturing data and are instead classified to the wholesale trade industry, BEA is most likely not capturing all output or value added for these specific establishments. The classification of FGPs in manufacturing will capture these ''missed'' shipments and value added will be affected accordingly.

Bureau of Economic Analysis International Area

BEA's international area uses NAICS-based classifications to publish enterprise statistics for multi-national companies (MNCs) by industry. NAICS is used to publish statistics on MNC research and development and on foreign-owned U.S. establishments from links of BEA and Census Bureau data. The international guidelines recommend ownership of the material inputs at the time of processing as the

key to determining whether cross-border manufacturing services occur. It is important to exclude any foreign production from GDP.

Bureau of Economic Analysis National Income and Product Accounts (NIPA)

BEA's NIPA accounts benchmark their data to the Input-Output table every five years (I–O based on Economic Census data). A commodity-flow method is used in deriving many NIPA categories, such as investment in equipment. Classifying FGPs in manufacturing has the potential to significantly affect these estimates, especially if the trade flows are not appropriately accounted for. A fully consistent and integrated set of national and international accounts is important to avoid measurement inconsistencies.

Bureau of Economic Analysis Regional Accounts

It is important that the output of FGPs and manufacturing service providers (MSPs) be recorded in the State (or Metropolitan Area) where the transformational activity takes place. An implementation that assigns this output to a headquarters location geographically separate from the location of activity will not be ideal.

Census Bureau Economic Programs

The classification of FGPs to manufacturing will affect a wide range of statistical outputs from the Census Bureau including industry statistics from the Economic Census; Annual and Monthly Wholesale Trade Surveys; the Annual Survey of Manufacturers; Monthly Manufacturers' Inventories, Shipments, and Orders (M3); Manufacturing and Energy Consumption Survey (MECS); County Business Patterns (CBP); Quarterly Survey of Plant Capacity Utilization (QPC); Annual Capital Expenditures Survey (ACES); Business R&D and Innovation Survey (BRDIS); Business Expense Survey (BES); Quarterly Financial Report (QFR); and other series that are published using NAICS. The level of impact will vary based on the intensity of outsourcing.

OMB understands the considerable cost and lead time required to implement this decision. The ECPC will continue the multi-agency subgroup and re-charter the subgroup to plan and oversee the implementation of this decision in a coordinated fashion that will keep definitions comparable across programs to the extent possible. OMB also acknowledges that this conceptual clarification will take time to implement consistently using statistically sound methods. The decision to classify factoryless goods producers in manufacturing will be mentioned in the *NAICS United States 2012 Manual.* Statistical programs are expected to begin the work of implementing this change as soon as possible, and to the extent possible apply the implementation to data releases as data collection and processing system changes allow, but beginning no later than 2017. In the interim, statistical agencies should undertake outreach prior to implementation, and include a clear statement for data users when the change is implemented. Users will find information about the plans and progress on implementation at *http://www.census.gov/naics.*

Final Decisions

After taking into consideration other comments submitted in direct response to the May 12, 2010, **Federal Register** notice, as well as benefits and costs, and after consultation with the Economic Classification Policy Committee, Mexico's Instituto Nacional de Estadística y Geografía (INEGI) and Statistics Canada, OMB made no other changes to the scope and substance of the ECPC's recommendations outlined in the May 12, 2010, **Federal Register** notice. The other comments that were received supported proposed changes, suggested changes that would be incompatible with the production-based foundation of NAICS such as proposals for modeling and simulation industries, or suggested changes that would be incompatible with proposals that were accepted.

OMB's final decisions regarding revision of NAICS for 2012 are to adopt the proposals contained in the May 12, 2010, **Federal Register**, with the changes detailed in the preceding paragraphs. Attachments 1 and 2 below show the corrections for Tables 1 and 2 in the May 12, 2010, **Federal Register** notice based on these changes.

Cass R. Sunstein,

Administrator, Office of Information and Regulatory Affairs.

Attachment 1

TABLE 1—2007 NAICS UNITED STATES MATCHED TO 2012 NAICS UNITED STATES

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
323110	Commercial Lithographic Printing	pt	323111	Commercial Printing (except Screen and Books).
323111	Commercial Gravure Printing	pt	323111	Commercial Printing (except Screen and Books).
323112	Commercial Flexographic Printing	pt	323111	Commercial Printing (except Screen and Books).
323114	Quick Printing	pt	323111	Commercial Printing (except Screen and Books).
323115	Digital Printing	pt	323111	Commercial Printing (except Screen and Books).
323116	Manifold Business Forms Printing	pt	323111	Commercial Printing (except Screen and Books).
323118	Blankbook, Looseleaf Binders, and Devices Manufacturing.	pt	323111	Commercial Printing (except Screen and Books).
323119	Other Commercial Printing	pt	323111	Commercial Printing (except Screen and Books).
331524	Aluminum Foundries (except Die-Casting)		331524	Aluminum Foundries (except Die-Casting).
331525	Copper Foundries (except Die-Casting)	pt	331529	Other Nonferrous Metal Foundries (except Die-Casting).
331528	Other Nonferrous Foundries (except Die-Casting)	pt	331529	Other Nonferrous Metal Foundries (except Die-Casting).
334413	Semiconductor and Related Device Manufacturing		334413	Semiconductor and Related Device Manufacturing.
443111	Household Appliance Stores		443141	Household Appliance Stores.

pt.—Part of 2012 NAICS United States industry.

Attachment 2

TABLE 2—2012 NAICS UNITED STATES MATCHED TO 2007 NAICS UNITED STATES

2012 NAICS code	2012 NAICS description	Status code	2007 NAICS code	2007 NAICS description
323111	Commercial Printing (except Screen and Books) ...	R	323110	Commercial Lithographic Printing
			323111	Commercial Gravure Printing.
			323112	Commercial Flexographic Printing.
			323114	Quick Printing.
			323115	Digital Printing.
			323116	Manifold Business Forms Printing.
			323118	Blankbook, Looseleaf Binders, and Devices Manufacturing.
			323119	Other Commercial Printing.
331524	Aluminum Foundries (except Die-Casting)	.....	331524	Aluminum Foundries (except Die-Casting).
331529	Other Nonferrous Metal Foundries (except Die-Casting).	N	331525	Copper Foundries (except Die-Casting)
			331528	Other Nonferrous Foundries (except Die-Casting).
334413	Semiconductor and Related Device Manufacturing	.....	334413	Semiconductor and Related Device Manufacturing.
7225	Restaurants and Other Eating Places			
72251	Restaurants and Other Eating Places			

R—2007 NAICS industry code reused with different content; N—new NAICS industry for 2012.

[FR Doc. 2011–20997 Filed 8–16–11; 8:45 am]

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Reader Aids

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