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Federal Register

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### 7 CFR Part 636

**RIN 0578–AA49**

### Wildlife Habitat Incentive Program

**AGENCY:** Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS), an agency of the United States Department of Agriculture (USDA), is issuing a final rule for the Wildlife Habitat Incentive Program (WHIP). This final rule sets forth how NRCS, using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC), will implement WHIP in response to changes made by the Food, Conservation, and Energy Act of 2008 (2008 Act). NRCS published an interim final rule with request for comment in the **Federal Register** on January 16, 2009, an amendment was published on March 12, 2009, with a request for public comment, and another amendment was published on July 15, 2009, with a request for public comment. NRCS is publishing a final rule that addresses the comments received on the interim final rule and to clarify policies to improve program implementation.

**DATES:** *Effective Date:* The rule is effective November 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250; Telephone: (202) 720–1844; Fax: (202) 720–4265.

Persons with disabilities who require alternative means for communicating (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

## Regulatory Certifications

*Executive Order 12866*

Pursuant to Executive Order 12866, this final rule has been determined to be a significant regulatory action. The administrative record is available for public inspection at the Department of Agriculture, 1400 Independence Avenue, SW., Room 5241 South Building, Washington, DC 20250. In accordance with Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the regulatory certifications of the preamble, and a copy of the analysis is available upon request from Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act is not applicable to this final rule because NRCS is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

*Environmental Analysis*

In compliance with the National Environmental Policy Act, a Programmatic Environmental Assessment (EA) was prepared in association with the interim final rule. The analysis determined there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement was not required to be prepared (40 CFR 1508.13). The Programmatic EA and Finding of No Significant Impact (FONSI) were made available for public review for 60 days, which also coincided with the public review timeframe for the interim final rule. Comments were received on the Programmatic EA and FONSI, and responses to those comments have been prepared and can be reviewed along with a copy of the EA and FONSI from the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/*. Additional program requirements that were not in the interim final rule, and that are now in the final rule, are minor program element changes that do not affect the overall effects or analysis in the Programmatic EA. As a result, preparation of a supplemental Programmatic EA has been determined not to be necessary.

*Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis that this final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. WHIP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this final rule will not result in adverse civil rights implications for women, minorities, and persons with disabilities.

Copies of the Civil Rights Impact Analysis are available from Albert Cerna, National Wildlife Habitat Incentive Program Manager, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5233 South Building, Washington, DC 20250, or electronically at *http://www.nrcs.usda.gov/Programs/farmbill/2008/civilrightsimpact.html*.

*Paperwork Reduction Act*

Section 2904 of the 2008 Act requires that the implementation of programs authorized under Title II of the Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

*Government Paperwork Elimination Act*

NRCS is committed to compliance with the Government Paperwork

Elimination Act and the Freedom to E-File Act, which requires government agencies in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

*Executive Order 12988*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent such laws are inconsistent with this rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

*Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994*

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

*Unfunded Mandates Reform Act of 1995*

NRCS assessed the affects of this final rule on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more in any one year (adjusted for inflation) by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

*Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this final rule does not have Federalism implications.

*Executive Order 13175*

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this final rule on Indian tribal governments and concluded that this final rule will not negatively affect Indian tribal governments or their communities. The rule neither imposes substantial direct compliance costs on tribal governments nor preempts tribal law. However, NRCS plans to undertake a series of at least six regional tribal consultation sessions before December 30, 2010, on the impact of NRCS conservation programs and services on tribal governments and their members to establish a baseline of consultation for future actions. Reports from these sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. NRCS will respond in a timely and meaningful manner to all tribal governments' requests for consultation.

*Small Business Regulatory Enforcement Fairness Act of 1996*

Section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of Title 5, U.S.C., which allows an agency to forego the Small Business Regulatory Enforcement Fairness Act of 1996 usual 60-day congressional review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the congressional intent to have the conservation programs authorized or amended by Title II of the 2008 Act in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

*Section 2708 of the 2008 Act*

Section 2708, "Compliance and Performance," of the 2008 Act added a paragraph to section 1244(g) of the Food Security Act of 1985, as amended entitled, "Administrative Requirements for Conservation Programs," which states the following: "(g) Compliance and performance.—For each conservation program under Subtitle D, the Secretary shall develop procedures—

(1) To monitor compliance with program requirements;

(2) To measure program performance;

(3) To demonstrate whether long-term conservation benefits of the program are being achieved;

(4) To track participation by crop and livestock type; and

(5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004)."

This new provision presents in one place the accountability requirements placed on the agency as it implements conservation programs and reports on program results. The requirements apply to all programs under Subtitle D, including the Wetlands Reserve Program, the Conservation Security Program, the Conservation Stewardship Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Environmental Quality Incentives Program (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed Initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the Food Security Act of 1985, as amended and the agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of section 1244(g) of the Food Security Act of 1985, as amended and agency expectations for improving its ability to report on each program's performance and the achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the agency accountability requirements as outlined in section 1244(g) of the Food Security Act of 1985, as amended.

*Monitor compliance with program requirements.* NRCS has established application procedures to ensure that participants meet eligibility requirements and follow-up procedures to ensure that participants are complying with the terms and conditions of their contractual arrangement with the government, and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies are set forth in agency guidance (CPM–440–512 and CPM–440–517) (*http://directives.sc.egov.usda.gov/*).

The program requirements applicable to participants that relate to compliance are set forth in these regulations in § 636.4 "Program requirements," § 636.8 "WHIP Plan of Operations," and § 636.9 "Cost-share agreements." These sections make clear the general program eligibility requirements, participant obligations for implementing a WHIP plan of operations, participant cost-share agreement obligations, and

requirements for operating and maintaining WHIP-funded conservation improvements.

*Measure program performance.* Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Sec. 1116) and guidance provided by OMB Circular A–11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools, and the information is available at *http://ias.sc.egov.usda.gov/PRSHOME/.* Program performance also is reported annually to Congress and the public through the annual performance budget, annual accomplishments report, and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in agency guidance (GM–340–401 and GM–340–403) (*http://directives.sc.egov.usda.gov/*).

The conservation actions undertaken by participants are the basis for measuring program performance—specific actions are tracked and reported annually, while the effects of those actions relate to whether the long-term benefits of the program are being achieved. The program requirements applicable to participants that relate to undertaking conservation actions are set forth in these regulations in § 636.8 "WHIP Plan of Operations," and § 636.9 "Cost-share agreements." These sections make clear participant obligations for implementing, operating, and maintaining WHIP-funded conservation improvements, which in aggregate result in the program performance that is reflected in agency performance reports.

*Demonstrate whether long-term conservation benefits of the program are being achieved.* Demonstrating the long-term natural resource benefits achieved through conservation programs is subject to the availability of needed data, the capacity and capability of modeling approaches, and the external influences that affect actual natural resource condition. While NRCS captures many measures of "output" data, such as acres of conservation practices, it is still in the process of developing methods to quantify the contribution of those outputs to environmental outcomes. NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, a connection between these data and specific conservation programs (with the exception of the Conservation Reserve Program, since 1987 the NRI has reported acreage enrolled in CRP) has been lacking. In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through agency field-level business tools to help produce estimates of environmental effects accomplished through agency programs, such as WHIP. In 2006, a Blue Ribbon panel evaluation of CEAP strongly endorsed the project's purpose, but concluded "CEAP must change direction" to achieve its purposes. (See Soil and Water Conservation Society. 2006. Final Report from the Blue Ribbon Panel Conducting an External Review of the U.S. Department of Agriculture Conservation Effects Assessment Project. Ankeny, IA: Soil and Water Conservation Society. This review is available at *http://www.nrcs.usda.gov/technical/NRI/ceap/.*) In response, CEAP has focused on priorities identified by the Panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status, is available at *http://www.nrcs.usda.gov/technical/NRI/ceap/.*

Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. Natural resource inventory and assessment and performance measurement and reporting policies are set forth in agency guidance (GM–290–400; GM–340–401; and GM–340–403) (*http://directives.sc.egov.usda.gov/*).

*Demonstrating the long-term conservation benefits of conservation programs is an Agency responsibility.* Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation practices and systems applied by participants under the program. The program requirements applicable to participants that relate to producing long-term conservation benefits are described previously under "measuring program performance," *i.e.,* § 636.8 "WHIP Plan of Operations," and § 636.9 "Cost-share agreements." These and related program management procedures supporting program implementation are set forth in agency guidance (CPM–440–512 and CPM–440–515).

*Coordinate these actions with the national conservation program authorized under the Soil and Water Resources Conservation Act (RCA).* The 2008 Act reauthorized and expanded on a number of elements of the RCA related to evaluating program performance and conservation benefits. Specifically, the 2008 Act added a provision stating, "Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation."

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in agency guidance (GM–290–400; CPM–440–525; and GM–130–402) (*http://directives.sc.egov.usda.gov/*).

The coordination of the previously described components with the RCA is an agency responsibility and is not reflected in these regulations. However, it is likely that results from the RCA process will result in modifications to the program and performance data collected, to the systems used to acquire data and information, and potentially to the program itself. Thus, as the Secretary proceeds to implement the RCA in accordance with the statute, the approaches and processes developed will improve existing program performance measurement and outcome reporting capability and provide the foundation for improved implementation of the program performance requirements of section 1244(g) of the Food Security Act of 1985, as amended.

*Economic Analysis—Executive Summary*

WHIP provides direct technical and financial assistance to improve fish and wildlife habitat on eligible agricultural, nonindustrial private forest land (NIPF), and Indian land. The focus of the program is on national, regional, and State-directed fish and wildlife priorities, including rare and declining species. These priorities are established with input from the regional, State, and local stakeholders through the State Technical Committee. Because these efforts involve both onsite and offsite specific impacts, and these impacts

affect a host of non-market valued attributes ecosystem services, performing a traditional benefit-cost analysis is challenging. Even with these limitations, a benefit-cost analysis offers a means to identify the main costs and benefits and explore policy and program alternatives.

The primary costs associated with WHIP include the cost-share outlays by NRCS and the matching funds of the participant to fully pay for the restoration and improvements in fish and wildlife habitat within the agricultural, forestry operation, or Indian land. These primary costs must then be compared with the benefits of the habitat improvement realized through these efforts, mainly the improvements of the flow of ecological goods and services and provision of non-market valued amenities, such as more scenic views, as well as providing fish and wildlife habitat.

The results of this benefit-cost analysis suggest that the WHIP assistance to participants will result in positive net benefits, especially in areas where fish and wildlife habitat is deteriorating or being lost. The changes to WHIP made by the 2008 Act do not change this conclusion. Copies of the economic analysis may be obtained from Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250.

**Discussion of Program**

WHIP is a voluntary program administered by NRCS using the funds and authorities of the CCC. WHIP is available in any of the 50 States, District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands. Through WHIP, NRCS provides technical and financial assistance to participants to develop upland, wetland, and aquatic wildlife habitat, as well as fish and wildlife habitat on other areas and to develop habitat for at-risk species, including threatened and endangered species. NRCS first allocated funds for WHIP in 1997. Over the life of the program, NRCS has entered into over 29,000 cost-share agreements that cover over 4.7 million acres.

WHIP was originally authorized under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127). In 1997, NRCS published regulations to implement WHIP at 7 CFR part 636. Section 2502 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) repealed the original WHIP authority and established a new WHIP under section 1240N of the Food Security Act of 1985, as amended. Section 2602 of the 2008 Act made further changes to WHIP.

These recent changes included restricting eligible lands to private agricultural land, NIPF, and Indian land; clarifying the phrase "other types of habitat" to include habitat developed on pivot corners and irregular areas; increasing the proportion of annual funds available for long-term agreements that are 15 years or longer to not more than 25 percent; providing the Secretary with discretionary authority to address State, regional, and national conservation initiatives; and establishing a $50,000 annual payment limitation per person or legal entity. The WHIP statute uses tribal, but NRCS will use Indian and tribal interchangeably to be consistent with other programs.

**Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006**

The Office of Management and Budget recently published two regulations, 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements beginning October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering System (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and sub recipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier sub awards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 apply to certain awards of financial assistance provided under WHIP. Therefore, NRCS has incorporated, by reference, these registration and reporting requirements at § 636.4 and will include the requisite provisions as part of the WHIP contract.

**Analysis of Public Comment**

On January 16, 2009, NRCS published an interim final rule in the **Federal Register**. On March 12, 2009, NRCS published an amendment to the interim final rule addressing the incorrect application of the $50,000 annual payment limitation to joint operations and requesting public comment on how USDA's conservation programs can further the Nation's ability to increase renewable energy production and conservation, mitigate the effects and adapt to climate change, and reduce net carbon and greenhouse gas (GHG) emissions.

Following this amendment and request for comment, NRCS published an additional amendment to the interim final rule, with a request for comment, on July 15, 2009, redefining the term agricultural lands to be more inclusive of lands that have the potential to produce agricultural products or livestock. The comments received on the interim final rule and amendments were consolidated and are addressed in this public comment analysis. In total, 43 comments were received during the comment periods; 3 were from individuals, 15 from State agencies, 2 from Federal agencies, 2 from Indian tribes, and 23 from nongovernmental organizations. All comments received are available for review at *http://www.nrcs.usda.gov/programs/farmbill/2008/public-comments.html.*

The discussion that follows is organized in the same sequence as the interim final rule.

*Section 636.1 Applicability*

Section 636.1 sets forth WHIP's purpose and scope, stating that "the purpose of the program is to help participants develop fish and wildlife habitat on private agricultural land, NIPF, and Indian land."

*Comments:* One respondent expressed concern about NRCS proposing to strike the term species from the program's purpose statement, shifting the program focus from species to land and water resources.

*Response:* The interim final rule replaced the phrase "for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife" with the phrase "develop fish and wildlife habitat on private agricultural land, NIPF, and Indian land," in an effort to be consistent with the program's statutory authority. The simplified language provided the appropriate broad interpretation for the types of habitat to be developed on eligible lands, including a new statutory requirement to encourage the development of habitat for native and managed pollinators. No changes were made to the final rule.

*Comments:* Numerous respondents requested that NRCS extend WHIP's

program purpose and scope to pollinators, specifically. Five respondents requested that NRCS reference native and managed pollinator habitat, while four of the five respondents wanted WHIP to focus on native pollinators and their habitats and not managed pollinators, leaving managed pollinator habitat to other conservation programs like the Environmental Quality Incentives Program (EQIP).

*Response:* Section 1244(h) of the Food Security Act of 1985, as amended states:

"In carrying out any conservation program administered by the Secretary, the Secretary may, as appropriate, encourage (1) the development of habitat for native and managed pollinators; and (2) the use of conservation practices that benefit native and managed pollinators."

Section 1244(h) includes both managed and native pollinators. In section 1244(h), WHIP's authority focuses on wildlife habitat with no distinction made between native and managed species. As part of the development of habitats in many projects, WHIP plants grasses, forbs, shrubs, and trees that provide habitats for pollinator species as a consequence of providing habitats for prioritized wildlife. NRCS chooses to retain the interim final rule's original language which follows the intent of section 1244(h) and WHIP's legislative authority that makes no distinction between restoring or enhancing native and managed pollinator species' habitats.

*Comments:* Several respondents requested that NRCS focus its technical assistance efforts on improving pollinator habitat. One respondent wanted NRCS to designate a national coordinator to advance habitat for honey bees and expand its outreach to potential participants. Another respondent expressed concern that with a lack of emphasis in a regulation, pollinator habitat may be disregarded by individual States. Another respondent wanted to ensure that expedited efforts were made to update and revise the conservation practice standards and technical notes, assuring that these standards and technical notes were appropriate and relevant to the local habitat and species' needs. Moreover, the respondent wanted NRCS to provide input to the National Institute of Food and Agriculture and Agricultural Research Service about additional research needed to improve the science regarding wildlife habitat and conservation practices that are best for native and managed pollinators.

*Response:* No changes were made to the rule in response to these comments. State Conservationists have been encouraged to establish pollinator species as State priorities, and they have done so. In fiscal year (FY) 2009, NRCS funded 54 projects to restore and improve pollinator habitat through the WHIP and the Conservation Innovation Grants (CIG) program. Interim conservation practice standards and technical notes have been and are in the process of being established. State Conservationists are providing information to producers that conservation practices which benefit pollinator species are eligible for cost-share. NRCS does not conduct research, but has established partnerships with agencies that provide information from research.

*Section 636.2 Administration*

Section 636.2 sets forth the policies related to NRCS and its agreements with partners.

*Comments:* Two respondents requested that NRCS include marketing and outreach as eligible work for partner agreements, also known as contribution agreements. Several respondents supported the flexibility to enter into agreements with Federal and State agencies and Indian tribes to assist with program implementation.

*Response:* Since WHIP's inception, NRCS has used partnership agreements with Federal, State, and local agencies to implement the program. NRCS has the ability to include marketing and outreach in these agreements.

Aside from working through contribution agreements, NRCS also has the ability to enter into agreements with Technical Service Providers (TSPs) to assist in implementing conservation programs. Section 2706 of the 2008 Act amended the Food Security Act of 1985, as amended to authorize payments to TSPs for related technical assistance services that accelerate program delivery. Related technical assistance services include, but are not limited to, conservation planning documentation, payment scheduling, and documentation. Technical standards for certifying other services like outreach and marketing TSPs will be formulated during FY 2010.

As in the case of other Title XII conservation programs, a WHIP participant or NRCS may use the services of a qualified TSP to install and implement conservation practices. Technical services provided may include conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical assistance services as described above. To clarify that TSPs may be used to expedite WHIP conservation program delivery, NRCS has added related technical assistance services to § 636.18(c): "Technical services provided by qualified personnel not affiliated with USDA may include, but is not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical assistance services as defined in 7 CFR part 652."

*Section 636.3 Definitions*

When NRCS published the WHIP interim final rule, it revised many of WHIP's definitions to be consistent with other NRCS conservation programs and to avoid confusion among NRCS field personnel and customers. A majority of the comments received during the interim final rule's request for comment period were definitions contained in section 636.3. Following are definitions received from public comments.

**Agricultural Lands**

*Comments:* Over 20 respondents commented on the agricultural lands definition. The majority of respondents stated that the definition of agricultural lands was too limited. The respondents requested that NRCS expand the definition to include "lands on which agricultural and forest products may be produced or have the potential to be produced." They cited that many rural, privately owned lands offer significant wildlife habitat potential, despite the fact that they are not currently used for agricultural production.

*Response:* NRCS concurs with this recommendation and on July 15, 2009, published an amendment to the interim final rule which defined agricultural lands as: "Cropland, grassland, rangeland, pastureland, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are or have the potential to be produced. Agricultural lands may include cropped woodland, wetlands, waterways, streams, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production."

Under WHIP, NRCS has the discretion to define agricultural lands in order to meet the program objectives. In the past, WHIP served as a niche program through its ability to improve wildlife habitat on areas that were not otherwise eligible for NRCS conservation assistance. NRCS believes that the interim final rule's agricultural lands definition was too narrow in its interpretation of the statute, especially since lands that are not currently under

production oftentimes can most readily be improved for wildlife habitat, and that there are many active conservationists who wish to enhance wildlife habitat but may not be actively producing a commodity or raising livestock. As noted above, this change was adopted in the amendment to the interim final rule.

*Comments:* Two respondents requested that NRCS add specific language to modify the agricultural lands definition to make it consistent with the Farm Credit Administration's (FCA) definition of agricultural land. The intent behind making the WHIP definition consistent with FCA's definition was similar to the rationale described above —expand the types of eligible lands to those that have the potential or are available to produce a crop, fruits, timber, or livestock.

*Response:* Based upon the rationale set forth above, NRCS concurs with this recommendation and on July 15, 2009, published an amendment to the interim final rule which changed the definition of agricultural lands.

*Comments:* Nearly a dozen respondents requested that specific areas be identified in the definition of agricultural lands. Areas mentioned included wetlands, riparian areas, aspen groves, streams, canals, shelterbelts, buffer strips, and waterways.

*Response:* NRCS has chosen to retain the current definition of agricultural lands with the slight modification of changing marshes to wetlands, since wetlands is a more inclusive term to describe areas WHIP seeks to restore and enhance. NRCS has also chosen to add the terms waterways and streams. NRCS believes areas like canals, shelterbelts, aspen groves, and buffer strips would be determined to be eligible since they would be considered lands incidental to the agricultural or forestry operation.

**Applicant**

*Comments:* Six respondents requested changing the definition of applicant. As currently defined, an applicant must have an interest in an agricultural operation. Such a requirement prohibits NIPF landowners and others who own or operate agricultural land with the potential to produce an agricultural crop or livestock from participating.

*Response:* NRCS accepts this recommendation to revise the term applicant, and modifies the definition in this final rule as follows: "Applicant means a person, legal entity, joint operation, or Indian tribe that has an interest in agricultural land, NIPF, Indian land, or other lands identified in § 636.4(c)4, who has requested in writing to participate in WHIP."

**At-Risk Species**

*Comments:* In the interim final rule published on January 16, 2009, NRCS specifically requested comment on its definition of at-risk species. Approximately 20 individuals and organizations responded to this request, providing suggestions on how NRCS could modify this definition.

Fifteen respondents suggested using the definition that exists in the Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (USFWS), NRCS, and the Association of Fish and Wildlife Agencies. As stated in the MOU, "at-risk species refers to plant and animal species in that area listed as threatened or endangered under the Endangered Species Act (ESA); proposed or candidates for listing under ESA: likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; and State species of conservation concern (*i.e.,* those species identified by State fish and wildlife agencies in State wildlife action plans or other State agency conservation strategies and plans that include species identified as being in greatest need of conservation concern)."

One respondent suggested that State agencies determine at-risk species, while another respondent suggested that NRCS retain the interim final rule definition as follows: "Any plant or animal species as determined by the State Conservationist, with advice from the State Technical Committee, needing direct intervention to halt its population decline." Another respondent wanted NRCS to take into account global species of concern generated by The Nature Conservancy and a similar list generated by the International Union of Conservation of Nature. One respondent recommended that consideration should also be extended to ecosystems at-risk as well as species.

One respondent suggested using the MOU definition, in conjunction with NRCS' definition, specifically rewording the definition as follows: "At-risk species refers to (1) any plant or animal species listed as threatened or endangered under ESA, (2) proposed for listing under ESA, (3) a candidate for listing in the near future, (4) likely to become a candidate for listing in the near future, (5) listed as endangered or threatened (or similar classification) under State law, (6) a species of conservation concern, or (7) other species determined by the State Conservationist, with advice from the State Technical Committee, to need direct intervention to halt its population decline." Another respondent suggested that NRCS expand the definition beyond the MOU definition by adding the following sentence to the MOU definition: "At-risk species may also include native species identified by the Chief, in consultation with the State Conservationist and State Technical Committee, and with advice from the USFWS, National Marine Fisheries Service, or other experts as at-risk because of population vulnerability due to climate change, catastrophic events, or pest/pathogen outbreaks."

Two respondents defined at-risk species more broadly stating at-risk means any plant or animal species as determined by the State Conservationist, with advice from the State Technical Committee, the USFWS, the State agency responsible for fish and wildlife, and in consultation with the State wildlife action plan to include species listed as endangered or threatened under ESA and proposed or candidate species for listing under ESA (this allows determination by the State Conservationist), while another respondent requested that NRCS allow for a localized area to give a designation.

*Response:* Section 636.3 in the interim final rule defines at-risk species as "any plant or animal species as determined by the State Conservationist, with advice from the State Technical Committee, to need direct intervention to halt its population decline." NRCS developed this definition to provide maximum flexibility and allow the State Conservationist to enroll acres for any type of species, provided it is experiencing population decline. For example, the at-risk definition has enabled NRCS to restore wildlife habitat for species that have experienced population decline from a natural disaster or other situation, without the requirement that the species be included on a list.

NRCS determined, based on the public comments, to revise its definition to read as follows: "At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the ESA; a species listed as threatened or endangered under State law or tribal law on tribal land; State or tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), that has undergone, or likely to undergo, population decline

and may become imperiled without direct intervention."

**Habitat Development**

*Comments:* Two respondents requested that NRCS modify the habitat development definition solely to address native conditions for fish and wildlife habitat.

*Response:* WHIP's authority focuses on wildlife habitat with no distinction made between native and managed species and no distinction made on native or managed conditions. NRCS chooses to retain the flexibility afforded by the program's enabling legislation and leave it to the discretion of the State Conservationist, with advice from the State Technical Committee, to restore or enhance wildlife for those species that are deemed to need habitat restoration or enhancement in that geographic area or State. No changes were made to the final rule.

**Historically Underserved Producer**

*Comments:* Three respondents requested that NRCS expand WHIP's applicability to include NIPF landowners or family forest owners, along with farmers and ranchers, in the definition of historically underserved producer.

*Response:* NRCS' current definition of historically underserved producer is as follows: "Historically underserved producer means an eligible person, joint operation, or legal entity who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher."

NIPF landowners are eligible for the increased WHIP cost-share rates afforded to historically underserved agricultural producers, provided they meet the same quantifiable criteria contained within the separate definitions for beginning farmer or rancher, limited resource farmer or rancher, or socially disadvantaged farmer or rancher. Section 636.3 defines each of these terms.

To clarify that NIPF landowners can qualify for the increased cost-share rates, NRCS revises the historically underserved producer definition as follows: "Historically underserved producer means an eligible person, joint operation, legal entity, or Indian tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or NIPF landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in § 636.3."

**Livestock**

*Comments:* Two respondents request that NRCS revise the definition of livestock to limit the terminology to "all domesticated animals kept on farms and ranches for the production of agricultural goods, as determined by the Chief."

*Response:* NRCS retains the interim final rule's definition since some animals raised on a farm or ranch such as bison, fish, or emus may not be considered domesticated species. As defined, "livestock means all animals produced on farms and ranches, as determined by the Chief."

**Resource Concern**

*Comments:* Four respondents requested that NRCS modify the definition of resource concern, striking the phrase by producers and replacing it with by participants.

*Response:* NRCS accepts this recommendation since the term participant is the term used to describe a person, joint operation, or legal entity that has responsibility to implement the contract. Therefore, the final rule definition is as follows: "Resource concern means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementation of the conservation activities by participants."

**Wildlife**

*Comments:* Four respondents requested that NRCS include mollusks in the definition of wildlife.

*Response:* Mollusks are considered invertebrates; therefore, NRCS retains the definition of wildlife as stated in the interim final rule: "Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals."

*Section 636.4 Program Requirements*

Section 636.4 articulates program eligibility requirements. In the interim final rule, NRCS made several adjustments to § 636.4(b) to incorporate the 2008 Act changes to land eligibility and to conform the eligibility language to the new definitions described in § 636.3. In particular, NRCS identified in § 636.4(b) that eligible lands included agricultural land, NIPF, and Indian land as defined in § 636.3. Most of the comments received for this section focused on eligible lands and the role of other agencies in determining what lands are eligible for WHIP assistance.

**Land Eligibility**

*Comments:* Several respondents were disappointed that NRCS limited the program to private agricultural lands, NIPF, and tribal lands, stating that a lot of wildlife benefits can occur on public lands. Another respondent recommended that the public lands restriction be revised when significant habitat gains can accrue on public lands, while another respondent suggested that NRCS allow public lands if it is a working component of the participant's agricultural or forestry operation, and where an at-risk species on private land would benefit. Ten respondents suggested that public lands leased by private landowners who have control over the land for the contract period be eligible. Nine of those respondents also wanted NRCS to allow public lands that were held in trust for the beneficiaries of a State's education system. Another respondent requested that WHIP allow for a small number of strategically located projects on private non-agricultural land, State, or locally-owned public lands.

*Response:* The 2008 Act amended section 1240N of the Food Security Act of 1985, as amended to limit WHIP's scope to "wildlife habitat on private agricultural land, NIPF, and tribal lands." Consequently, public lands are ineligible for WHIP assistance, even those leased by private landowners or States' education systems. Based on this authority, WHIP's activities on streams and waterways are limited to the extent that these lands are considered private lands. The final rule is being revised to provide that certain trust lands are eligible for assistance.

**Hawaii and Other Pacific Trust Lands**

*Comments:* Several respondents requested that NRCS allow public leaseholder land in the State of Hawaii to be eligible for WHIP cost-share assistance. In addition to Hawaii homelands, several respondents also requested that NRCS expand the definition of Indian land beyond tribal and trust land held by Alaska Natives to include trust lands in the Pacific.

*Response:* The respondents accurately note that many public trust lands in Hawaii and other Pacific locations operate as the equivalent of private land and leaseholders hold such land under very long-term leases (99 years in the case of Hawaii) and often without any payment to the government at issue including any requirement to share any profits made from agricultural operations. While such trust lands cannot fall under the statutory definition of tribal lands as urged by the

respondents, as set forth below, the rule is being revised to make such trust lands eligible for WHIP assistance when the Chief determines trust land is held under a long-term lease by a person or nongovernmental entity and when the Chief determines that (i) By the nature of the lease, such land is tantamount to private agricultural land; (ii) the duration of the lease is at least the length of any WHIP agreement; and (iii) no funds under the WHIP program are paid to a governmental entity.

*Comments:* Ten respondents requested that NRCS allow stream systems, including stream bottoms, to be eligible, while another respondent requested that NRCS allow streams to be eligible if the activity is for dam removal. Six respondents requested that NRCS allow stream systems to be eligible when the landowner who operates the land within these landscapes is willing to participate. Two respondents supported the rationale to allow streams to be enrolled, particularly if it is public land that remains under private control during the contract period. Two respondents stated that the intent of WHIP was to limit WHIP's use in State Parks and wildlife areas, not where private land surrounds the stream or waterway.

*Response:* NRCS will enroll streams and stream bottoms provided the governmental entity with authority over State or Federal waters provides documentation certifying that the stream and the stream bottom are considered private land. The processes for obtaining this approval will be outlined in 440 Conservation Programs Manual, Part 517, Section 517.22 Eligibility.

*Comments:* Section 1240N(b) directs the Secretary to "make cost-share payments to owners of lands referred to in subsection (a) to develop (A) upland wildlife habitat; (B) wetland wildlife habitat; (C) habitat for threatened and endangered species; (D) fish habitat; and other types of wildlife habitat approved by the Secretary, including habitat developed on pivot corners and irregular areas." One respondent supported Congress' addition of pivot corners into WHIP.

*Response:* Prior to the 2008 Act, the existing WHIP regulation encompassed habitats on areas such as pivot corners; therefore, NRCS determined that it did not need to amend the final rule, although the preamble clarified that pivot corners were considered eligible lands.

*Comments:* Several respondents requested that NRCS involve other agencies in the determination of public lands. Specifically, four respondents recommended that NRCS modify 636.4(c), to allow the USFWS and State agencies to be involved in determining land that is ineligible. Specifically, they request that NRCS revise paragraph (c) as follows: "Ineligible land. NRCS will not provide cost-share assistance if after coordination with the State fish and wildlife agency and USFWS with respect to conservation practices on land * * *"

*Response:* NRCS chooses to retain the interim final rule's language in § 636.4 which does not specify consultation with State fish and wildlife agencies or USFWS. The State Conservationist may consult with the State fish and wildlife agency and USFWS on ineligible land determinations as stated in 440 Conservation Programs Manual, Part 517, Section 517.22; however, the final decision rests with the State Conservationist.

*Comments:* One respondent requested that NRCS broaden the scope of § 636.4(c)(3) to include not just threatened and endangered species, but also at-risk species. In essence, the respondent requested that NRCS not provide assistance on land where at-risk species may be adversely affected, while two additional respondents requested that NRCS expand the list to proposed or candidates for listing under ESA or likely to become candidates under ESA or similar classification under State law.

*Response:* NRCS retains the reference to threatened and endangered species in § 636.4(c)(3), since the proposed categorized species are broader categories of species that are experiencing population decline and such species may not undergo the same scrutiny and information gathering process in their labeling as threatened or endangered species.

*Comments:* Section 636.4(c)(4) sets forth the types of lands ineligible for WHIP assistance. Three respondents requested that NRCS revise § 636.4(c)(4) regarding ineligible land to read: "Lands owned in fee title by an agency of the United States, other than land held in trust for Indian tribes, and (ii) lands owned in fee title by a State, including an agency or subdivision of a State or a unit of government."

*Response:* NRCS supports the recommended wording change and adopts it.

**Person Eligibility**

*Comments:* Several respondents commented on person eligibility. One respondent supported NRCS' ability to grant waivers for persons and legal entities who exceed the Adjusted Gross Income (AGI) limitation as specified in 7 CFR part 1400. Section 1400.500 allows the Chief to grant a waiver "for the protection of environmentally sensitive land of special significance." Such a waiver proves helpful to States like Hawaii, where high real estate prices, wealthy landowners, and critical natural resources exist. Two respondents questioned whether tribes were exempt from the AGI limitation.

*Response:* Tribes are exempt from AGI limits in accordance with 7 CFR part 1400, "Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years."

*Comments:* One respondent requested that WHIP should reflect the policy outlined in 7 CFR part 1466, EQIP, which clearly exempts Indian tribes or Indians represented by the Bureau of Indian Affairs (BIA) from the limitations.

*Response:* 7 CFR 1400.4 excludes tribes from payment limitation and eligibility provisions related to the AGI: "Provisions of this part do not apply to Indian tribes as defined in section 1400.3." The regulation's corresponding preamble states the following:

> "In this rule, section 1400.4 exempts Indian tribes, as defined in 1400.3, from all requirements of this part. Provisions of this part apply to persons or legal entities. Indian tribes are not included under the definition of person or legal entity as provided by the 2008 Act for the application of payment eligibility and payment limitation provisions. The 2008 Act does not impose any limitations or restrictions on programs payments and benefits to federally recognized Indian tribes. This exemption to the provisions of this part only applies to Indian tribes. The payment eligibility and payment limitation requirements remain applicable to individual American Indians or Alaska Natives receiving program payment and benefits as individuals, or through a group in which all members of the group are American Indians or Alaska Natives."

For this reason, persons and legal entities within the tribe will be subject to limitations in accordance with § 636.4(a)(9); however, payments made to tribal groups may exceed the payment limitation if the BIA or a tribal official certifies that no one individual will receive more than the established payment limitation.

*Comments:* As it relates to tribes, one respondent requested that NRCS form a partnership via a Memorandum of Agreement or MOU between NRCS and the tribe to ensure that tribal members comply with tribal law before applying for WHIP benefits as well as operational consideration. An individual tribal member must comply with a tribal management plan and be able to show proper documentation for land control pursuant to the tribal nation.

*Response:* The NRCS policy is to work with all tribes to meet all of their resource needs. No changes were made to the final rule.

*Comments:* Related to payment matters, one respondent requested that NRCS rephrase § 636.9(c) to add: "Deferment will be eligible for payments for foregone income when deferment of use is needed to meet habitat need and achieve program objectives."

*Response:* Section 1240N identifies that NRCS is to provide cost-share assistance to private agricultural landowners to develop wildlife habitat. The statutory authority does not restrict cost-share assistance to any particular identified aspect of the cost of habitat development. As can be gleaned from other financial assistance programs, the costs associated for implementing a conservation practice, activity, or other fish and wildlife habitat development action includes the income forgone from its implementation, and thus, income foregone is an appropriate consideration for determining the level of cost-share assistance that should be made available under the program. Therefore, NRCS will review and develop payment rates wildlife habitat development actions where the income foregone by the WHIP participant to implement those actions is appropriate to be included in the cost-share payments made under the WHIP contract. NRCS has made editorial adjustments throughout the final rule to clarify that cost-share assistance is available for the implementation of cost-share practices, activities, and other habitat development actions, and that such cost-share assistance includes income foregone. Therefore, NRCS has added a new term, "conservation activities," to encompass the range of habitat development actions eligible for cost-share assistance, and incorporated the term throughout the final rule where appropriate.

*Comments:* One respondent suggested that NRCS clarify when the operation and maintenance (O&M) agreement will be signed.

*Response:* The O&M agreement will continue to be signed at the time that the WHIP plan of operations cost-share agreement is signed. In accordance with § 636.8, the WHIP plan of operations forms the basis for the WHIP cost-share agreement, along with the O&M agreement. The WHIP plan of operations includes a schedule for the implementation and maintenance of the conservation activities, as determined by NRCS.

*Section 636.5 National Priorities*

Section 636.5 provides that NRCS will establish national priorities to guide funding to the State offices, selection of WHIP cost-share agreements, and implementation priority for WHIP conservation practices.

*Comments:* NRCS received over 20 comments pertaining to WHIP's national priorities. Nine respondents supported WHIP's national priorities outlined in section 636.5(a). Several others supported WHIP's priorities, but wanted to see pollinators addressed as part of the priorities. Several of those respondents wanted only native pollinators to be considered national priorities. Another respondent wanted honey bees to be a national priority. Six respondents requested giving priority to unique habitats or special geographic areas identified by the State, while two other respondents requested that natural disasters, such as catastrophic wildfires, insect and disease outbreaks, invasive, and other natural disasters be considered a national priority. Several respondents requested that WHIP address these priorities and other additional priorities identified in section 8001 of the 2008 Act.

*Response:* Although these are good comments, they are too specific. The existing WHIP national priorities are broad and include these recommendations.

*Comments:* One respondent requested that WHIP address State, regional, or national conservation initiatives in its list of national priorities.

*Response:* NRCS believes that it is not necessary to add this last recommendation to § 636.5, since State, regional, and national conservation initiatives are already addressed in § 636.6, "Establishing priority for enrollment in WHIP."

*Comments:* One respondent requested that NRCS add the following to its list of priorities: "(a)(5) Protect, restore, develop, or enhance important migration and other movement corridors for wildlife."

*Response:* NRCS has added the above-mentioned migration or movement corridor to 636.5 (a)(5) as WHIP's fifth national priority since it is neither species nor land-use specific.

*Comments:* Several organizations commented on WHIP's priority setting process. One respondent would like the process for establishing national priorities promulgated in the regulation, while others requested outside agency input.

*Response:* NRCS is not making changes to the final rule in response to these comments because the rulemaking process enables respondents to comment on WHIP's national priorities. In addition, § 636.5(b) articulates the policy to undertake periodic review of the agency's national priorities.

*Section 636.6 Establishing Priority for Enrollment in WHIP*

Section 636.6 establishes the policies and procedures for enrolling lands in WHIP at the State and local levels.

*Comments:* A majority of the comments received focused on priority setting, requesting that NRCS name specific priorities and policies in the regulation, while others commented on specific ranking criteria. Other respondents supported NRCS' emphasis on local input, while others raised concern about the Chief being able to limit the program to specific geographic areas. Finally, some respondents requested specific wording changes.

For example, several respondents requested amending § 636.6 to add after paragraph (a): "These conservation initiatives may include such things as the North American Waterfowl Management Plan, the National Fish Habitat Action Plan, the Greater Sage-Grouse Conservation Strategy, the State Comprehensive Wildlife Conservation Strategies (also referred to as the State Wildlife Action Plan), the Northern Bobwhite Conservation Initiative, and State forest resource strategies." One respondent requested adding "and other conservation plans designated by the Chief" to the list. Three other respondents requested that NRCS amend § 636.6(c) to include priority forest areas or regions identified in the State Forest Resource Assessments and Strategies required by section 8002 of the 2008 Act.

*Response:* In order to maintain flexibility when addressing wildlife habitat needs, the State Conservationist, with input from the State Technical Committee, identifies appropriate ranking criteria and uses the agency-approved Application Evaluation and Ranking Tool (AERT) to prioritize all eligible applications. Ranking priority is given to those applications that complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, and national levels, including the current and successor plans of the initiatives identified by the respondents.

*Comments:* Several respondents suggested specific wording revisions in § 636.6(a) by changing the word "and" to "or." Another respondent suggested that NRCS change the word limit to focus.

*Response:* NRCS accepts these recommendations and has reworded paragraph (a) as follows: "NRCS, in consultation with Federal and State agencies, tribal, and conservation partners, may identify priorities for

enrollment in WHIP that will complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, tribal land, or national levels. In response to national, tribal, regional, or State fish and wildlife habitat concerns, the Chief may focus program implementation in any given year to specific geographic areas or to address specific habitat development needs."

*Comments:* As it relates to § 636.6(c)(1), several respondents recommended the paragraph be revised as follows: "Contribution to resolving an identified habitat concern of national, regional, or State importance, including habitat to benefit at-risk species." One respondent supports NRCS' change in terminology from needs to concern.

*Response:* NRCS accepts these suggestions and has incorporated them into the final rule.

*Comments:* NRCS received several comments on the 2-year-completion criteria. Several respondents expressed concern that giving priority to applicants who are willing to complete all conservation practices within 2 years discriminates against more complex projects. Three respondents suggest offering a higher cost-share rate during the first 2 years of the contract to motivate completion of a contract. Two respondents say that completing a contract will be difficult in 2 years, but that higher cost-share rates during the first 2 years would promote completion. One respondent supports NRCS emphasis on a 2-year agreement.

*Response:* Section 636.6(c) of the interim final rule states the following: "(c) NRCS will evaluate the applications and make enrollment decisions based on the fish and wildlife habitat need using some or all of the following criteria * * * (8) Willingness of the applicant to complete all conservation improvements during the first 2 years of the WHIP cost-share agreement." The State Conservationist, with advice from the State Technical Committee, has discretion to use one or more of the criteria listed in § 636.6(c). Depending on the needs of the particular geographic area or State, the State Conservationist may or may not use a participant's willingness to complete the application within the first 2 years. However, to ensure more complex projects have an opportunity to be funded, at-risk species is added to 636.6 (c)(1). NRCS amends § 636.6(c)(1) in the interim final rule to read as follows: "Contribution to resolving an identified habitat concern of national, tribal, regional, or State importance including at-risk species."

*Section 636.7 Cost-Share Payments*

Section 636.7 sets forth the payment rates, payment limitations, and requirements for receiving payments under WHIP. In the interim final rule, NRCS adopted a number of payment policies to address the 2008 Act requirements and to make WHIP consistent with other NRCS conservation programs. These policies included: Revising WHIP cost-share rates, stipulating that NRCS will offer to pay no more than 75 percent of the costs of establishing conservation practices; adding a new provision as § 636.7(a)(2) to allow NRCS to provide additional cost-share incentives to historically underserved producers that include limited resource farmers or ranchers, beginning farmers or ranchers, and socially disadvantaged farmers or ranchers; and instituting a payment limitation of $50,000 per person or legal entity per year as required under section 1244(a)(2) of the Food Security Act of 1985, as amended.

*Comments:* Several respondents requested that NRCS make WHIP consistent with other NRCS programs, like EQIP, by paying for activity plans and income foregone. They specifically suggested rewording § 636.7(d) as follows: "NRCS, in consultation with the State Technical Committee, will identify and provide public notice of the conservation practices eligible for payment under the program. Conservation practices eligible for payment include development and implementation of conservation activity plans including grazing, haying, forestry, and stubble management."

In line with compensating producers for income foregone, one respondent supported a payment that recognized game damage.

*Response:* NRCS does not have authorization in WHIP to make payments based on any method other than cost-sharing to develop upland wildlife habitat, wetland wildlife habitat, habitat for threatened and endangered species, fish habitat, and other types of wildlife habitat approved by the Secretary, including habitat developed on pivot corners and irregular areas. Accordingly, NRCS cannot provide payments for conservation activity plans. However, as discussed above, NRCS is modifying this final rule to include income foregone as a cost element of wildlife habitat development that will be included in payment rates.

*Comments:* Several respondents requested that WHIP's payments be flexible based on the type of species targeted. Specifically, 10 respondents requested to allow waivers to the 75 percent Federal cost-share cap when dealing with at-risk species, while several of these respondents specifically requested that the cost-share rate be raised up to 90 percent for threatened and endangered species, pollinators, and other species considered to be at-risk or declining. One respondent recommended specific wording changes to § 636.7. The comment called for a change in the 15-year minimum contract to 5 years for 90 percent cost-share for Federal or State threatened and endangered recovery plans.

*Response:* NRCS chooses to retain the language in the interim final rule which gives flexibility to the State Conservationist to establish cost-share rates up to 75 percent and up to 90 percent for specified cost-share agreements. Section 636.7(a)(1) sets forth that NRCS will not pay more than 75 percent of the costs to develop fish and wildlife habitat, including those that target at-risk or declining species. For cost-share agreements that are 15 years or more and whose habitat development actions have been determined to protect essential plant or animal habitat, NRCS may provide up to 90 percent of those habitat development actions. For participants who are considered historically underserved, NRCS may issue payments not less than 25 percent above the applicable payment rate, provided that this increase does not exceed 90 percent of the estimated incurred costs associated with the conservation practice.

*Comments:* NRCS received several comments on the 25 percent set-aside for cost-share agreements exceeding 15 years.

*Response:* Section 1240N(b)(2)(B) of the Food Security Act of 1985, as amended specifies NRCS may use up to 25 percent of WHIP funds to carry out cost-share agreements that extend 15 years or more. Prior to the 2008 Act, NRCS had the legislative authority to use up to 15 percent of WHIP funds to carry out these longer-term agreements.

*Comments:* One respondent suggested NRCS should track the 25 percent set-aside for cost-share agreements described in § 636.9(c) at the national level, instead of requiring 25 percent of all State funds for these projects, since annual allocations are typically small amounts.

*Response:* NRCS already tracks the 25 percent annual reserve for longer-term agreements on a State and national level. NRCS uses its contracting software to track this and all other information about its cost-share agreements. Tracking is an

administrative action; therefore, no changes were made to the final rule.

*Comments:* NRCS received numerous comments on the $50,000 annual payment limitation. Several of the respondents requested that NRCS waive the $50,000 annual payment limitation for a variety of reasons including waiving the limitation for non-profit entities; at-risk and declining species; or projects, not landowners. Five respondents requested that NRCS clarify how the $50,000 annual payment limitation works over multi-years. They stated that the payment limitation should be clarified as follows: "A multiple contract may exceed $50,000 provided the payments made or attributed to a participant, directly or indirectly, may not exceed, in the aggregate, $50,000 per year."

*Response:* NRCS has no authority to waive the annual payment limitation. Section 1240N(e) directs the Secretary to limit payments not to exceed $50,000 per year. Therefore, NRCS retains the payment limitation as set forth in § 636.7(f).

A WHIP project may exceed $50,000 provided no one individual exceeds the annual payment limitation. This may extend to a project with multiple landowners or to where there is one landowner who wishes to extend his payment over multiple years. For example, for one landowner who wishes to install 45,000 trees and plants, 5,000 trees per year at a cost of $10.00 per tree (including labor), the payments may be as follows: $50,000 annual payment limitation for a 10-year contract beginning with FY 2009 with 75 percent cost-share. A total of 45,000 trees will be planted at a rate of 5,000 trees per year with a cost of $10.00 per tree including labor:

FY 2009

FY 2010 = $50,000

FY 2011 = $50,000

FY 2012 = $50,000

FY 2013 = $50,000

FY 2014 = $50,000

FY 2015 = $50,000

FY 2016 = $50,000

FY 2017 = $50,000

FY 2018 = $50,000 = Total payments = $450,000

FY 2019 = all plantings were completed in FY 2018 and no payment this year as this is a maintenance year.

However, under the annual payment limitation, if the same participant elects to complete all plantings in one fiscal year, *i.e.,* FY 2009, the participant will be limited to one payment of $50,000.

*Section 636.8 WHIP Plan of Operations*

Section 636.8 sets forth the WHIP plan of operation's basic requirements, including habitat types that should be addressed under a WHIP plan of operations.

*Comments:* Most of the comments generated in this section focused on what types of habitats should receive emphasis in a WHIP plan of operations. While some respondents requested that NRCS amend § 636.6 to prioritize habitats that have been impacted by natural disasters, such as catastrophic wildfires, insect and disease outbreaks, and invasive species, a majority of respondents requested that NRCS place a priority on restoring and enhancing pollinator habitat.

*Response:* NRCS has chosen to leave its regulation species neutral so that species are not inadvertently ignored by highlighting some and not others. In accordance with § 636.6, the Chief or State Conservationist has the discretion to address initiatives. NRCS accepts the recommendation to amend § 636.8(a)(2) and reference § 636.6(a); however, NRCS chooses to not identify specific land uses within WHIP's national priorities. Specifically, § 636.8(a)(2) is revised as follows: "Fish and wildlife habitat concerns identified in State, regional, tribal land, or national conservation initiatives, as referenced in § 636.6(a)."

NRCS placed the NRCS Conservation Practice Standards in the **Federal Register** request for comments. A number of suggestions dealt with better inclusion of concern for pollinators and pollinator habitat within the practice standard. NRCS anticipates that many of the suggestions will be incorporated into revised Conservation Practice Standards. Increased concern for pollinator habitat is evident through both national and State-specific technical notes over the past few years concerning the enhancement and protection of pollinator habitat.

Currently, 23 State offices have identified to the public through their Web page that pollinator habitat is a priority in their State. Fifteen States have FY 2009 pollinator WHIP contracts. NRCS State offices have been encouraged to provide incentives in appropriate conservation programs (*e.g.,* EQIP, WHIP, and CSP) for the creation of pollinator habitat, and a recently approved NRCS Pollinator Initiative will implement increased attention to pollinators through an agency pollinator policy, additional conservation program incentives, new and stronger pollinator-focused partnerships, and far-reaching informational and educational outreach efforts.

*Comments:* In addition to requesting that pollinator habitat be emphasized in the WHIP plan of operations, one respondent requested that NRCS ensure that its updates and revisions to conservation practice standards and the development of its technical notes for native and managed pollinators move forward on an expedited basis. The respondent also requested that NRCS increase outreach to producers on methods in which they can address pollinator habitat through its cost-share assistance and requested that NRCS use WHIP to create conservation corridors.

*Response:* NRCS will continue to address pollinator needs, as appropriate, in the WHIP plan of operations, but has chosen to leave the regulation species neutral, so that species are not inadvertently ignored by highlighting some and not others. NRCS has taken and will continue to take a proactive approach to addressing pollinator habitat, including the development of wildlife corridors. State Conservationists have been encouraged to establish pollinator species as State priorities, and they have been proactive in establishing pollinator habitat as State priorities and interim conservation standards and technical notes related to pollinator species and their habitat. NRCS has also established partnerships with agencies that provide information on pollinator research. In 2008, NRCS funded a bat habitat enhancement project through the CIG program. In 2009, CIG funded 5 pollinator projects and WHIP funded 49 pollinator contracts nationwide.

*Comments:* As it relates to practice life spans, one respondent requested that NRCS codify that management practices have a one-year minimum and establish a 5-year minimum for structural and vegetative practices.

*Response:* NRCS is not including in this rulemaking practice life spans, because NRCS' existing practice is to set forth such information in the NRCS Field Office Technical Guide (FOTG). The FOTG is supported by national standards based upon USDA's scientific and technical findings.

*Comments:* Several other respondents requested that NRCS accept conservation plans, such as a forest management plan, which may be developed by another agency as a foundation to the WHIP plan of operations and ensure that such plans complement one another.

*Response:* NRCS agrees that habitat, forestry, and other natural resource plans should complement one another. Section 636.8 enables NRCS to consult

with "other public or private natural resource professionals," such as State or regional foresters, to develop a WHIP plan of operations that may be compatible with a forest management plan. Therefore, no changes were made to the final rule.

*Section 636.9 Cost-Share Agreements*

Section 636.9 sets forth the duration of the cost-share agreement. Prior to the interim final rule, all long-term WHIP agreements were 5 to 10 years in duration. The interim final rule established a minimum duration of one year after the completion of all conservation practices and a maximum of 10 years, with the exception of longer-term agreements as established under § 636.9(c). This revised contract length provided the flexibility needed for establishing agreement lengths based on wildlife habitat needs and other factors.

*Comments:* One respondent expressed confusion about NRCS' intent to implement shorter-term WHIP contracts and simultaneously encourage longer-term cost-share agreements, while another respondent supported setting aside 25 percent for longer-term agreements. Several respondents expressed concern that giving priority to applicants who are willing to complete all conservation practices within 2 years discriminates against more complex projects.

*Response:* Section 1240N(b)(2) enables the Secretary to provide up to 25 percent of the funds made available for cost-share agreements that are at least 15 years in length. NRCS is retaining the original language of the interim final rule because it encourages both shorter and longer-term cost-agreements. Such language provides the State Conservationists flexibility to address resource concerns based on both the short and long-term needs of the State or geographic area. Furthermore, a State Conservationist has the discretion to raise or lower cost-share rates to create an incentive to complete the contract in a timely manner.

*Section 636.10 Modifications*

Section 636.10 sets forth the policies and procedures to modify a cost-share agreement.

*Comments:* One respondent supported WHIP's modification provisions. Another respondent requested that NRCS recognize the right of contract holders to control wildlife in any way possible when animals cause damage to property or threaten personal safety.

*Response:* NRCS respects the need to modify a contract where a health or safety issue exists. To accommodate instances where public health or safety is jeopardized, NRCS adds paragraph (d) to § 636.10: "Where circumstances beyond the participant's control or when it is in the public interest, such as a matter of health or safety, the State Conservationist may independently or by mutual agreement with the parties, modify or terminate the cost-share agreement as provided for in stated in § 636.12."

*Section 636.11 Transfer of Interest in a Cost-Share Agreement*

Section 636.11 sets forth the policies and procedures regarding the transfer of interest in a cost-share agreement.

*Comments:* Five respondents requested that NRCS change producer to participant to be more inclusive of the type of individuals and entities that participate in WHIP.

*Response:* NRCS accepts this recommendation and rewords § 636.11(b) as follows: "The participant and NRCS may agree to transfer a cost-share agreement to another potential participant. The transferee must be determined by NRCS to be eligible to participate in WHIP and must assume full responsibility under the cost-share agreement."

*Section 636.12 Termination of Cost-Share Agreements*

Section 636.12 sets forth the conditions and procedures under which a cost-share agreement may be terminated. No comments were received on this section; therefore, no changes were made to the final rule.

*Section 636.13 Violations and Remedies*

Section 636.13 sets forth the policies and procedures as it relates to contract violations and remedies to recoup the Federal investment. No substantive comments were received; therefore, no changes were made to the final rule.

*Section 636.14 Misrepresentation and Scheme or Device*

Section 636.14 establishes the policies and procedures when a participant knowingly misrepresented any fact that affected program determination of their WHIP cost-share agreement. No comments were received on this section; therefore, no changes were made to the final rule.

*Section 636.15 Offsets and Assignments*

Section 636.15 establishes offsets and assignments of payments. No comments were received on this section; therefore, no changes were made to the final rule.

*Section 636.16 Appeals*

Section 636.16 sets forth the policies and procedures regarding program appeals. No comments were received on this section; therefore, no changes were made to the final rule.

*Section 636.17 Compliance With Regulatory Measures*

NRCS added § 636.17 to identify clearly a participant's responsibilities associated with other regulatory measures. This change reflects standard NRCS language applicable to multiple programs.

*Comments:* Seven respondents requested that NRCS not issue payments until the participant has obtained and complied with all applicable local, State, and Federal permits.

*Response:* NRCS does not accept the comment, but instead adjusts 636.17 (a) as follows: "Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation activities in keeping with applicable laws and regulations. The requirement for the participant to obtain necessary permits is included in the terms and conditions of the contract appendix."

*Section 636.18 Technical Services Provided by Qualified, Non-USDA Personnel*

NRCS added § 636.18 in the interim final rule to incorporate the TSP provisions in place since 2002, but not included in the WHIP regulation.

*Comments:* One respondent supported the use of TSPs.

*Response:* Section 2706 of the 2008 Act amended the Food Security Act of 1985, as amended to authorize payments to third party TSPs or "related technical assistance services that accelerate program delivery." Related technical assistance services include, but are not limited to, conservation planning documentation, payment scheduling and documentation, and other services.

To reflect the new statutory authority that TSPs may be used to expedite WHIP conservation program delivery, NRCS has added "related technical services" to § 636.18(c). As in the case of other Food Security Act of 1985, as amended conservation programs, NRCS or a WHIP participant may use the services of a qualified TSP to install and implement the WHIP plan of operations. Technical services provided may

include conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical assistance services as described above.

Accordingly, NRCS is revising § 636.18(c) as follows: "Technical services provided by qualified personnel not affiliated with USDA may include, but is not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical services as defined in 7 CFR part 652."

*Section 636.19 Access to Operating Unit*

Section 636.19 establishes the policies shared by all NRCS programs about access to a participant's operating unit.

*Comments:* Four respondents want to add including TSPs after NRCS representatives to clarify that TSPs have the right to enter the premises. They also request that NRCS revise the language from agricultural operation or tract to a participant's property.

*Response:* Under WHIP and other NRCS conservation programs, a participant or NRCS may use the services of a qualified TSP to plan, design, install, and check-out conservation practices. TSPs are authorized to access the property where they have been delegated authority to conduct NRCS activities via the contract or through an agreement between NRCS and the TSP. Section 636.4(a)(7) provides that participants agree to grant to NRCS, or its representatives, access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this part. To ensure that participant's are aware that TSPs, as a representative of NRCS, may enter the property, NRCS will amend the Appendix to the contract so that participants are fully informed that NRCS or the TSP, acting on behalf of NRCS, may enter a property for program purposes.

*Section 636.20 Equitable Relief*

NRCS added § 636.20, Equitable relief, in the interim final rule to be consistent with other NRCS conservation programs. This section clarified that WHIP participants who acted in good faith based on erroneous information provided by NRCS or its representatives may be granted equitable relief if such action resulted in a violation of the cost-share agreement. No comments were received on this section; therefore, no changes were made to the final rule.

*Section 636.21 Environmental Services Credits for Conservation Improvements*

NRCS included § 636.21, Environmental services credits for conservation improvements, in the interim final rule which acknowledged participants' rights to the environmental benefits achieved by conservation programs like WHIP.

*Comments:* Three respondents supported NRCS' provision pertaining to environmental credits, while another respondent requested that NRCS calculate what portion of the potential credit NRCS has financed and what portion remains that could be sold into an ecosystem services market. The same respondent also requested that NRCS require a compatibility assessment. Seven respondents requested that NRCS add a modification option to the environmental credits provision similar to the Healthy Forest Reserve Program.

*Response:* NRCS retains the interim final rule's provision on environmental credits and adds language to accommodate a possible modification for an environmental credits provision that is consistent with the purposes of the cost-share agreement: "NRCS recognizes that environmental benefits will be achieved by implementing conservation practices funded through WHIP, and environmental credits may be gained as a result of implementing conservation practices compatible with the purposes of a WHIP cost-share agreement. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that program purposes are met, maintained, and consistent with §§ 636.8 and 636.9. Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, participants are highly encouraged to request an O&M compatibility assessment from NRCS prior to entering into any such credit agreements. The WHIP cost-share agreement may be modified, in accordance with policies outlined in § 636.10, provided the modification meets WHIP purposes and is in compliance with this part."

*Comments:* Another respondent requests that NRCS coordinate this type of activity with the Office of Ecosystem and Markets.

*Response:* As a preliminary matter, NRCS notes that the Office of Ecosystem Services and Markets has changed its name to the Office of Environmental Markets (OEM). No changes were made to the final rule. Development of ecosystems services markets under the WHIP program is beyond the statutory authority of that program. To the extent appropriate, NRCS coordinates with OEM and other relevant offices when formulating policy.

**Climate Change**

*Comments:* On March 12, 2009, NRCS published an amendment to the interim final rule with a request for public comment on how conservation programs, like WHIP, could be used to mitigate climate change, conserve energy, and reduce net carbon emissions. Four respondents provided comments on how WHIP could be used to reduce the impacts of climate change. All respondents stated that WHIP's primary focus should continue to be fish and wildlife habitat since WHIP is the only conservation program focused solely on fish and wildlife habitat. However, each of these respondents believed that practices applied in WHIP may assist in meeting the challenges posed by climate change. One respondent stated that WHIP should promote practices that involve perennial vegetation, draw attention to the energy-conservation value of many WHIP practices, and collaborate with conservation districts. The respondent cited specifically that control of invasive species and removal of wood damaged by pests may help meet the goal of renewable energy.

Another respondent stated it would be inappropriate for NRCS to use WHIP to support projects focused primarily on advancing renewable energy and energy conservation, it should only be supported where such production is a co-benefit of the practice. The same respondent stated that NRCS should consider activities to monitor and measure GHG reductions that are generated by the project, but it should not make extra payments for carbon sequestration. This respondent also reiterated that the enhancement and restoration of wildlife corridors and other forms of perennial vegetation are practices that would provide dual benefits and also help species adapt to climate change.

Two respondents requested that when examining practices such as wildlife migration corridors, NRCS add points in WHIP project selection criteria that would, with other wildlife habitat benefits being equal, provide a preference for projects that reduce net carbon emissions or boost carbon storage. To evaluate this, they suggested making accommodations at the regional level so that if points are awarded, they are based on reasonable expectations for fish or wildlife benefits to the location.

*Response:* NRCS will continue to place its primary focus on fish and wildlife habitat. However, NRCS accepts

the respondents' comments that some practices can serve multiple purposes, such as riparian migration corridors, which not only sequester carbon and provide essential fish and wildlife habitat, but also help species adapt to climate change. NRCS accepts the respondents' suggestions that additional ranking points may be assigned to practices that offer multiple benefits in WHIP's AERT. NRCS also agrees with the respondents that additional WHIP payments should not be issued for practices which are already being compensated under wildlife habitat cost-share.

**List of Subjects in 7 CFR Part 636**

Administrative practice and procedure, Agriculture, Conservation, Endangered and threatened species, Natural resources, Soil conservation, and Wildlife.

■ For reasons stated above, the CCC revises part 636 of Title 7 of the CFR to read as follows:

## PART 636—WILDLIFE HABITAT INCENTIVE PROGRAM

Sec.

636.1 Applicability.
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636.15 Offsets and assignments.
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636.18 Technical services provided by qualified personnel not affiliated with USDA.
636.19 Access to operating unit.
636.20 Equitable relief.
636.21 Environmental services credits for conservation improvements.

**Authority:** 16 U.S.C. 3839bb–1.

### § 636.1 Applicability.

(a) The purpose of the Wildlife Habitat Incentive Program (WHIP) is to help participants develop fish and wildlife habitat on private agricultural land, nonindustrial private forest land (NIPF), and Indian land.

(b) The regulations in this part set forth the requirements for WHIP.

(c) The Chief, Natural Resources Conservation Service (NRCS), may implement WHIP in any of the 50 States, District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

### § 636.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief. The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS to carry out WHIP. Accordingly, where NRCS is mentioned in this part, it also refers to CCC's funds, facilities, and authorities, where applicable.

(b) The State Conservationist may accept recommendations from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land) in the implementation of the program and in establishing program direction for WHIP in the applicable State or tribal land. The State Conservationist has the authority to accept or reject the State Technical Committee and the Tribal Conservation Advisory Council's (for tribal land) recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee and the Tribal Conservation Advisory Council's recommendation.

(c) NRCS may enter into agreements with Federal and State agencies, Indian tribes, conservation districts, local units of government, public and private organizations, and individuals to assist with program implementation, including the provision of technical assistance. NRCS may make payments pursuant to said agreements for program implementation and for other goals consistent with the program provided for in this part.

(d) NRCS will provide the public with notice of opportunities to apply for participation in the program.

(e) No delegation in this part to lower organizational levels will preclude the Chief, or designee, from determining any issues arising under this part or from reversing or modifying any determination made under this part.

### § 636.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

*Agricultural lands* means cropland, grassland, rangeland, pastureland, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are or have the potential to be produced. Agricultural lands may include cropped woodland, wetlands, waterways, streams, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.

*Applicant* means a person, legal entity, joint operation, or Indian tribe that has an interest in agricultural land, NIPF, Indian land, or other lands identified in 636.4(c)4, who has requested in writing to participate in WHIP.

*At-risk species* means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act (ESA); a species listed as threatened or endangered under State law or tribal law on tribal land; State or tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), that has undergone, or likely to undergo, population decline and may become imperiled without direct intervention.

*Beginning farmer or rancher* means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a cost-share agreement with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a cost-share agreement with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

*Chief* means the Chief of NRCS or designee.

*Conservation activities* means conservation systems, practices, or management measures needed to

address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities, as determined by NRCS.

*Conservation district* means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar name.

*Conservation practice* means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and achieve program purposes. Approved conservation practices are listed in the NRCS Field Office Technical Guide (FOTG).

*Cost-share agreement* means a financial assistance document that specifies the rights and obligations of any participant accepted into the program. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from the Department of Agriculture (USDA) to the participant to share in the costs of applying conservation activities.

*Cost-share payment* means the payments under the WHIP cost-share agreement to develop fish and wildlife habitat or accomplish other goals consistent with the program provided for in this part.

*Designated conservationist* means an NRCS employee whom the State Conservationist has designated as responsible for WHIP administration in a specific area.

*Field Office Technical Guide* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Habitat development* means the conservation activities implemented to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

*Historically underserved producer* means an eligible person, joint operation, legal entity, or Indian tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or NIPF landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in § 636.3.

*Indian land* means:

(1) Land held in trust by the United States for individual Indians or Indian tribes, or

(2) Land, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance, or

(3) Land which is subject to rights of use, occupancy, and benefit of certain Indian tribes, or

(4) Land held in fee title by an Indian, Indian family, or Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Joint operation* means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

*Legal entity* means, as defined in 7 CFR part 1400, an entity created under Federal or State law that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

*Lifespan* means the period of time during which a conservation practice is to be operated and maintained for the intended purpose.

*Limited resource farmer or rancher* means:

(1) A person with direct or indirect gross farm sales of not more than $142,000 in each of the previous 2 years (this is the amount for 2010, and adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using the Department of Commerce Data).

*Liquidated damages* means a sum of money stipulated in the WHIP cost-share agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the cost-share agreement. The sum represents an estimate of the technical assistance expenses incurred to service the agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Livestock* means all animals produced on farms and ranches, as determined by the Chief.

*Natural Resources Conservation Service* is an agency of USDA, which has the responsibility for administering WHIP using the funds, facilities, and authorities of the CCC.

*Nonindustrial private forest land* means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

*Operation and maintenance* means work performed by the participant to keep the applied conservation activities functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed activity functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Operation and maintenance agreement* means the document that, in conjunction with the WHIP plan of operations, specifies the operation and maintenance (O&M) responsibilities of the participants for conservation activities implemented with WHIP assistance.

*Participant* means a person, legal entity, joint operation, or Indian tribe that is receiving payment or is responsible for implementing the terms and conditions of a WHIP cost-share agreement.

*Person* means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

*Producer* means, as defined in 7 CFR part 1400, a person, legal entity, joint operation, or Indian tribe who has an interest in the agricultural operation or who is engaged in agricultural production or forestry management.

*Resource concern* means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed

successfully through the implementation of the conservation activities by participants.

*Secretary* means the Secretary of USDA.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan Natives, Hispanics, and Asians or Pacific Islanders.

*State Conservationist* means the NRCS employee authorized to implement WHIP and direct and supervise NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Technical assistance* means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Technical service provider* means an individual, entity, Indian tribe, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

*Tribal Conservation Advisory Council* means a committee established by a State Conservationist to implement consultation as defined in General Manual 410 Part 405.

*WHIP plan of operations* means the document that identifies the location and timing of conservation activities that the participant agrees to implement on eligible land in order to develop fish and wildlife habitat and provide environmental benefits. The WHIP plan of operations is a part of the WHIP cost-share agreement.

*Wildlife* means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

*Wildlife habitat* means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

**§ 636.4 Program requirements.**

(a) To participate in WHIP, an applicant must:

(1) Be in compliance with the highly erodible and wetland conservation provisions found in 7 CFR part 12;

(2) Be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party;

(3) Develop and agree to comply with a WHIP plan of operations and O&M agreement, as described in § 636.8;

(4) Enter into a cost-share agreement for the development of fish and wildlife habitat as described in § 636.9;

(5) Provide NRCS with written evidence of ownership or legal control of land for the term of the proposed cost-share agreement, including the O&M agreement. An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA) or Indian land where there is sufficient assurance of control;

(6) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance;

(7) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this part;

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(9) With regard to cost-share agreements with individual Indians or Indians represented by the BIA, payments exceeding the payment limitation may be made to the tribal participant if a BIA or tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The BIA or tribal entity must also provide annually, a listing of individuals and payments made, by tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs related to conservation activity implementation;

(10) Supply information, as required by NRCS, to determine eligibility for the program including, but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income (AGI);

(11) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party. Violators will be considered to have provided fraudulent representation and are subject to § 636.13; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

(b) Eligible land includes:

(1) Private agricultural land;

(2) NIPF;

(3) Indian land; and

(4) Trust land owned in fee title by a State, including an agency or subdivision of a State, when such trust land is held under a long-term lease by a person or nongovernmental entity and when the Chief determines that (i) by the nature of the lease, such land is tantamount to private agricultural land; (ii) the duration of the lease is at least the length of any WHIP agreement; and (iii) no funds under the WHIP program are paid to a governmental entity.

(c) *Ineligible land.* NRCS will not provide cost-share assistance with respect to land:

(1) Enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved, as determined by NRCS;

(2) With onsite or offsite conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) On which habitat for threatened or endangered species, as defined in section 3 of the ESA, 16 U.S.C. 1532, would be adversely affected; or

(4) That is owned in fee title by an agency of the United States, other than:

(i) Land held in trust for Indian tribes, and

(ii) Lands owned in fee title by a State, including an agency or subdivision of a State or a unit of government except as provided in § 636.4(b)(4).

**§ 636.5 National priorities.**

(a) The following national priorities will be used in WHIP implementation:

(1) Promote the restoration of declining or important native fish and wildlife habitats;

(2) Protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species;

(3) Reduce the impacts of invasive species on fish and wildlife habitats;

(4) Protect, restore, develop, or enhance declining or important aquatic wildlife species' habitats; and

(5) Protect, restore, develop, or enhance important migration and other movement corridors for wildlife.

(b) NRCS, with advice of other Federal agencies, will undertake periodic reviews of the national priorities and the effects of program delivery at the State, tribal, and local levels to adapt the program to address emerging resource issues. NRCS will:

(1) Use the national priorities to guide the allocation of WHIP funds to the State offices;

(2) Use the national priorities in conjunction with State, tribal, and local priorities to assist with prioritization and selection of WHIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian tribes, and affected stakeholders to ensure that the program continues to address priority resource concerns.

**§ 636.6 Establishing priority for enrollment in WHIP.**

(a) NRCS, in consultation with Federal and State agencies, tribal, and conservation partners, may identify priorities for enrollment in WHIP that will complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, tribal land, or national levels. In response to national, tribal, regional, or State fish and wildlife habitat concerns, the Chief may focus program implementation in any given year to specific geographic areas or to address specific habitat development needs.

(b) The State Conservationist, with recommendations from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), may give priority to WHIP projects that will address unique habitats or special geographic areas identified in the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the fish and wildlife habitat need using some or all of the following criteria:

(1) Contribution to resolving an identified habitat concern of national, tribal, regional, or State importance including at-risk species;

(2) Relationship to any established wildlife or conservation priority areas;

(3) Duration of benefits to be obtained from the habitat development practices;

(4) Self-sustaining nature of the habitat development practices;

(5) Availability of other partnership matching funds or reduced funding request by the person applying for participation;

(6) Estimated costs of fish and wildlife habitat development activities;

(7) Other factors determined appropriate by NRCS to meet the objectives of the program; and

(8) Willingness of the applicant to complete all conservation improvements during the first 2 years of the WHIP cost-share agreement.

**§ 636.7 Cost-share payments.**

(a) NRCS may share the cost with a participant for implementing the conservation activities as provided in the WHIP plan of operations that is a component of the WHIP cost-share agreement:

(1) Except as provided in paragraph (a)(2) of this section and in § 636.9(c), NRCS will offer to pay no more than 75 percent of the costs to develop fish and wildlife habitat. The cost-share payment to a participant will be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(2) Historically underserved producers, as defined in § 636.3, and Indian tribes may receive the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated costs associated with WHIP plan of operations implementation.

(b) Cost-share payments may be made only upon a determination by NRCS that a conservation activity or an identifiable component of a conservation activity has been established in compliance with appropriate standards and specifications.

(c) Payments will not be made for a conservation activity that was:

(1) Applied prior to application for the program; or

(2) Initiated or implemented prior to cost-share agreement approval, unless a waiver was granted by the State Conservationist or designated conservationist prior to implementation.

(d) NRCS, in consultation with the State Technical Committee, will identify and provide public notice of the conservation activities eligible for payment under the program.

(e) Cost-share payments may be made for the establishment and installation of additional eligible conservation activities, or the maintenance or replacement of an eligible conservation activity, but only if NRCS determines the conservation activity is needed to meet the objectives of the program, or that the failure of the original project was due to reasons beyond the control of the participant.

(f) Payments made or attributed to a participant, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(g) Eligibility for payment in accordance with 7 CFR part 1400, subpart G, average AGI limitation, will be determined prior to cost-share agreement approval.

(h) Subject to fund availability, the payment rates identified in a WHIP contract may be adjusted by NRCS to reflect increased costs.

(i) A participant will not be eligible for payments for conservation activities on eligible land if the participant receives payments or other benefits for the same activity on the same land under any other conservation program administered by USDA.

(j) Before NRCS will approve and issue final payment, the participant must certify that the conservation activity has been completed in accordance with the cost-share agreement, and NRCS or an approved Technical Service Provider (TSP) must certify that the activity has been carried out in accordance with the applicable FOTG.

(k) NRCS, for a fiscal year, may use up to 25 percent of WHIP funds to carry out cost-share agreements described in § 636.9(c).

**§ 636.8 WHIP plan of operations.**

(a) As a condition of participation, the participant develops a WHIP plan of operations with the assistance of NRCS or other public or private natural

resource professionals who are approved by NRCS. A WHIP plan of operations encompasses the parcel of land where habitat will be established, improved, protected, enhanced, or restored. The WHIP plan of operations will be approved by NRCS and address at least one of the following as determined by NRCS:

(1) Fish and wildlife habitat conditions that are of concern to the participant;

(2) Fish and wildlife habitat concerns identified in State, regional, tribal land, or national conservation initiatives, as referenced in § 636.6(a); or

(3) Fish and wildlife habitat concerns identified in an approved area-wide plan that addresses the wildlife resource habitat concern.

(b) The WHIP plan of operations forms the basis for the WHIP cost-share agreement and will be attached and included as part of the cost-share agreement, along with the O&M agreement. The WHIP plan of operations includes a schedule for implementation and maintenance of the conservation activities, as determined by NRCS.

(c) The WHIP plan of operations may be modified in accordance with § 636.10.

(d) All conservation activities in the WHIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable FOTG.

(e) The participant is responsible for the implementation of the WHIP plan of operations.

**§ 636.9 Cost-share agreements.**

(a) To apply for WHIP cost-share assistance, a person, tribe, or legal entity must submit an application for participation at a USDA Service Center to an NRCS representative.

(b) A WHIP cost-share agreement will:

(1) Incorporate the WHIP plan of operations;

(2) Be for a time period agreed to by the participant and NRCS, with a minimum duration of one year after the completion of conservation activities identified in the WHIP plan of operations and a maximum of 10 years, except for agreements entered into under paragraph (c) of this section;

(3) Include all provisions as required by law or statute;

(4) Include any participant reporting and recordkeeping requirements to determine compliance with the cost-share agreement and program;

(5) Be signed by the participant;

(6) Specify payment limits described in § 636.7(f) including any additional payment limitation associated with determinations made under § 636.7(g);

(7) Include an O&M agreement that describes the O&M for each conservation activity and the agency expectation that WHIP-funded conservation activities will be operated and maintained for their expected lifespan; and

(8) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) Notwithstanding any limitation of this part, NRCS may enter into a long-term cost-share agreement that:

(1) Is for a term of at least 15 years;

(2) Protects and restores essential plant or animal habitat, as determined by NRCS; and

(3) Provides cost-share payments of no more than 90 percent of the cost of implementing the WHIP plan of operations to develop fish and wildlife habitat.

**§ 636.10 Modifications.**

(a) The participant and NRCS may modify a cost-share agreement if both parties agree to the modification. The WHIP plan of operations is revised in accordance with NRCS requirements, and the agreement is approved by the designated conservationist.

(b) Any modifications made under this section must meet WHIP program objectives and must be in compliance with this part.

(c) In the event implementation of a conservation activity fails through no fault of the participant, the State Conservationist may modify the cost-share agreement in order to issue payments to re-implement the activity, at the rates established in accordance with § 636.7, provided such payments do not exceed the payment limitation requirements as set forth in § 636.7.

(d) Where circumstances beyond the participant's control or when it is in the public interest, such as matters of health or safety, the State Conservationist may independently or by mutual agreement with the parties modify or terminate the cost-share agreement as provided for in § 636.12.

**§ 636.11 Transfer of interest in a cost-share agreement.**

(a) A participant is responsible for notifying NRCS when he or she anticipates the voluntary or involuntary loss of control of the land covered by a WHIP cost-share agreement during the term of the agreement.

(b) The participant and NRCS may agree to transfer a cost-share agreement to another potential participant. The transferee must be determined by NRCS to be eligible to participate in WHIP and must assume full responsibility under the cost-share agreement.

(c) With respect to any and all payments owed to participants who wish to transfer ownership or control of land subject to a cost-share agreement, the division of payment will be determined by the original party and that party's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(d) If new participants are not willing or not eligible to assume the responsibilities of an existing WHIP cost-share agreement, including the O&M agreement, and the participant fails to implement the cost-share agreement, then NRCS will terminate the agreement and may require that all cost-share payments be forfeited, refunded, or both, with applicable interest in accordance with § 636.12. Participants may be subject to liquidated damages in accordance with § 636.12.

**§ 636.12 Termination of cost-share agreements.**

(a) The State Conservationist may, independently or by mutual agreement with the parties to the cost-share agreement, terminate the cost-share agreement where:

(1) The parties to the cost-share agreement are unable to comply with the terms of the cost-share agreement as the result of conditions beyond their control;

(2) Termination of the cost-share agreement would, as determined by the State Conservationist, be in the public interest; or

(3) A participant fails to correct a violation of a cost-share agreement within the period provided by NRCS in accordance with § 636.13.

(b) If NRCS terminates a cost-share agreement, in accordance with the provisions of paragraphs (a)(1) and (a)(2) of this section the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously implemented conservation activity can function independently, and is not adversely affected by the violation or the absence of other conservation activities that would have been implemented under the cost-share agreement; and

(2) The State Conservationist will have the option to waive all or part of the liquidated damages assessed,

depending upon the circumstances of the case.

(c) When making termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects:

(1) The good faith effort of the participant to comply with the cost-share agreement; or

(2) The existence of hardships beyond the participant's control that have prevented compliance. If a participant claims hardship, that claim must be documented and cannot have existed when the applicant applied for participation in the program.

**§ 636.13 Violations and remedies.**

(a) If NRCS determines that a participant is in violation of a cost-share agreement, NRCS will give the parties to the cost-share agreement notice of the violation and a minimum of 60 days to correct the violation and comply with the terms of the cost-share agreement and attachments thereto.

(b) If the participant fails to correct the violation of a cost-share agreement within the period provided by NRCS under paragraph (a) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any of the funds issued under that cost-share agreement, plus interest, and may assess liquidated damages as indicated in the cost-share agreement appendix, as well as require the participant to forfeit all rights to any future payment under the agreement.

(c) If NRCS terminates a cost-share agreement due to breach of contract, the participant will forfeit all rights to future payments under the agreement, may be required to pay liquidated damages in an amount determined by the State Conservationist in accordance with the terms of the agreement, and will refund all or part of the payments received, plus interest. Participants violating WHIP cost-share agreements may be determined ineligible for future NRCS-administered conservation program funding.

**§ 636.14 Misrepresentation and scheme or device.**

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part, will not be entitled to cost-share agreement payments and must refund to NRCS all payments and pay liquidated damages, plus interest, as determined by NRCS.

(b) A participant will refund to NRCS all payments, plus interest, as determined by NRCS, with respect to all NRCS cost-share agreements to which they are a party if they are determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) Other NRCS cost-share agreements where this person is a participant may be terminated.

**§ 636.15 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person or legal entity will be made without regard to questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 of this title will be applicable to cost-share agreement payments.

(b) WHIP participants may assign any payments in accordance with 7 CFR part 1404.

**§ 636.16 Appeals.**

(a) Any participant may obtain reconsideration and review of determinations affecting participation in this program in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved fish and wildlife priority areas, habitats, or activities;

(3) NRCS program funding decisions;

(4) Eligible conservation activities; and

(5) Other matters of general applicability.

(c) Before a participant may seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

**§ 636.17 Compliance with regulatory measures.**

(a) Participants who implement the WHIP plan of operations will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation activities in keeping with applicable laws and regulations. The requirement for the participant to obtain necessary permits is included in the terms and conditions of the contract appendix.

(b) Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participants' performance under the cost-share agreement.

**§ 636.18 Technical services provided by qualified personnel not affiliated with USDA.**

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical services as defined in 7 CFR part 652.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving WHIP payments.

**§ 636.19 Access to operating unit.**

As a condition of program participation, any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to cost-share agreements and performance. Access will include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the cost-share agreements, including the WHIP plan of operations and O&M agreement; and collect information necessary to evaluate the habitat development performance specified in the cost-share agreements. The NRCS representative will make a reasonable effort to contact the participant prior to the exercising of this provision.

**§ 636.20 Equitable relief.**

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the advice or action was improper or erroneous, NRCS may grant relief in accordance with 7 CFR part 635. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an

ineligibility or program violation, the participant may request equitable relief under 7 CFR 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If during the term of a WHIP cost-share agreement a participant has been found in violation of a provision of the cost-share agreement, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR 635.4.

**§ 636.21 Environmental services credits for conservation improvements.**

USDA recognizes that environmental benefits will be achieved by implementing conservation activities funded through WHIP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WHIP cost-share agreement. NRCS asserts no direct or indirect interest on any such credits. However, NRCS retains the authority to ensure that program purposes are met and the requirements for WHIP funded improvements are met and maintained consistent with §§ 636.8 and 636.9. Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements. The WHIP cost-share agreement may be modified, in accordance with policies outlined in § 636.10, provided the modification meets WHIP purposes and is in compliance with this part.

Signed this 17th day of November, 2010, in Washington, DC.

**Dave White,**

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. 2010–29394 Filed 11–22–10; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 317 and 381

**[Docket No. FSIS–2010–0031]**

**RIN 0583–AD**

## Uniform Compliance Date for Food Labeling Regulations

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is establishing January 1, 2014, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2011, and December 31, 2012. FSIS periodically announces uniform compliance dates for new meat and poultry product labeling regulations to minimize the economic impact of label changes.

**DATES:** This rule is effective November 23, 2010. Comments on this final rule must be received on or before December 23, 2010.

**ADDRESSES:** FSIS invites interested persons to submit comments on this final rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, USDA, FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0031. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Rosalyn Murphy-Jenkins, Food Safety and Inspection Service, USDA, Room 2–2125, George Washington Carver Center, Beltsville, MD 20705 (*telephone:* 301–504–0879; *fax:* 301–504–0872).

**SUPPLEMENTARY INFORMATION:**

### Background

FSIS periodically issues regulations that require changes in the labeling of meat and poultry food products. Many meat and poultry establishments also produce non-meat and non-poultry food products subject to the jurisdiction of the Food and Drug Administration (FDA), and FDA periodically issues regulations that require changes in the labeling of such products.

On December 14, 2004, FSIS issued a final rule that provided that the Agency will set uniform compliance dates for new meat and poultry product labeling regulations in 2-year increments and will periodically issue final rules announcing those dates. The final rule also established January 1, 2008, as the uniform compliance date for meat and poultry product labeling regulations that were issued between January 1, 2005, and December 31, 2006 (69 FR 74405). Consistent with the 2004 final rule, FSIS subsequently issued final rules on March 5, 2007, and December 18, 2008, that established uniform compliance dates of January 1, 2010, and January 1, 2012, for meat and poultry product labeling regulations issued between January 1, 2007, and December 31, 2008, and January 1, 2009, and December 31, 2010, respectively (72 FR 9651) (73 FR 75564).

### The Final Rule

This final rule establishes January 1, 2014, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2011, and December 31, 2012, and is consistent with the previous final rules establishing uniform compliance dates.

FSIS's approach for establishing uniform compliance dates for new food labeling regulations is consistent with FDA's approach in this regard. FDA is also establishing January 1, 2014, as the uniform compliance date for new food labeling regulations that are issued between January 1, 2011, and December 31, 2012.

A uniform compliance date of January 1, 2014, for all food product labeling regulations issued between January 1, 2011, and December 31, 2012, will ensure that changes take effect on a timely basis and will minimize the economic impact of those changes on the industry because companies will not have to respond separately to each labeling change as it occurs (69 FR 74406). This policy also serves consumers' interests because the cost of the multiple short-term label revisions that would otherwise occur would

likely be passed on to consumers in the form of higher prices.

It will remain FSIS's policy, however, to encourage industry to comply with new labeling regulations as quickly as feasible. Thus, when industry members voluntarily change their labels, they should consider incorporating any new requirements that have been published as final regulations up to that time.

The new uniform compliance date will apply only to final FSIS regulations that require changes in the labeling of meat and poultry products and that are published after January 1, 2011, and before December 31, 2012. In each of these regulations, FSIS will specifically identify January 1, 2014, as the compliance date. All meat and poultry food products that are subject to labeling regulations promulgated between January 1, 2011, and December 31, 2012, will be required to comply with these regulations when introduced into commerce on or after January 1, 2014. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2014, the Agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

The Agency received only four comments in response to the May 4, 2004, proposed rule that solicited comments on the concept of establishing uniform compliance dates for labeling requirements (69 FR 74406), all of which were fully supportive of the policy to set uniform compliance dates. Therefore, in the March 5, 2007, final rule, FSIS determined that further rulemaking for the establishment of uniform compliance dates for labeling requirements is unnecessary (72 FR 9651). In response to the December 12, 2008, final rule, which established January 1, 2012, as the uniform compliance date for meat and poultry labeling regulations issued between January 1, 2009, and December 31, 2010 (73 FR 75564), FSIS received only one comment. This comment concerned the listing of all ingredients and preservatives in food and was outside the scope of the final rule. Therefore, consistent with its statement in 2007, FSIS finds at this time that further rulemaking on this matter is unnecessary. However, FSIS is providing an opportunity for comment on whether the uniform compliance date established in this final rule should be modified or revoked.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this final rule: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

**Executive Order 12866**

FSIS has examined the impacts of the final rule under Executive Order 12866, which directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This action has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget.

Establishing a uniform compliance date for all future Federal food product labeling regulations affecting the meat and poultry industry that are issued by FSIS over a 2-year period will eliminate potentially burdensome requirements otherwise faced by the industry.

The regulation also greatly limits the possibility of potentially conflicting compliance dates for labeling requirements developed for meat and poultry products and labeling requirements developed for non-meat and non-poultry products. It thus provides for an orderly industry adjustment to any new labeling requirements. Labeling changes in response to Federal regulations will likely be less frequent, and establishments will be able to plan for full utilization of their labeling stocks.

**Need for the Rule**

Establishing uniform compliance dates for food labeling regulations issued within specified time periods minimizes the economic impact of label changes for industry and may indirectly benefit consumers if cost savings are passed on in the form of lower prices.

**Regulatory Flexibility Analysis**

This rule does not have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis is not required (5 U.S.C. 601–612). The uniform compliance date does not impose any burden on small entities. The Agency will conduct regulatory flexibility analyses of future labeling regulations if such analyses are required.

**Paperwork Requirements**

There are no paperwork or recordkeeping requirements associated with this policy under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**E-Government Act Compliance**

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

**Executive Order 13175**

This final 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.

**USDA Nondiscrimination Statement**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2010_Interim_&_Final_Rules_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures,

regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Done at Washington, DC, on November 16, 2010.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. 2010–29492 Filed 11–22–10; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM415; Special Conditions No. 25–414–SC]**

## Special Conditions: Boeing Model 787–8 Airplane; Lightning Protection of Fuel Tank Structure To Prevent Fuel Tank Vapor Ignition

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The Boeing Model 787–8 airplane will incorporate a fuel tank nitrogen generation system (NGS) that actively reduces flammability exposure within the main fuel tanks significantly below that required by the fuel tank flammability regulations. Among other benefits, this significantly reduces the potential for fuel vapor ignition caused by lightning strikes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* December 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mike Dostert, FAA, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2132; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 28, 2003, The Boeing Company applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be a new design, two-engine turbo-jet transport category airplane with a two-aisle cabin configuration. The maximum takeoff weight will be 484,000 pounds, and it will carry a maximum of 381 passengers.

### Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as "the 787") meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, with three exceptions. Sections 25.809(a) and 25.812 will remain as amended by Amendment 25–115, and § 25.981, which will be as amended by Amendment 25–125 in accordance with 14 CFR 26.37.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25) do not contain adequate or appropriate safety standards for the 787 because of novel or unusual design features, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. Finally, the FAA must also issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design features, the special conditions would also apply to the other model under § 21.101.

### Novel or Unusual Design Features

The 787 will have a fuel tank NGS that is intended to control fuel tank flammability. This NGS is designed to provide a level of performance that will reduce the warm day fleet average wing fuel tank flammability significantly below the maximum wing fuel tank flammability limits set in § 25.981(b), as amended by Amendment 25–125. This high level of wing fuel tank NGS performance is an unusual design feature not envisioned at the time the regulations in the 787 certification basis were promulgated.

### Existing Regulations

The certification basis of the 787 includes § 25.981, as amended by Amendment 25–125, as required by 14 CFR 26.37. This amendment includes the ignition prevention requirements in § 25.981(a), as amended by Amendment 25–102, and it includes revised flammability limits for the wing fuel tanks and new specific limitations on flammability of normally emptied fuel tanks located within the fuselage contour as defined in § 25.981(b), as amended by Amendment 25–125. (Section 25.981(c) contains an alternative to meeting paragraph (b)—vapor ignition mitigation—that is not applicable to the 787 design.)

*Ignition Source Prevention*

Section 25.981(a)(3) requires applicants to show that an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable. This requirement was originally adopted in Amendment 25–102 and it requires the assumption that the fuel tanks are always flammable when showing the probability of an ignition source being present is extremely remote. (Amendment 25–102 included § 25.981(c) that required minimizing fuel tank flammability and this was defined in the preamble as being equivalent to unheated aluminum fuel tanks located in the wing.) This

requirement defines three types of scenarios that must be addressed in order to show compliance with § 25.981(a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability of occurrence, in combination with any latent failure condition not shown to be at least extremely remote, must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source. Demonstration of compliance with this requirement would typically require a structured, quantitative safety analysis. Design areas that have latent failure conditions typically would be driven by these requirements to have multiple fault tolerance, or "triple redundancy." This means that ignition sources are still prevented even after two independent failures.

*Flammability Limits*

Section 25.981(b) states that no fuel tank fleet average flammability exposure may exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a fuel tank within the wing of the airplane being evaluated, whichever is greater. If the wing is not a conventional unheated aluminum wing, the analysis must be based on an assumed equivalent construction conventional unheated aluminum wing. In addition, for fuel tanks that are normally emptied during operation and that have any part of the tank located within the fuselage contour, the fleet average flammability for warm days (above 80° F) must be limited to 3 percent as calculated using the method in part 25, Appendix M.

**Application of Existing Regulations Inappropriate Due to Impracticality**

Since the issuance of § 25.981(a)(3), as amended by Amendment 25–102, the FAA has conducted certification projects in which applicants found it impractical to meet the requirements of that regulation for some areas of lightning protection for fuel tank structure. Partial exemptions were issued for these projects. These same difficulties exist for the 787 project.

The difficulty of designing multiple-fault-tolerant structure, and the difficulty of detecting failures of hidden structural design features in general, makes compliance with § 25.981(a)(3) uniquely challenging and impractical for certain aspects of the electrical bonding of structural elements. Such bonding is needed to prevent occurrence of fuel tank ignition sources from lightning strikes. The effectiveness and fault tolerance of electrical bonding features for structural joints and fasteners is partially dependent on design features that cannot be effectively inspected or tested after assembly without damaging the structure, joint, or fastener. Examples of such features include a required interference fit between the shank of a fastener and the hole in which the fastener is installed, metal foil or mesh imbedded in composite material, a required clamping force provided by a fastener to pull two structural parts together, and a required faying surface bond between the flush surfaces of adjacent pieces of structural material such as in a wing skin joint or a mounting bracket installation. In addition, other features that can be physically inspected or tested may be located within the fuel tanks; therefore, it is not practical to inspect for failures of those features at short intervals. Examples of such failures include separation or loosening of cap seals over fastener ends and actual structural failures of internal fasteners. This inability to practically detect manufacturing errors and failures of structural design features critical to lightning protection results in degraded conditions that occur and remain in place for a very long time, possibly for the remaining life of the airplane.

Accounting for such long failure latency periods in the system safety analysis required by § 25.981(a)(3) would require multiple fault tolerance in the structural lightning protection design. As part of the design development activity for the 787, Boeing has examined possible design provisions to provide multiple fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment to the airplane in critical locations. Boeing has concluded from this examination that providing multiple fault tolerance for some structural elements is not practical. Boeing has also identified some areas of the 787 design where it is impractical to provide even single fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment after a single failure. The FAA has reviewed this examination with Boeing in detail and has agreed that providing fault tolerance beyond that in the proposed 787 design for these areas would be impractical.

As a result of the 787 and other certifications projects, the FAA has now determined that compliance with § 25.981(a)(3) is impractical for some areas of lightning protection for fuel tank structure, and that application of § 25.981(a)(3) to those design areas is therefore inappropriate. The FAA plans further rulemaking to revise § 25.981(a)(3). As appropriate, the FAA plans to issue special conditions or exemptions, for certification projects progressing before the revision is complete. This is discussed in FAA Memorandum ANM–112–08–002, Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure, dated May 26, 2009.[1]

**Application of Existing Regulations Inappropriate Due to Compensating Feature That Provides Equivalent Level of Safety**

Section 25.981(b) sets specific standards for fuel tank flammability as discussed above under "Flammability Limits." Under that regulation, the fleet average flammability exposure of wing main tanks on the 787 may not exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a wing main tank within an equivalent construction conventional unheated aluminum wing fuel tank, whichever is greater. The typical fleet average fuel tank flammability of fuel tanks located in the wing ranges between 1 and 5 percent. If it is assumed that a 787 equivalent conventional unheated aluminum wing fuel tank would not exceed a fleet average flammability time of 3 percent, the actual composite airplane wing fuel tank design would be required to comply with the 3 percent fleet average flammability standard and therefore a means to reduce the flammability to 3 percent would be required. However, the proposed 787 design includes a wing tank NGS that will also be shown to meet the additional, more stringent warm day average flammability standard in part 25, Appendix M, which is only required for normally emptied fuel tanks with some part of the tank within the fuselage contour. Fuel tanks that meet this requirement typically have average fuel tank flammability levels well below the required 3 percent.

Since the proposed wing tank NGS on the 787 provides performance that meets part 25, Appendix M, the FAA has determined that the risk reduction

[1] The memorandum may be viewed at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/12350AE62D393B7A862575C300709CA3?OpenDocument&Highlight=anm-112-08-002.*

provided by this additional performance will provide compensation for some relief from the ignition prevention requirements of § 25.981(a)(3) while still establishing a level of safety equivalent to that established in the regulations.

In determining the appropriate amount of relief from the ignition prevention requirements of § 25.981(a), the FAA considered the original overall intent of Amendment 25–102, which was to ensure the prevention of catastrophic events due to fuel tank vapor explosion. These special conditions are intended to achieve that objective through a prescriptive requirement that fault tolerance (with respect to the creation of an ignition source) be provided for all structural lightning protection design features where providing such fault tolerance is practical, and through a performance-based standard for the risk due to any single failure vulnerability that exists in the design. In addition, for any structural lightning protection design features for which Boeing shows that providing fault tolerance is impractical, these special conditions would require Boeing to show that a fuel tank vapor ignition event due to the summed risk of all non-fault-tolerant design features is extremely improbable. Boeing would be required to show that this safety objective is met by the proposed design using a structured system safety assessment similar to that currently used for demonstrating compliance with §§ 25.901 and 25.1309.

**Discussion of the Final Special Conditions**

Given these novel design features, and the compliance challenges noted earlier in this document, the FAA has determined that application of § 25.981(a)(3) is inappropriate in that it is neither practical nor necessary to apply the ignition source prevention provisions of § 25.981(a)(3) to the specific fuel tank structural lightning protection features of the 787. However, without the § 25.981(a)(3) provisions, the remaining applicable regulations in the 787 certification basis would be inadequate to set an appropriate standard for fuel tank ignition prevention. Therefore, in accordance with provisions of § 21.16, the FAA has determined that, instead of § 25.981(a)(3), alternative fuel tank structural lighting protection requirements be applied to fuel tank lightning protection features that are integral to the airframe structure of the 787. These alternative requirements are intended to provide the level of safety intended by § 25.981(a)(3), based on our recognition, as discussed above, that a highly effective NGS for the fuel tanks makes it unnecessary to assume that the fuel tank is always flammable. As discussed previously, the assumption that the fuel tanks are always flammable was required when demonstrating compliance to the ignition prevention requirements of § 25.981(a)(3).

One resulting difference between these special conditions and the § 25.981(a)(3) provisions they are meant to replace is the outcome being prevented—fuel vapor ignition versus an ignition source. These special conditions acknowledge that the application of fuel tank flammability performance standards will reduce fuel tank flammability to an extent that it is appropriate to consider the beneficial effects of flammability reduction when considering design areas where it is impractical to comply with § 25.981(a)(3).

One of the core requirements of these special conditions is a prescriptive requirement that structural lightning protection design features must be fault tolerant. (An exception wherein Boeing can show that providing fault tolerance is impractical, and associated requirements, is discussed below.) The other core requirement is that Boeing must show that the design, manufacturing processes, and airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage. The FAA has determined that, if these core requirements are met, a fuel tank vapor ignition event due to lightning is not anticipated to occur in the life of the airplane fleet. This conclusion is based on the fact that a critical lightning strike to any given airplane is itself a remote event, and on the fact that fuel tanks must be shown to be flammable for only a relatively small portion of the fleet operational life.

For any non-fault-tolerant features proposed in the design, Boeing must show that eliminating these features or making them fault tolerant is impractical. The requirements and considerations for showing it is impractical to provide fault tolerance are described in FAA Memorandum ANM–112–08–002. This requirement is intended to minimize the number of non-fault tolerant features in the design.

For areas of the design where Boeing shows that providing fault tolerant structural lighting protection features is impractical, non-fault-tolerant features will be allowed provided Boeing can show that a fuel tank vapor ignition event due to the non-fault-tolerant features is extremely improbable when the sum of probabilities of those events due to all non-fault-tolerant features is considered. Boeing will be required to submit a structured, quantitative assessment of fleet average risk for a fuel tank vapor ignition event due to all non-fault-tolerant design features included in the design. This will require determination of the number of non-fault tolerant design features, estimates of the probability of the failure of each non-fault-tolerant design feature, and estimates of the exposure time for those failures. This analysis must include failures due to manufacturing variability, aging, wear, corrosion, and likely damage.

It is acceptable to consider the probability of fuel tank flammability, the probability of a lightning strike to the airplane, the probability of a lightning strike to specific zones of the airplane (for example, Zone 2 behind the nacelle, but not a specific location or feature), and a distribution of lightning strike amplitude in performing the assessment provided the associated assumptions are acceptable to the FAA. The analysis must account for any dependencies among these factors, if they are used. The assessment must also account for operation with inoperative features and systems, including any proposed or anticipated dispatch relief. This risk assessment requirement is intended to ensure that an acceptable level of safety is provided given the non-fault-tolerant features in the proposed design.

Part 25, Appendix N, as adopted in Amendment 25–125, in conjunction with these special conditions, constitutes the standard for how to determine flammability probability. In performing the safety analysis required by these special conditions, relevant § 25.981(a)(3) compliance guidance is still applicable. Appropriate credit for the conditional probability of environmental or operational conditions occurring is normally limited to those provisions involving multiple failures, and this type of credit is not normally allowed in evaluation of single failures. However, these special conditions would allow consideration of the probability of occurrence of lightning attachment and flammable conditions when assessing the probability of structural failures resulting in a fuel tank vapor ignition event.

The FAA understands that lightning protection safety for airplane structure is inherently different from lightning protection for systems. We intend to apply these special conditions only to

structural lightning protection features of fuel systems. We do not intend to apply the alternative standards used under these special conditions to other areas of the airplane design evaluation.

**Requirements Provide Equivalent Level of Safety**

In recognition of the unusual design feature discussed above, and the impracticality of requiring multiple fault tolerance for lightning protection of certain aspects of fuel tank structure, the FAA has determined that an equivalent level of safety to direct compliance with § 25.981(a)(3) will be achieved for the 787 by applying these requirements. The FAA considers that, instead of only concentrating on fault tolerance for ignition source prevention, significantly reducing fuel tank flammability exposure in addition to preventing ignition sources is a better approach to lightning protection for the fuel tank. In addition, the level of average fuel tank flammability achieved by compliance with these special conditions is low enough that it is not appropriate or accurate to assume in a safety analysis that the fuel tanks may always be flammable.

Section 25.981(b), as amended by Amendment 25–125, sets limits on the allowable fuel tank flammability for the 787. Paragraph 2(a) of these special conditions applies the more stringent standard for warm day flammability performance applicable to normally emptied tanks within the fuselage contour from § 25.981(b) and part 25, Appendix M, to the wing tanks of the 787.

Because of the more stringent fuel tank flammability requirements in these special conditions, and because the flammability state of a fuel tank is independent of the various failures of structural elements that could lead to an ignition source in the event of lightning attachment, the FAA has agreed that it is appropriate in this case to allow treatment of flammability as an independent factor in the safety analysis. The positive control of flammability and the lower flammability that is required by these special conditions exceeds the minimum requirements of § 25.981(b). This offsets a reduction of the stringent standard for ignition source prevention in § 25.981(a)(3), which assumes that the fuel tank is flammable at all times.

Given the stringent requirements for fuel tank flammability, the fuel vapor ignition prevention and the ignition source prevention requirements in these special conditions will prevent "* * * catastrophic failure * * * due to ignition of fuel or vapors" as stated in § 25.981(a). Thus, the overall level of safety achieved by these special conditions is considered equivalent to that which would be required by compliance with § 25.981(a)(3) and (b).

**Discussion of Comments**

Notice of proposed special conditions No. 25–09–11–SC for the Boeing Model 787–8 airplanes was published in the **Federal Register** on October 14, 2009 (74 FR 52698). Several comments were received from two commenters (Cessna and NATCA).

*Cessna #1*

Cessna requested additional wording be added to the discussion of the proposed special conditions to clarify the fuel tank flammability requirements proposed in the special conditions would only be applied specifically to special conditions. Cessna referred to FAA Policy Memo ANM–112–08–002 and noted the flammability levels of Appendix M are not defined as a precondition for petitions for exemptions. Cessna proposed the following text:

> "Since the proposed wing tank NGS on the 787 provides performance that meets part 25, Appendix M, the FAA has determined that the risk reduction provided by this additional performance will provide compensation for some relief from the ignition prevention requirements of § 25.981(a)(3) while still establishing a level of safety equivalent to that established in the regulations."

The additional wording proposed by the commenter clarifies that the safety level provided by the special conditions is equivalent to that established in the regulation. Part 21 only allows the FAA to propose special conditions when equivalent safety to the applicable airworthiness standards has been demonstrated. We agree with the accuracy of the commenters proposed text and modified the wording of the discussion in the special conditions as suggested by the commenter.

As we have already stated in FAA Policy Memo ANM–112–08–002 (Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure), for traditional airplanes that do not have active flammability reduction systems, where the applicant shows that full compliance with § 25.981 is impractical, we intend to allow a similar reduction in the number of ignition-prevention features using the exemption process. Exemptions are needed because reducing the number of ignition-prevention features without reducing the fuel-tank flammability does not provide equivalent safety to § 25.981.

No change to the proposed special conditions was made as a result of this comment.

*Cessna #2*

Cessna recommended that the alternative requirements for special conditions and exemptions to § 25.981(a)(3) include considerations for both structure and systems, with regards to both lightning and electrostatics protection. They supported their comment with the rationale that electrostatic protection methods rely upon bonding techniques similar to those employed for lightning protection, and pose similar practicality issues. Each additional redundant bonding provision is itself another potential failure mode, and the over-complication of increased redundancy presents maintenance and operational issues.

Cessna requested that the proposed Special Condition No. 1, Definitions, be changed to broaden the applicability of the special conditions to include "systems internal to the fuel tank." We have already addressed this comment in developing FAA Policy Memo ANM–112–08–002. The public comments to FAA Policy Memo ANM–112–08–002 and our disposition of those comments are available at *http://rgl.faa.gov*. Click on "Policy," then search (By Policy Number) for ANM–112–08–002. The commenter has provided no new information, and no change was made to the proposed special conditions as a result of this comment.

*Cessna #3*

Cessna recommended the FAA include reference to guidance material developed by the Society of Automotive Engineers (SAE) AE–2 Lightning Committee directly in exemptions and special conditions. The FAA participated on the SAE committee that prepared the guidance material. However, at this time the FAA has not completed its review of the AE–2 guidance. We will review the proposed guidance material and publish it for comment if we determine it to be a viable means of showing compliance to special conditions or exemptions. In the mean time, this guidance is not necessary for the adoption of, or compliance with, these special conditions.

*NATCA #1*

The National Air Traffic Controller Association (NATCA) requested the proposed special conditions be withdrawn since they believe the information provided in the special condition's Background section does not support the FAA finding that the

proposed special conditions provide equivalent safety to the existing part 25 safety standards for transport airplanes.

We have already addressed this request to not publish the proposed special conditions in developing FAA Policy Memo ANM–112–08–002. For the reasons stated in that policy memo and the associated disposition of comments, we believe these special conditions do establish an equivalent level of safety.

*NATCA #2 & #3*

NATCA provided an alternative to the proposed special conditions. They requested the proposed special conditions be withdrawn and revised and suggested the following requirements replace those proposed by the FAA:

(1) Eliminate the allowance for single failures that can result in an ignition source, unless the fuel tank is shown to have a flammability reduction means that prevents the tanks from becoming flammable or,

(2) Do not allow dispatch of any airplane with the inerting system that is not functioning if the design does not have two independent features that will prevent an ignition source.

NATCA provided comments in support of its suggested change to the special conditions discussed above that would not "allow dispatch of any airplane with the inerting system that is not functioning if the design does not have independent features that will prevent an ignition source." They suggested a means of meeting their proposed special conditions could be achieved by "a combination of eliminating the single failures through design improvements and limiting airplane operation on warmer days with the NGS inoperative could essentially eliminate the chance of a fuel tank explosion due to a lightning strike." They supported their comment by stating design improvements implemented by Boeing have reduced the number of ignition sources and further design improvements implemented on later production airplanes could eliminate single failures. They proposed that once the single failures were eliminated, the restriction on dispatch of airplanes with the inerting system inoperative could be removed. They stated this would be a practical way to implement new technology because a small number of airplane flights could be impacted by flight delays caused by an inoperative fuel tank inerting system.

We have already addressed the proposal to restrict dispatch with the inerting system inoperative in developing FAA Policy Memo ANM–112–08–002. In short, determining appropriate dispatch relief, if any, is the function of the Flight Operations Evaluation Board and not the function of special conditions.

*NATCA #4*

NATCA requested extension of the comment period because guidance material regarding means of compliance with the proposed special conditions was not available to the public prior the closing of the comment period. We do not agree with the request to extend the comment period but do agree that public comment on future policy should be sought. These special conditions are specific to the 787 and means of compliance are dependent upon specific proprietary design details of the airplane that cannot be released to the public.

*NATCA #5*

NATCA provided comments that the number of single failures on the 787 had been reduced through design changes and that earlier exemptions issued by the FAA did not allow single failures. They questioned the FAA's determination that it is impractical to eliminate single failures in the 787 design. They offered specific examples of possible methods of preventing certain single failures discussed in the preamble to the proposed special conditions, including use of monitoring aids consisting of overlays that are on the outside the fuel tank where failure could be easily detected and therefore failure of the features would not be latent.

From this comment the FAA infers the commenter believes preventing all single failures is practical. While NATCA is correct that previously issued exemptions did not explicitly allow for single failures, at the time those exemptions were issued, we were not aware of the particular failure modes that could result in single failures that could create ignition sources. As stated in the proposed special conditions and in the discussion in FAA Policy Memo ANM–112–08–002, we now recognize that eliminating all single failures in airplane structure using current state-of-the-art design practices is not always practical.

The FAA therefore does not agree that the proposed allowance for single failure conditions should be eliminated.

*NATCA #7*

NATCA requested that "the FAA make available to the public all documentation supporting the impracticality findings for each ignition prevention feature that will not be fail-safe, as well as why it is impractical (costs) to issue special conditions requiring the 787 inerting system be operating on warmer days on any airplane that has been produced with known single failures." No change to the special conditions was requested in this comment. General information supporting the impracticality of eliminating single failures, as well as considerations for operating airplanes with the NGS inoperative, was previously discussed in FAA Policy Memo ANM–112–08–002. The specific design issues associated with the design of the 787 are likely to be proprietary, but that determination can only be made in the context of a Freedom of Information Act request. The special conditions, with clarifications discussed above, are adopted as proposed.

## Applicability

As discussed above, these special conditions are applicable to the Boeing Model 787–8 airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

## Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 787–8 airplane. It is not a rule of general applicability.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 787–8 airplane.

*1. Definitions*

Most of the terms used in Special Condition No. 2, Alternative Fuel Tank Structural Lightning Protection Requirements, either have the common dictionary meaning or are defined in Advisory Circular 25.1309–1A, System Design and Analysis, dated June 21, 1988.

The following definitions are the only terms intended to have a specialized meaning when used in Special Condition No. 2:

(a) *Basic Airframe Structure.* Includes design elements such as structural members, structural joint features, and fastener systems including airplane skins, ribs, spars, stringers, etc., and associated fasteners, joints, coatings, and sealant. Basic airframe structure may also include those structural elements that are expected to be removed for maintenance, such as exterior fuel tank access panels and fairing attachment features, provided maintenance errors that could compromise associated lightning protection features would be evident upon an exterior preflight inspection of the airplane and would be corrected prior to flight.

(b) *Permanent Systems Supporting Structure.* Includes static, permanently attached structural parts (such as brackets) that are used to support system elements. It does not include any part intended to be removed, or any joint intended to be separated, to maintain or replace system elements or other parts, unless that part removal or joint separation is accepted by the FAA as being extremely remote.

(c) *Manufacturing Variability.* Includes tolerances and variability allowed by the design and production specifications as well as anticipated errors or escapes from the manufacturing and inspection processes.

(d) *Extremely Remote.* Conditions that are not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of one type. Extremely remote conditions are those having an average probability per flight hour on the order of $1 \times 10^{-7}$ or less, but greater than on the order of $1 \times 10^{-9}$.

(e) *Extremely Improbable.* Conditions that are so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. Extremely improbable conditions are those having an average probability per flight hour of the order of $1 \times 10^{-9}$ or less.

*2. Alternative Fuel Tank Structural Lightning Protection Requirements*

For lightning protection features that are integral to fuel tank basic airframe structure or permanent systems supporting structure, as defined in Special Condition No. 1, Definitions, for which The Boeing Company shows and the FAA finds compliance with § 25.981(a)(3) to be impractical, the following requirements may be applied in lieu of the requirements of § 25.981(a)(3):

(a) The Boeing Company must show that the airplane design meets the requirements of part 25, Appendix M, as amended by Amendment 25–125, for all fuel tanks installed on the airplane.

(b) The Boeing Company must show that the design includes at least two independent, effective, and reliable lightning protection features (or sets of features) such that fault tolerance to prevent lightning-related ignition sources is provided for each area of the structural design proposed to be shown compliant with these special conditions in lieu of compliance with the requirements of § 25.981(a)(3). Fault tolerance is not required for any specific design feature if:

(1) For that feature, providing fault tolerance is shown to be impractical, and

(2) Fuel tank vapor ignition due to that feature and all other non-fault-tolerant features, when their fuel tank vapor ignition event probabilities are summed, is shown to be extremely improbable.

(c) The applicant must perform an analysis to show that the design, manufacturing processes, and airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage. Issued in Renton, Washington, on November 15, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–29409 Filed 11–22–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–0725; Directorate Identifier 2010–NE–18–AD]; Amendment 39–16528; AD 2010–24–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a one-time visual inspection of the No. 3 bearing oil pressure tube, part number (P/N) 51J041–01, P/N 50J604–01, or P/N 50J924–01. Tubes that are found cracked or repaired must be removed from service. This AD also prohibits repaired tubes from being installed. This AD results from one report of a repaired No. 3 bearing oil tube that caused an engine in-flight shutdown, seven reports of repaired No. 3 bearing oil pressure tubes found cracked that led to unscheduled engine removals, and one report of a test cell event from a repaired tube that cracked. We are issuing this AD to prevent cracking of No. 3 bearing oil pressure tubes, which could result in internal oil fire, failure of the high-pressure turbine (HPT) disks, uncontained engine failure, and damage to the airplane.

**DATES:** This AD is effective December 28, 2010.

### 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 address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7742; fax (781) 238–7199; e-mail: *james.e.gray@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on June 3, 2010 (75 FR 31330). That NPRM proposed to require:

- A one-time visual inspection of the No. 3 bearing oil pressure tube, P/N 51J041–01, P/N 50J604–01, or P/N 50J924–01; and
- Removal from service if found cracked or repaired, or if suspected that the tube was repaired; and
- A prohibition on installing repaired tubes.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

**Request To Clarify Paragraph (e) of the Proposed AD**

United Airlines asked us to revise paragraph (e) of the proposed AD to inspect the tube when the tube is in the piece-part condition. United Airlines felt that changing paragraph (e) of the proposed AD will make our intent clear.

We agree. We revised paragraph (e) of the proposed AD to say "You are responsible for having the actions required by this AD performed the next time the No. 3 bearing oil pressure tube is in the piece-part condition after the effective date of this AD, unless the actions have already been done." We also added a new heading "Definitions" and new paragraph (i) that defines piece-part condition for the oil pressure tube.

**Request To Provide Clarification of the Definition of a Repair**

Delta Airlines, Inc. and United Airlines asked us to clarify the types of repaired tubes that must be removed. Delta Airlines Inc. and United Airlines said the body of the NPRM states that weld repairs were the source of the failures.

We don't agree. All repairs are unacceptable, not just weld repairs. Further, the original equipment manufacturer also revised their applicable repair manual(s) to remove all repairs to these tubes.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Costs of Compliance**

We estimate that this AD would affect 973 PW4000 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 10 minutes per engine to perform the one-time visual inspection when the tube has been removed, and that the average labor rate is $85 per work-hour. Required parts would cost about $9,154 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $8,923,383.

**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, 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):

**2010–24–09 Pratt & Whitney:** Amendment 39–16528; FAA–2010–0725; Directorate Identifier 2010–NE–18–AD.

**Effective Date**

(a) This AD is effective December 28, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following Pratt & Whitney turbofan engines, with No. 3 bearing oil pressure tube, part number (P/N) 51J041–01, P/N 50J604–01, or P/N 50J924–01, installed:

**PW4000–94" Engines**

(1) PW4000–94" engines affected are PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650, including models with any dash number suffix.

**PW4000–100" Engines**

(2) PW4000–100" engines affected are PW4164, PW4168, PW4168A, PW4164C, PW4164C/B, PW4170, PW4168A–1D, PW4168–1D, PW4164–1D, PW4164C–1D, and PW4164C/B–1D, including models with any dash number suffix.

**PW4000–112" Engines**

(3) PW4000–112" engines affected are PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090–3, PW4090D, and PW4098, including models with any dash number suffix.

(4) These engines are installed on, but not limited to, Airbus A300, A310, and A330 series, Boeing MD–11, 747, 767, and 777 series, airplanes.

**Unsafe Condition**

(d) This AD results from one report of a repaired No. 3 bearing oil pressure tube that cracked and caused an engine in-flight shutdown, one report of a test cell event, and seven reports since 2007, of repaired No. 3 bearing oil pressure tubes found cracked that led to unscheduled engine removals. We are issuing this AD to prevent cracking of No. 3 bearing oil pressure tubes, which could result in internal oil fire, failure of the high-pressure turbine disks, uncontained engine failure, and damage to the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed the next time the No. 3 bearing oil pressure tube is in the piece-part condition after the

effective date of this AD, unless the actions have already been done.

**One-Time Visual Inspection of the No. 3 Bearing Oil Pressure Tube**

(f) Perform a one-time visual inspection of the exterior of the No. 3 bearing oil pressure tube for cracks and evidence of being repaired.

(1) Remove the tube from service if any cracks are found.

(2) Remove the tube from service if found repaired, or if suspected that the tube was repaired.

(g) After the effective date of this AD, do not install any repaired No. 3 bearing oil pressure tube into any engine.

(h) Guidance on the No. 3 bearing oil pressure tube visual inspection can be found in:

(1) Pratt & Whitney Clean, Inspect, Repair Manual PN 51A357, 72–41–20 for PW4000–94" and PW4000–100" series engines; or

(2) Pratt & Whitney Clean, Inspect, Repair Manual PN 51A750, 72–41–20 for PW4000–112" series engines.

**Definitions**

(i) For the purpose of this AD, piece part condition means that the part is completely disassembled from the engine as specified in the disassembly instructions in the manufacturer's engine manual.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, FAA, may approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(k) For more information about this AD, contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7742; fax (781) 238–7199; e-mail: *james.e.gray@faa.gov.*

**Material Incorporated by Reference**

(l) None.

Issued in Burlington, Massachusetts, on November 16, 2010.

**Robert G. Mann,**

*Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2010–29451 Filed 11–22–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–1076; Directorate Identifier 2009–CE–019–AD; Amendment 39–16296; AD 2010–10–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Various Models MU–2B Airplanes

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

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that has published in the **Federal Register**. That AD applies to the products listed above. The reissue date of September 24, 1986, of the MU–2B–60 airplane flight manual (AFM) in table 3 of the Compliance section (e)(1)(i) is incorrect, in that it is "September 24, 1985," instead of "September 24, 1986." This document corrects this error. In all other respects, the original document remains the same.

**DATES:** This final rule; correction is effective November 23, 2010. The effective date for AD 2010–10–17 remains July 22, 2010.

**ADDRESSES:** 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 address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Matt Bryant, Propulsion Engineer, FAA, Fort Worth ACO, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5146; fax: (817) 222–5960; e-mail: *matthew.a.bryant@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive 2010–10–17, amendment 39–16296 (75 FR 34349), which supersedes Airworthiness Directive (AD) 2006–17–01, AD 2006–15–07, AD 2000–02–25, and AD 97–25–02, currently retains from AD 2006–17–01 the inspection of the engine torque indication system and possible recalibration of the torque pressure transducers and requires incorporating all revisions up to and including the latest revisions of the AFM for certain MHI various Models MU–2B airplanes.

As published, table 3 specific to the MHI MU–2B–60 airplane stating that the MU–2B–60 AFM has a reissued date of September 24, 1986, in the Compliance section (e) is incorrect, in that it is "September 24, 1985," instead of "September 24, 1986."

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains July 22, 2010.

### Correction of Regulatory Text

**§ 39.13 [Corrected]**

■ In the **Federal Register** of June 17, 2010, AD 2010–10–17; Amendment 39–16296 is corrected as follows:

On page 34352, in the Compliance section paragraph (e)(1)(i) in table 3, under the third column "Date and version of AFM," change the AFM, Section 6, Reissued date "September 24, 1986," to "September 24, 1985."

Issued in Kansas City, Missouri, on November 17, 2010.

**Patrick R. Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–29463 Filed 11–22–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 26

**[Docket No. OJP 1464; AG Order No.]**

**RIN 1121–AA76**

## Office of the Attorney General; Certification Process for State Capital Counsel Systems; Removal of Final Rule

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the USA PATRIOT Improvement and Reauthorization Act of 2005, the Department of Justice promulgated a final rule to implement certification procedures for States seeking to qualify for the special federal habeas corpus review procedures in capital cases. A Federal district court issued an injunction requiring the Department to provide an additional public comment period and publish a response to any comments received during that period. The Department then solicited further

public comments. By this rule, the Department is removing the December 11, 2008 regulations. The Department will issue new regulations on this subject by separate rulemaking.

**DATES:** *Effective Date:* This rule is effective December 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ellman, Office of Legal Policy, at (202) 514–4601 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Overview

Chapter 154 of title 28, United States Code, makes special procedures available to a State respondent in Federal habeas corpus proceedings involving review of State capital convictions, but only if the Attorney General has certified "that [the] State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265," and if "counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent." 28 U.S.C. 2261(b). 28 U.S.C. 2265(a)(1) provides that, in order for a State to qualify for the special habeas procedures, the Attorney General must determine that "the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent [capital] prisoners" and that the State "provides standards of competency for the appointment of counsel in [such proceedings]."

Chapter 154 has been in place since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132), but was amended by section 507 of Public Law 109–177, the USA PATRIOT Improvement and Reauthorization Act of 2005 ("the Act"). Prior to the Act, the determination of a State's eligibility for the special procedures had been left to the Federal habeas courts. The 2005 Act amended, inter alia, sections 2261(b) and 2265 to assign responsibility for chapter 154 certifications to the Attorney General of the United States, subject to de novo review by the Court of Appeals for the District of Columbia Circuit.

## Rulemaking History

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure. To fulfill this mandate, the Department of Justice published a proposed rule in the **Federal Register** on June 6, 2007, that proposed adding a new subpart entitled "Certification Process for State Capital Counsel Systems" to 28 CFR part 26. 72 FR 31217 (June 6, 2007). The comment period ended on August 6, 2007. The Department published a notice on August 9, 2007, reopening the comment period, 72 FR 44816, and the reopened comment period ended on September 24, 2007. The final rule establishing the chapter 154 certification procedure was published on December 11, 2008, 73 FR 75327, with an effective date of January 12, 2009.

The U.S. District Court for the Northern District of California preliminarily enjoined the Department "during the pendency of these proceedings from putting into effect the rule * * * without first providing an additional comment period of at least thirty days and publishing a response to any comments received during such period." *Habeas Corpus Resource Center* v. *United States Dep't of Justice,* No. 08–2649, 2009 WL 185423, at *10 (N.D. Calif. Jan. 20, 2009). Further public comment was solicited, with the comment period closing on April 6, 2009. 74 FR 6131.

As the Department reviewed the submitted comments, it considered further the statutory requirements governing the regulatory implementation of the chapter 154 certification procedures. The Attorney General has determined that chapter 154 reasonably could be construed to allow the Attorney General greater discretion in making certification determinations than the December 11, 2008 regulations allowed. For instance, chapter 154 reasonably could be construed to permit the Attorney General to determine, within certain bounds, whether a state's competency standards and counsel appointment mechanism (including compensation standards) are adequate to achieve chapter 154's objectives.

Therefore, the Department published a notice in the **Federal Register** on May 25, 2010, proposing to remove the December 11, 2008 regulations pending the completion of a new rulemaking process, during which the Department will further consider what standards and procedures are appropriate. 75 FR 29217. The comment period closed on June 24, 2010.

## Summary of Comments

Eight comments were received in response to the notice proposing to remove the December 11, 2008 regulations.

Two U.S. Senators, Federal Public Defenders, a California capital defense agency, and a number of other organizations submitted comments supporting removal of the existing rule. These comments were critical of the existing regulations and included recommendations concerning the development or formulation of a replacement rule.

The Criminal Justice Legal Foundation submitted comments that recommended not removing the portions of the existing rule concerned with certification procedures, on the ground that present dissatisfaction by the Department with the section of the existing rule concerning the substantive criteria a state must meet to be certified under chapter 154—i.e., 28 CFR 26.22—could at most justify rescinding that section alone. The commenter accordingly urged that 28 CFR 26.20, 26.21, and 26.23 should be implemented without delay, and that any further delay would violate the Department's duty to victims of crime.

The creation of a process for States to apply for chapter 154 certification is only part of the Attorney General's responsibilities under chapter 154, and it makes little sense to retain that process in the absence of substantive certification criteria. If applications are submitted, the Attorney General must then decide whether the submitting States satisfy the requirements for chapter 154 certification. Section 26.22 in the existing rule reflected the Department's understanding of those requirements at the time the rule was published. However, the Department has since reconsidered that understanding, including the rule's assumption that the formulation of counsel competency and compensation standards for purposes of chapter 154 certification is a matter of state discretion and subject to very little, if any, further review by the Attorney General.

The Department believes that the process for considering and deciding States' applications for chapter 154 certification is best promulgated concurrently with a rule setting forth the standards for a State to meet chapter 154's requirements. The Attorney General will need to decide what standards he will apply in assessing whether State capital counsel systems are adequate to satisfy the chapter 154 requirements. States correspondingly will need to know what standards the Attorney General will apply in order to frame those applications intelligently, and in order to make any necessary changes in their capital counsel systems prior to applying for Attorney General certification. Likewise, members of the public will need to know what standards the Attorney General will apply in order to provide relevant input concerning the adequacy of State

applications. *Cf.* 28 CFR 26.23(c)–(d) (providing for receipt and consideration of public comment on State applications for chapter 154 certification).

Accordingly, removal of the entire December 11, 2008 final rule at this time is warranted in order to allow the Attorney General to articulate the standards he will apply in making chapter 154 certification decisions and to obtain public input concerning the formulation of such standards. Pending the completion of a new rulemaking process, receipt and consideration of applications for chapter 154 certification cannot sensibly go forward in the absence of articulated standards for deciding such applications.

**Regulatory Certifications**

*Executive Order 12866*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

*Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. This rule merely removes the December 11, 2008 regulations. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

*Executive Order 12988–Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule merely removes the December 11, 2008 regulations.

*Unfunded Mandates Reform Act of 1995*

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

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 28 CFR Part 26**

Law enforcement officers, Prisoners.

■ Accordingly, for the reasons set forth in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

## PART 26—DEATH SENTENCES PROCEDURES

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

**Authority:** 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

## Subpart B—[Removed and Reserved]

■ 2. Subpart B is removed and reserved.

Dated: November 15, 2010.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2010–29329 Filed 11–22–10; 8:45 am]

BILLING CODE 4410–18–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1983

**[Docket No. OSHA–2010–0006]**

**RIN 1218–AC47**

## Collection of Information Requirement Related to Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008

**AGENCY:** Occupational Safety and Health Administration (OSHA); Department of Labor.

**ACTION:** Clarification.

**SUMMARY:** OSHA is informing the public of a collection of information requirement contained in the Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008 interim final rule, published August 31, 2010. This clarification notice informs the public about the means by which to comment on this collection of information requirement prior to OSHA's submission of an information collection request (ICR) extension to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995.

**DATES:** Comments on the collection of information requirement in this interim final rule must be submitted (postmarked, sent, or received) to the ICR docket, Docket No. OSHA–2010–0049, by December 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** Nilgun Tolek, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

**SUPPLEMENTARY INFORMATION:** On August 31, 2010, OSHA published notice of an interim final rule containing procedures for the handling of retaliation complaints under the employee protection provision of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (75 FR 53533).

In the August 31, 2010 notice, OSHA indicated that the interim final rule did not contain collection of information requirements subject to review by OMB under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA). (75 FR at 53538.) However, upon reconsideration, OSHA has determined that there is a collection of information requirement associated with the initiation of CPSIA whistleblower complaints.

OSHA currently has OMB approval for collection of information requirements related to the handling of retaliation complaints filed under various whistleblower protection statutes in the "Regulations Containing Procedures for Handling of Retaliation Complaints" ICR, OMB Control Number 1218–0236. OSHA is currently requesting that OMB extend approval of

this ICR and has included in its extension request the collection of information requirement contained in the CPSIA whistleblower procedures. As a result of including the collection of information requirement contained in the CPSIA whistleblower procedures in this ICR, the burden hours in the ICR will increase by 4.

The **Federal Register** notice soliciting public comment on the extension of the "Regulations Containing Procedures for Handling of Retaliation Complaints" ICR is in Docket No. OSHA–2010–0049. Comments on the requested extension of this ICR may be submitted to Docket No. OSHA–2010–0049 electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal, or by facsimile, mail, hand delivery, express mail, messenger or courier service to the OSHA Docket office, as indicated in the related **Federal Register** notice.

**List of Subjects in 29 CFR Part 1983**

Administrative practice and procedure, Employment, Consumer protection, Investigations, Reporting and recordkeeping requirements, Whistleblower.

**Authority and Signature**

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, under the following authorities: 15 U.S.C. 2087, Secretary of Labor's Order 4–2010, 75 FR 55355 (Sept. 10, 2010).

Signed in Washington, DC, on November 17, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–29412 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1978

**[Docket No. OSHA–2008–0026]**

**RIN 1218–AC36**

## Collection of Information Requirement Related to Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982

**AGENCY:** Occupational Safety and Health Administration (OSHA); Department of Labor.

**ACTION:** Clarification.

**SUMMARY:** OSHA is informing the public of a collection of information requirement contained in the Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982 interim final rule, published August 31, 2010. This clarification notice informs the public about the means by which to comment on this collection of information requirement prior to OSHA's submission of an information collection request (ICR) extension to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995.

**DATES:** Comments on the collection of information requirement in the interim final rule must be submitted (postmarked, sent, or received) to the ICR docket, Docket No. OSHA–2010–0049, by December 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** Nilgun Tolek, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

**SUPPLEMENTARY INFORMATION:** On August 31, 2010, OSHA published notice of an interim final rule containing updated procedures for the handling of retaliation complaints under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA) (75 FR 53544).

In the August 31, 2010 notice, OSHA indicated that the interim final rule did not contain collection of information requirements subject to review by OMB under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA). (75 FR at 53552) However, upon reconsideration, OSHA has determined that there is a collection of information requirement associated with the initiation of STAA whistleblower complaints.

OSHA currently has OMB approval for collection of information requirements related to the handling of retaliation complaints filed under various whistleblower protection statutes in the "Regulations Containing Procedures for Handling of Retaliation Complaints" ICR, OMB Control Number 1218–0236. OSHA is currently requesting that OMB extend approval of this ICR and has included in its extension request the collection of information requirement contained in the updated STAA whistleblower procedures. As a result of including the collection of information requirement contained in the updated STAA whistleblower procedures in this ICR, the burden hours in the ICR will increase by 305.

The **Federal Register** notice soliciting public comment on the extension of the "Regulations Containing Procedures for Handling of Retaliation Complaints" ICR is in Docket No. OSHA–2010–0049. Comments on the requested extension of this ICR may be submitted to Docket No. OSHA–2010–0049 electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal, or by facsimile, mail, hand delivery, express mail, messenger or courier service to the OSHA Docket office, as indicated in the related **Federal Register** notice.

**List of Subjects in 29 CFR Part 1978**

Administrative practice and procedure, Employment, Highway safety, Investigations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation, Whistleblowing.

**Authority and Signature**

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, under the following authorities: 49 U.S.C. 31101 and 31105, Secretary of Labor's Order 4–2010, 75 FR 55355 (Sept. 10, 2010).

Signed in Washington, DC, on November 17, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–29415 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1982

**[Docket Number OSHA–2008–0027]**

**RIN 1218–AC36**

## Collection of Information Requirement Related to Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act and the Federal Railroad Safety Act

**AGENCY:** Occupational Safety and Health Administration (OSHA); Department of Labor.

**ACTION:** Clarification.

**SUMMARY:** OSHA is informing the public of a collection of information

requirement contained in the Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act and the Federal Railroad Safety Act interim final rule, published August 31, 2010. This clarification notice informs the public about the means by which to comment on this collection of information requirement prior to OSHA's submission of an information collection request (ICR) extension to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995.

**DATES:** Comments on the collection of information requirement in the interim final rule must be submitted (postmarked, sent, or received) to the ICR docket, Docket Number OSHA–2010–0049, by December 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** Nilgun Tolek, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

**SUPPLEMENTARY INFORMATION:** On August 31, 2010, OSHA published notice of an interim final rule containing procedures for the handling of retaliation complaints under the employee protection provisions of the National Transit Systems Security Act (NTSSA) and the Federal Railroad Safety Act (FRSA) (75 FR 53521).

In the August 31, 2010 notice, OSHA indicated that the interim final rule did not contain collection of information requirements subject to review by OMB under the provisions of the Paperwork Reduction Act of 1995 (Pub. L.104–13) (PRA). (75 FR at 53527) However, upon reconsideration, OSHA has determined that there is a collection of information requirement associated with the initiation of NTSSA and FRSA whistleblower complaints.

OSHA currently has OMB approval for collection of information requirements related to the handling of retaliation complaints filed under various whistleblower protection statutes in the "Regulations Containing Procedures for Handling of Retaliation Complaints" ICR, OMB Control Number 1218–0236. OSHA is currently requesting that OMB extend approval of this ICR and has included in its extension request the collection of information requirement contained in the NTSSA and FRSA whistleblower procedures. As a result of including the collection of information requirement contained in the NTSSA and FRSA whistleblower procedures in this ICR, the burden hours in the ICR will increase by 155.

The **Federal Register** notice soliciting public comment on the extension of the "Regulations Containing Procedures for Handling of Retaliation Complaints" ICR is in Docket No. OSHA–2010–0049. Comments on the requested extension of this ICR may be submitted to Docket No. OSHA–2010–0049 electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal, or by facsimile, mail, hand delivery, express mail, messenger or courier service to the OSHA Docket office, as indicated in the related **Federal Register** notice.

### List of Subjects in 29 CFR Part 1982

Administrative practice and procedure, Employment, Homeland security, Investigations, Mass transportation, Reporting and recordkeeping requirements, Public transportation, Railroads, Safety, Transportation, Whistleblowing.

### Authority and Signature

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, under the following authorities: 6 U.S.C. 1142 and 49 U.S.C. 20109, Secretary of Labor's Order 4–2010, 75 FR 55355 (Sept. 10, 2010).

Signed in Washington, DC, on November 17, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–29414 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8159]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been

published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*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 rule involves no policies that have federalism implications under Executive Order 13132.

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

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 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.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region I** | | | | |
| Connecticut: | | | | |
| Beacon Falls, Town of, New Haven County. | 090072 | June 27, 1975, Emerg; March 1, 1979, Reg; December 17, 2010, Susp. | Dec. 17, 2010 ... | Dec. 17, 2010. |
| Bethany, Town of, New Haven County | 090144 | July 24, 1975, Emerg; August 23, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Branford, Town of, New Haven County | 090073 | April 5, 1973, Emerg; December 15, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Cheshire, Town of, New Haven County | 090074 | March 13, 1975, Emerg; July 16, 1981, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Derby, City of, New Haven County ..... | 090075 | February 4, 1972, Emerg; September 15, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Guilford, Town of, New Haven County | 090077 | October 20, 1972, Emerg; May 1, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Hamden, Town of, New Haven County | 090078 | May 3, 1973, Emerg; June 15, 1979, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Madison, Town of, New Haven County | 090079 | July 19, 1973, Emerg; September 15, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Meriden, City of, New Haven County .... | 090081 | April 11, 1974, Emerg; September 30, 1982, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Milford, City of, New Haven County ..... | 090082 | January 14, 1972, Emerg; September 29, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Naugatuck, Borough of, New Haven County. | 090137 | June 26, 1975, Emerg; August 15, 1979, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| North Branford, Town of, New Haven County. | 090085 | October 20, 1972, Emerg; July 3, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Orange, Town of, New Haven County .. | 090087 | May 25, 1973, Emerg; March 18, 1980, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Prospect, Town of, New Haven County | 090151 | July 1, 1975, Emerg; February 4, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Seymour, Town of, New Haven County | 090088 | December 18, 1974, Emerg; July 3, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Southbury, Town of, New Haven County. | 090089 | August 31, 1973, Emerg; March 28, 1980, Reg; December 17, 2010, Susp. | .....do ..... | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Wallingford, Town of, New Haven County. | 090090 | June 25, 1973, Emerg; September 15, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Waterbury, City of, New Haven County | 090091 | May 23, 1975, Emerg; November 1, 1979, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| West Haven, City of, New Haven County. | 090092 | October 6, 1972, Emerg; January 17, 1979, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Wolcott, Town of, New Haven County .. | 090093 | August 6, 1975, Emerg; July 5, 1982, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| **Region III** | | | | |
| Virginia: | | | | |
| Alleghany County, Unincorporated Areas. | 510009 | February 22, 1974, Emerg; July 16, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Botetourt County, Unincorporated Areas | 510018 | September 6, 1974, Emerg; June 15, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Buchanan, Town of Botetourt County ... | 510019 | January 10, 1974, Emerg; November 2, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Clifton Forge, Town of, Alleghany County. | 510038 | February 1, 1974, Emerg; September 1, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Covington, City of, Independent City .... | 510040 | March 13, 1974, Emerg; January 3, 1979, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Fincastle, Town of, Botetourt County .... | 510020 | November 17, 1975, Emerg; May 15, 1978, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Iron Gate, Town of, Alleghany County .. | 510220 | May 13, 1975, Emerg; January 16, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Troutville, Town of, Botetourt County .... | 510021 | February 26, 1975, Emerg; October 14, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| **Region IV** | | | | |
| Florida: | | | | |
| Alford, Town of, Jackson County ..... | 120580 | N/A, Emerg; July 14, 2005, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Bonifay, City of, Holmes County ..... | 120116 | July 25, 1975, Emerg; August 1, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Callahan, Town of, Nassau County ..... | 120171 | June 2, 1976, Emerg; April 4, 1983, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Campbellton, Town of, Jackson County | 120126 | N/A, Emerg; April 28, 2008, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Cottondale, City of, Jackson County ..... | 120583 | N/A, Emerg; December 30, 1993, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Esto, Town of, Holmes County ..... | 120630 | N/A, Emerg; March 19, 1996, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Fernandina Beach, City of, Nassau County. | 120172 | August 16, 1974, Emerg; January 14, 1977, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Graceville, City of, Jackson County ..... | 120127 | April 2, 1975, Emerg; December 15, 1990, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Grand Ridge, Town of, Jackson County | 120128 | March 8, 1976, Emerg; May 1, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Hilliard, Town of, Nassau County ..... | 120573 | March 16, 1998, Emerg; October 1, 2003, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Holmes County, Unincorporated Areas | 120420 | March 29, 1978, Emerg; December 5, 1990, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Jackson County, Unincorporated Areas | 120125 | August 18, 1975, Emerg; December 15, 1990, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Malone, Town of, Jackson County ..... | 120623 | October 30, 1984, Emerg; December 15, 1990, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Marianna, City of, Jackson County ..... | 120129 | March 20, 1975, Emerg; May 1, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Nassau County, Unincorporated Areas | 120170 | July 9, 1971, Emerg; August 15, 1984, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Noma, Town of, Holmes County ..... | 120631 | N/A, Emerg; March 19, 1996, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Ponce de Leon, Town of, Holmes County. | 120117 | October 30, 1975, Emerg; December 5, 1990, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Sneads, Town of, Jackson County ..... | 120130 | August 5, 1977, Emerg; May 1, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Westville, Town of, Holmes County ..... | 120118 | November 14, 1975, Emerg; June 1, 1987, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Georgia: Bartow, City of, Jefferson County. | 130115 | October 22, 1990, Emerg; January 1, 1992, Reg; December 17, 2010, Susp. | .....do ..... | do. |
| Dexter, Town of, Laurens County ..... | 130607 | November 5, 2008, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do ..... | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Irwinton, City of, Wilkinson County | 130440 | August 4, 1975, Emerg; September 4, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Ivey, Town of, Wilkinson County | 130420 | August 6, 1979, Emerg; June 3, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Jeffersonville, City of, Twiggs County | 130508 | September 27, 1994, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | do | do. |
| Johnson County, Unincorporated Areas | 130567 | January 11, 1999, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | do | do. |
| Oglethorpe County, Unincorporated Areas. | 130370 | June 10, 1998, Emerg; November 1, 2006, Reg; December 17, 2010, Susp. | do | do. |
| Rincon, City of, Effingham County | 130426 | November 5, 1976, Emerg; February 19, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Stapleton, City of, Jefferson County | 130433 | May 24, 1976, Emerg; August 19, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Waynesboro, City of, Burke County | 130025 | May 2, 1975, Emerg; August 1, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Wilkinson County, Unincorporated Areas. | 135167 | December 18, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | do | do. |
| Mississippi: | | | | |
| Belmont, Town of, Tishomingo County | 280287 | April 15, 1998, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | do | do. |
| Burnsville, City of, Tishomingo County | 280264 | April 17, 1975, Emerg; January 17, 1991, Reg; December 17, 2010, Susp. | do | do. |
| Chunky, Town of, Newton County | 280240 | April 23, 1979, Emerg; August 1, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Forest, City of, Scott County | 280148 | December 5, 1974, Emerg; February 1, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Iuka, City of, Tishomingo County | 280266 | April 4, 1975, Emerg; June 19, 1989, Reg; December 17, 2010, Susp. | do | do. |
| Lake, Town of, Scott County | 280149 | April 23, 1979, Emerg; August 5, 1985, Reg; December 17, 2010, Susp. | do | do. |
| Morton, City of, Scott County | 280150 | June 18, 1975, Emerg; September 29, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Newton, City of, Newton County | 280121 | April 15, 1974, Emerg; April 15, 1980, Reg; December 17, 2010, Susp. | do | do. |
| Newton County, Unincorporated Areas | 280231 | April 23, 1979, Emerg; January 2, 1980, Reg; December 17, 2010, Susp. | do | do. |
| Pearl River Valley Water Supply District, Hinds, Leake, Madison, Rankin and Scott Counties. | 280338 | N/A, Emerg; March 5, 1993, Reg; December 17, 2010, Susp. | do | do. |
| Scott County, Unincorporated Areas | 280280 | April 23, 1979, Emerg; September 1, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Sebastopol, Village of, Scott County | 280151 | April 23, 1979, Emerg; June 3, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Tishomingo County, Unincorporated Areas. | 280283 | October 30, 1991, Emerg; March 15, 1993, Reg; December 17, 2010, Susp. | do | do. |
| Union, Town of, Neshoba and Newton Counties.. | 280122 | March 7, 1978, Emerg; April 15, 1980, Reg; December 17, 2010, Susp. | do | do. |
| **Region V** | | | | |
| Illinois: | | | | |
| Brussels, Village of, Calhoun County | 170747 | June 30, 1980, Emerg; February 4, 1981, Reg; December 17, 2010, Susp. | do | do. |
| Byron, City of, Ogle County | 170526 | July 21, 1975, Emerg; December 4, 1984, Reg; December 17, 2010, Susp. | do | do. |
| Calhoun County, Unincorporated Areas | 170018 | November 2, 1973, Emerg; February 1, 1984, Reg; December 17, 2010, Susp. | do | do. |
| Forreston, Village of, Ogle County | 170527 | July 21, 1975, Emerg; August 19, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Hamburg, Village of, Calhoun County | 170734 | December 6, 1973, Emerg; February 15, 1984, Reg; December 17, 2010, Susp. | do | do. |
| Hardin, Village of, Calhoun County | 170738 | February 1, 1974, Emerg; February 4, 1981, Reg; December 17, 2010, Susp. | do | do. |
| Kampsville, Village of, Calhoun County | 170735 | January 30, 1974, Emerg; February 4, 1981, Reg; December 17, 2010, Susp. | do | do. |
| Leaf River, Village of, Ogle County | 170528 | December 12, 1975, Emerg; June 18, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Mount Carroll, City of, Carroll County | 170020 | July 23, 1974, Emerg; September 29, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Ogle County, Unincorporated Areas | 170525 | August 17, 1973, Emerg; April 5, 1988, Reg; December 17, 2010, Susp. | do | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Oregon, City of, Ogle County | 170530 | April 30, 1975, Emerg; October 15, 1981, Reg; December 17, 2010, Susp. | .....do | do. |
| Rochelle, City of, Lee and Ogle Counties. | 170532 | March 7, 1975, Emerg; August 19, 1986, Reg; December 17, 2010, Susp. | .....do | do. |
| Indiana: | | | | |
| Bloomington, City of, Monroe County | 180169 | July 28, 1972, Emerg; June 15, 1978, Reg; December 17, 2010, Susp. | .....do | do. |
| Ellettsville, Town of, Monroe County | 180170 | April 14, 1974, Emerg; July 18, 1985, Reg; December 17, 2010, Susp. | .....do | do. |
| Monroe County, Unincorporated Areas | 180444 | June 18, 1985, Emerg; April 1, 1988, Reg; December 17, 2010, Susp. | .....do | do. |
| Ohio: Butler County, Unincorporated Areas. | 390037 | N/A, Emerg; October 5, 1989, Reg; December 17, 2010, Susp. | .....do | do. |
| Fairfield, City of, Butler County | 390038 | October 21, 1974, Emerg; March 15, 1979, Reg; December 17, 2010, Susp. | .....do | do. |
| Franklin, City of, Warren County | 390556 | September 7, 1973, Emerg; November 5, 1980, Reg; December 17, 2010, Susp. | .....do | do. |
| Hamilton, City of, Butler County | 390039 | April 4, 1974, Emerg; July 15, 1977, Reg; December 17, 2010, Susp. | .....do | do. |
| Lebanon, City of, Warren County | 390557 | December 23, 1974, Emerg; March 15, 1979, Reg; December 17, 2010, Susp. | .....do | do. |
| Mason, City of, Warren County | 390559 | April 15, 1975, Emerg; March 15, 1979, Reg; December 17, 2010, Susp. | .....do | do. |
| Middletown, City of, Butler and Warren Counties. | 390040 | June 13, 1975, Emerg; March 2, 1979, Reg; December 17, 2010, Susp. | .....do | do. |
| Millville, Village of, Butler County | 390041 | March 26, 1979, Emerg; February 4, 1981, Reg; December 17, 2010, Susp. | .....do | do. |
| Monroe, City of, Butler and Warren Counties. | 390042 | August 18, 1975, Emerg; August 5, 1991, Reg; December 17, 2010, Susp. | .....do | do. |
| Somerville, Village of, Butler County | 390046 | N/A, Emerg; June 21, 1995, Reg; December 17, 2010, Susp. | .....do | do. |
| South Lebanon, Village of, Warren County. | 390563 | January 23, 1975, Emerg; September 1, 1978, Reg; December 17, 2010, Susp. | .....do | do. |
| Springboro, City of, Warren County | 390564 | May 5, 1975, Emerg; February 4, 1981, Reg; December 17, 2010, Susp. | .....do | do. |
| Warren County, Unincorporated Areas | 390757 | January 3, 1975, Emerg; April 15, 1981, Reg; December 17, 2010, Susp. | .....do | do. |
| Waynesville, Village of, Warren County | 390565 | October 4, 1976, Emerg; August 1, 1980, Reg; December 17, 2010, Susp. | .....do | do. |
| Wisconsin: Bell Center, Village of, Crawford County. | 550068 | August 16, 1978, Emerg; March 5, 1990, Reg; December 17, 2010, Susp. | .....do | do. |
| Crawford County, Unincorporated Areas | 555551 | March 19, 1971, Emerg; April 20, 1973, Reg; December 17, 2010, Susp. | .....do | do. |
| Ferryville, Village of, Crawford County | 555553 | April 16, 1971, Emerg; May 26, 1972, Reg; December 17, 2010, Susp. | .....do | do. |
| Gays Mills, Village of, Crawford County | 550071 | April 12, 1973, Emerg; June 15, 1978, Reg; December 17, 2010, Susp. | .....do | do. |
| Lynxville, Village of, Crawford County | 555563 | April 3, 1971, Emerg; March 16, 1973, Reg; December 17, 2010, Susp. | .....do | do. |
| Prairie du Chien, City of, Crawford County. | 555573 | May 22, 1970, Emerg; May 22, 1970, Reg; December 17, 2010, Susp. | .....do | do. |
| Soldiers Grove, Village of, Crawford County. | 550074 | April 9, 1971, Emerg; April 3, 1984, Reg; December 17, 2010, Susp. | .....do | do. |
| Steuben, Village of, Crawford County | 555580 | May 21, 1971, Emerg; April 20, 1973, Reg; December 17, 2010, Susp. | .....do | do. |
| Wauzeka, Village of, Crawford County | 555586 | April 9, 1971, Emerg; April 20, 1973, Reg; December 17, 2010, Susp. | .....do | do. |
| **Region VI** | | | | |
| Arkansas: | | | | |
| Camden, City of, Ouachita County | 050163 | December 30, 1971, Emerg; March 15, 1982, Reg; December 17, 2010, Susp. | .....do | do. |
| East Camden, City of, Ouachita County | 050164 | March 20, 1975, Emerg; August 24, 1981, Reg; December 17, 2010, Susp. | .....do | do. |
| Ouachita County, Unincorporated Areas | 050161 | November 29, 1983, Emerg; March 1, 1987, Reg; December 17, 2010, Susp. | .....do | do. |
| New Mexico: | | | | |
| Alamogordo, City of, Otero County | 350045 | April 7, 1975, Emerg; March 2, 1983, Reg; December 17, 2010, Susp. | .....do | do. |
| Cibola County, Unincorporated Areas | 350145 | September 15, 2000, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Grants, City of, Cibola County | 350090 | July 25, 1974, Emerg; July 5, 1982, Reg; December 17, 2010, Susp. | do | do. |
| Milan, Village of, Cibola County | 350093 | April 25, 1975, Emerg; July 5, 1982, Reg; December 17, 2010, Susp. | do | do. |
| Otero County, Unincorporated Areas | 350044 | August 7, 1975, Emerg; August 1, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Zuni, Pueblo of, Catron, Cibola, and McKinley Counties.. | 350143 | December 21, 1978, Emerg; September 4, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Texas: | | | | |
| Browndell, Town of, Jasper County | 481542 | March 30, 1982, Emerg; July 3, 1985, Reg; December 17, 2010, Susp. | do | do. |
| Grand Saline, City of, Van Zandt County. | 480634 | July 24, 1975, Emerg; November 23, 1982, Reg; December 17, 2010, Susp. | do | do. |
| Kirbyville, City of, Jasper County | 480384 | June 12, 1975, Emerg; September 18, 1986, Reg; December 17, 2010, Susp. | do | do. |
| **Region VII** | | | | |
| Iowa: | | | | |
| Baldwin, City of, Jackson County | 190428 | August 21, 1979, Emerg; June 18, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Bellevue, City of, Jackson County | 190158 | April 21, 1975, Emerg; October 15, 1982, Reg; December 17, 2010, Susp. | do | do. |
| Jackson County, Unincorporated Areas | 190879 | August 17, 1979, Emerg; May 1, 1990, Reg; December 17, 2010, Susp. | do | do. |
| Maquoketa, City of, Jackson County | 190160 | September 10, 1976, Emerg; August 5, 1986, Reg; December 17, 2010, Susp. | do | do. |
| Miles, City of, Jackson County | 190779 | October 30, 2007, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | do | do. |
| Preston, City of, Jackson County | 190431 | N/A, Emerg; February 28, 1994, Reg; December 17, 2010, Susp. | do | do. |
| Sabula, City of, Jackson County | 190162 | April 22, 1974, Emerg; November 19, 1987, Reg; December 17, 2010, Susp. | do | do. |
| Kansas: Belleville, City of, Republic County. | 200287 | September 28, 1976, Emerg; July 6, 1984, Reg; December 17, 2010, Susp. | do | do. |
| Hartford, City of, Lyon County | 200422 | November 15, 2007, Emerg; February 20, 2008, Reg; December 17, 2010, Susp. | do | do. |
| Scandia, City of, Republic County | 200289 | April 24, 1974, Emerg; July 16, 1979, Reg; December 17, 2010, Susp. | do | do. |
| Missouri: | | | | |
| Christian County, Unincorporated Areas | 290847 | September 30, 1999, Emerg; April 1, 2004, Reg; December 17, 2010, Susp. | do | do. |
| Clever, City of, Christian County | 290600 | July 30, 1976, Emerg; March 30, 1981, Reg; December 17, 2010, Susp. | do | do. |
| Fair Grove, City of, Greene County | 290591 | N/A, Emerg; January 30, 2004, Reg; December 17, 2010, Susp. | do | do. |
| Nixa, City of, Christian County | 290078 | April 22, 1983, Emerg; April 22, 1983, Reg; December 17, 2010, Susp. | do | do. |
| Ozark, City of, Christian County | 290079 | January 12, 1976, Emerg; February 1, 1985, Reg; December 17, 2010, Susp. | do | do. |
| Republic, City of, Christian and Greene Counties. | 290148 | May 8, 1975, Emerg; June 4, 1980, Reg; December 17, 2010, Susp. | do | do. |
| Springfield, City of, Greene County | 290149 | April 12, 1974, Emerg; July 3, 1978, Reg; December 17, 2010, Susp. | do | do. |
| Strafford, City of, Greene County | 290506 | N/A, Emerg; July 30, 1999, Reg; December 17, 2010, Susp. | do | do. |
| Willard, City of, Greene County | 290653 | February 11, 1998, Emerg; October 10, 2003, Reg; December 17, 2010, Susp. | do | do. |
| **Region VIII** | | | | |
| Colorado: | | | | |
| Arapahoe County, Unincorporated Areas. | 080011 | February 4, 1972, Emerg; August 15, 1977, Reg; December 17, 2010, Susp. | do | do. |
| Aurora, City of, Adams and Arapahoe Counties. | 080002 | August 20, 1971, Emerg; June 1, 1978, Reg; December 17, 2010, Susp. | do | do. |
| Centennial, City of, Arapahoe County | 080315 | N/A, Emerg; December 11, 2002, Reg; December 17, 2010, Susp. | do | do. |
| Cherry Hills Village, City of, Arapahoe County. | 080013 | January 23, 1974, Emerg; August 1, 1978, Reg; December 17, 2010, Susp. | do | do. |
| Columbine Valley, Town of, Arapahoe County. | 080014 | May 18, 1973, Emerg; June 15, 1978, Reg; December 17, 2010, Susp. | do | do. |
| Englewood, City of, Arapahoe County | 085074 | February 26, 1971, Emerg; February 11, 1972, Reg; December 17, 2010, Susp. | do | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Glendale, City of, Arapahoe County | 080247 | N/A, Emerg; December 5, 2005, Reg; December 17, 2010, Susp. | .....do | do. |
| Greenwood Village, City of, Arapahoe County. | 080195 | March 16, 1976, Emerg; January 5, 1978, Reg; December 17, 2010, Susp. | .....do | do. |
| Littleton, City of, Arapahoe County | 080017 | September 3, 1971, Emerg; December 1, 1978, Reg; December 17, 2010, Susp. | .....do | do. |
| Sheridan, City of, Arapahoe County | 080018 | February 4, 1972, Emerg; July 13, 1976, Reg; December 17, 2010, Susp. | .....do | do. |
| North Dakota: | | | | |
| Americus, Township of, Grand Forks County. | 380064 | January 6, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |
| Emerado, City of, Grand Forks County | 380034 | February 17, 1978, Emerg; February 19, 1986, Reg; December 17, 2010, Susp. | .....do | do. |
| Fairfield, Township of, Grand Forks County. | 380102 | January 6, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |
| Ferry, Township of, Grand Forks County. | 380120 | January 6, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |
| Gilby, City of, Grand Forks County | 380035 | March 11, 1997, Emerg; April 25, 1997, Reg; December 17, 2010, Susp. | .....do | do. |
| Grand Forks, City of, Grand Forks County. | 385365 | March 19, 1971, Emerg; September 30, 1977, Reg; December 17, 2010, Susp. | .....do | do. |
| Grand Forks County, Unincorporated Areas. | 380033 | May 13, 1974, Emerg; May 1, 1986, Reg; December 17, 2010, Susp. | .....do | do. |
| Lakeville, Township of, Grand Forks County. | 380297 | January 6, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |
| Manvel, City of, Grand Forks County | 380037 | February 21, 1997, Emerg; May 4, 1998, Reg; December 17, 2010, Susp. | .....do | do. |
| Mekinock, Township of, Grand Forks County. | 380162 | N/A, Emerg; May 12, 2008, Reg; December 17, 2010, Susp. | .....do | do. |
| Oakville, Township of, Grand Forks County. | 380272 | January 6, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |
| Rye, Township of, Grand Forks County | 380298 | N/A, Emerg; December 3, 2009, Reg; December 17, 2010, Susp. | .....do | do. |
| Turtle River, Township of, Grand Forks County. | 380299 | January 6, 2009, Emerg; December 17, 2010, Reg; December 17, 2010, Susp. | .....do | do. |

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 16, 2010.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation.*

[FR Doc. 2010–29419 Filed 11–22–10; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8157]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*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 rule involves no policies that have federalism implications under Executive Order 13132.

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

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 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.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of lood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region I** | | | | |
| Rhode Island: | | | | |
| Coventry, Town of, Kent County | 440004 | November 21, 1973, Emerg; September 1, 1978, Reg; December 3, 2010, Susp.. | Dec. 3, 2010 | Dec. 3, 2010. |
| East Greenwich, Town of, Kent County | 445397 | July 16, 1971, Emerg; February 9, 1973, Reg; December 3, 2010, Susp.. | do* | do. |
| Warwick, City of, Kent County | 445409 | June 19, 1970, Emerg; April 6, 1973, Reg; December 3, 2010, Susp.. | do | do. |
| West Greenwich, Town of, Kent County | 440037 | October 10, 1975, Emerg; January 3, 1986, Reg; December 3, 2010, Susp.. | do | do. |
| West Warwick, Town of, Kent County | 440007 | September 1, 1972, Emerg; February 1, 1978, Reg; December 3, 2010, Susp.. | do | do. |
| **Region IV** | | | | |
| Tennessee: Woodbury, Town of, Cannon County. | 470021 | May 23, 1973, Emerg; September 1, 1977, Reg; December 3, 2010, Susp.. | do | do. |
| **Region V** | | | | |
| Indiana: | | | | |

| State and location | Community No. | Effective date authorization/cancellation of sale of lood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Bedford, City of, Lawrence County | 180148 | April 17, 1975, Emerg; September 4, 1987, Reg; December 3, 2010, Susp.. | .....do | do. |
| Lawrence County, Unincorporated Areas. | 180441 | June 24, 1993, Emerg; June 1, 1994, Reg; December 3, 2010, Susp.. | .....do | do. |
| Michigan: | | | | |
| Clare, City of, Clare and Isabella Counties. | 260629 | August 26, 1975, Emerg; February 5, 1992, Reg; December 3, 2010, Susp.. | .....do | do. |
| Redding, Township of, Clare County | 260382 | June 28, 1979, Emerg; June 17, 1986, Reg; December 3, 2010, Susp.. | .....do | do. |
| Surrey, Township of, Clare County | 261337 | November 24, 2009, Emerg; December 3, 2010, Reg; December 3, 2010, Susp.. | .....do | do. |
| Ohio: Adams County, Unincorporated Areas | 390001 | March 14, 1978, Emerg; February 3, 2003, Reg; December 3, 2010, Susp.. | .....do | do. |
| Manchester, Village of, Adams County | 390002 | October 25, 1974, Emerg; August 1, 1978, Reg; December 3, 2010, Susp.. | .....do | do. |
| Rome, Village of, Adams County | 390003 | February 16, 1977, Emerg; October 18, 1983, Reg; December 3, 2010, Susp.. | .....do | do. |
| Bay Village, City of, Cuyahoga County | 390093 | June 14, 1974, Emerg; December 1, 1977, Reg; December 3, 2010, Susp.. | .....do | do. |
| Beachwood, City of, Cuyahoga County | 390094 | November 26, 1975, Emerg; April 20, 1979, Reg; December 3, 2010, Susp.. | .....do | do. |
| Bedford Heights, City of, Cuyahoga County. | 390096 | June 11, 1975, Emerg; September 17, 1980, Reg; December 3, 2010, Susp.. | .....do | do. |
| Bedford, City of, Cuyahoga County | 390095 | July 11, 1975, Emerg; January 2, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Bentleyville, Village of, Cuyahoga County. | 390682 | March 24, 1976, Emerg; August 1, 1980, Reg; December 3, 2010, Susp.. | .....do | do. |
| Berea, City of, Cuyahoga County | 390097 | April 21, 1975, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do | do. |
| Bratenahl, Village of, Cuyahoga County | 390734 | June 9, 1975, Emerg; June 15, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Brecksville, City of, Cuyahoga County | 390098 | July 11, 1975, Emerg; January 16, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Broadview Heights, City of, Cuyahoga County. | 390099 | November 21, 1975, Emerg; March 2, 1979, Reg; December 3, 2010, Susp.. | .....do | do. |
| Brook Park, City of, Cuyahoga County | 390102 | April 21, 1975, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do | do. |
| Brooklyn Heights, Village of, Cuyahoga County. | 390101 | May 16, 1975, Emerg; June 15, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Brooklyn, City of, Cuyahoga County | 390100 | July 3, 1975, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do | do. |
| Chagrin Falls, Village of, Cuyahoga County. | 390103 | July 29, 1975, Emerg; July 2, 1980, Reg; December 3, 2010, Susp.. | .....do | do. |
| Cleveland Heights, City of, Cuyahoga County. | 390105 | April 11, 1975, Emerg; June 25, 1976, Reg; December 3, 2010, Susp.. | .....do | do. |
| Cleveland, City of, Cuyahoga County | 390104 | July 20, 1973, Emerg; August 1, 1978, Reg; December 3, 2010, Susp.. | .....do | do. |
| Cuyahoga County, Unincorporated Areas. | 390766 | October 4, 1979, Emerg; April 2, 1986, Reg; December 3, 2010, Susp.. | .....do | do. |
| Cuyahoga Heights, Village of, Cuyahoga County. | 390654 | June 18, 1976, Emerg; June 15, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Euclid, City of, Cuyahoga County | 390107 | July 3, 1975, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Fairview Park, City of, Cuyahoga County. | 390108 | June 24, 1975, Emerg; February 4, 1983, Reg; December 3, 2010, Susp.. | .....do | do. |
| Garfield Heights, City of, Cuyahoga County. | 390109 | September 18, 1970, Emerg; July 9, 1971, Reg; December 3, 2010, Susp.. | .....do | do. |
| Gates Mills, Village of, Cuyahoga County. | 390593 | June 4, 1973, Emerg; April 3, 1978, Reg; December 3, 2010, Susp.. | .....do | do. |
| Glenwillow, Village of, Cuyahoga County. | 390735 | March 14, 1978, Emerg; February 18, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Highland Heights, City of, Cuyahoga County. | 390110 | November 10, 1976, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do | do. |
| Independence, City of, Cuyahoga County. | 390111 | July 22, 1975, Emerg; February 18, 1981, Reg; December 3, 2010, Susp.. | .....do | do. |
| Lakewood, City of, Cuyahoga County | 390112 | March 30, 1973, Emerg; February 1, 1978, Reg; December 3, 2010, Susp.. | .....do | do. |
| Lyndhurst, City of, Cuyahoga County | 390113 | May 1, 1975, Emerg; April 23, 1982, Reg; December 3, 2010, Susp.. | .....do | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of lood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Maple Heights, City of, Cuyahoga County. | 390114 | July 22, 1975, Emerg; September 17, 1980, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Mayfield Heights, City of, Cuyahoga County. | 390115 | May 3, 1976, Emerg; June 10, 1980, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Middleburg Heights, City of, Cuyahoga County. | 390117 | January 20, 1975, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Moreland Hills, Village of, Cuyahoga County. | 390118 | June 30, 1975, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| North Olmsted, City of, Cuyahoga County. | 390120 | December 2, 1974, Emerg; September 5, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Oakwood, Village of, Cuyahoga County | 390122 | July 3, 1975, Emerg; March 2, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Olmsted Falls, City of, Cuyahoga County. | 390672 | July 29, 1975, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Orange, Village of, Cuyahoga County .. | 390737 | February 16, 1977, Emerg; February 4, 1983, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Parma Heights, City of, Cuyahoga County. | 390124 | January 24, 1975, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Parma, City of, Cuyahoga County ..... | 390123 | April 10, 1975, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Pepper Pike, City of, Cuyahoga County | 390125 | January 29, 1975, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Richmond Heights, City of, Cuyahoga County. | 390126 | November 13, 1975, Emerg; January 4, 1985, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Seven Hills, City of, Cuyahoga County | 390128 | July 30, 1975, Emerg; June 1, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Shaker Heights, City of, Cuyahoga County. | 390129 | October 28, 1975, Emerg; June 15, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Solon, City of, Cuyahoga County ..... | 390130 | July 28, 1975, Emerg; February 4, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| South Euclid, City of, Cuyahoga County | 390131 | August 5, 1974, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Strongsville, City of, Cuyahoga County | 390132 | December 13, 1974, Emerg; January 3, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Valley View, Village of, Cuyahoga County. | 390134 | September 26, 1975, Emerg; February 18, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Walton Hills, Village of, Cuyahoga County. | 390636 | December 29, 1975, Emerg; February 18, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Warrensville Heights, City of, Cuyahoga County. | 390135 | July 7, 1975, Emerg; August 17, 1981, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Westlake, City of, Cuyahoga County .... | 390136 | July 29, 1975, Emerg; January 16, 1980, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| **Region VI** | | | | |
| Arkansas: | | | | |
| Crawford County, Unincorporated Areas | 050428 | June 29, 1990, Emerg; August 5, 1991, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Gassville, City of, Baxter County ..... | 050243 | January 26, 1976, Emerg; November 6, 2008, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Howard County, Unincorporated Areas | 050438 | March 17, 1983, Emerg; September 30, 1988, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Mineral Springs, City of, Howard County. | 050349 | May 30, 1975, Emerg; June 1, 1987, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Mountain Home, City of, Baxter County | 050351 | February 9, 1976, Emerg; September 16, 1982, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Norfork, City of, Baxter County ..... | 050267 | June 2, 1976, Emerg; July 1, 1987, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Salesville, City of, Baxter County ..... | 050579 | August 14, 1989, Emerg; April 16, 1990, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| New Mexico: Las Vegas, City of, San Miguel County. | 350068 | August 11, 1975, Emerg; September 18, 1986, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Texas: | | | | |
| Gonzales, City of, Gonzales County ..... | 480254 | August 6, 1975, Emerg; June 15, 1979, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Gonzales County, Unincorporated Areas. | 480253 | November 8, 1973, Emerg; August 15, 1978, Reg; December 3, 2010, Susp.. | .....do ..... | do. |
| Nixon, City of, Gonzales and Wilson Counties. | 481114 | March 9, 1976, Emerg; August 26, 1977, Reg; December 3, 2010, Susp.. | .....do ..... | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of lood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Waelder, City of, Gonzales County ..... | 480255 | June 17, 1975, Emerg; December 1, 1977, Reg; December 3, 2010, Susp.. | .....do ..... | do. |

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 16, 2010.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation.*

[FR Doc. 2010–29418 Filed 11–22–10; 8:45 am]

BILLING CODE 9110–12–P

# Proposed Rules

Federal Register
Vol. 75, No. 225
Tuesday, November 23, 2010

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 26

**[Docket No. PRM–26–6; NRC–2010–0310]**

### Erik Erb; Notice of Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM) dated August 17, 2010, submitted by Erik Erb (the Petitioner) and 91 co-signers. The petition was docketed by the NRC on September 17, 2010, and has been assigned PRM–26–6. The petitioner requests that the NRC amend its regulations to decrease the minimum days off (MDO) requirement for security officers working 12-hour shifts from an average of 3 days per week to 2.5 or 2 days per week. The NRC is also requesting public comments on the PRM.

**DATES:** Submit comments by February 7, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2010–0310 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, *see* "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

*Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0310. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (telephone: 301–415–1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667, toll free: 800–368–5642, e-mail: *Cindy.Bladey@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal Rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

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

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

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, then contact the NRC's PDR reference staff at 800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* The ADAMS accession number for the petition is ML102630127.

*Federal Rulemaking Web site:* Public comments and supporting materials related to this action, including the petition for rulemaking, can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0310.

### Petitioner

The petitioner is Erik Erb, a nuclear security officer at Constellation's Nine Mile Point Nuclear Station in Oswego, New York. Mr. Erb has held this position since April 2004. The petition has 91 co-signers; most co-signers have identified their position as nuclear security officer or guard.

### Background

*Grounds for Action Requested*

The Petitioner proposes that the NRC amend its regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) part 26, subpart I, to decrease the MDO requirement for security officers working 12-hour shifts from an average of 3 days per week to 2.5 or 2 days per week. Specifically, the Petitioner claims that the MDO requirement of 3 days per week has led to unintended detrimental consequences at the Nine Mile Point facility.

The Petitioner states that the MDO requirement has reduced the amount of overtime available to security officers at Nine Mile Point. The Petitioner states that this may provide the impetus for security officers to seek additional part-time employment. The Petitioner claims that hours worked at another place of employment would most likely be unrecorded, unmonitored, and unreported to the licensee. The Petitioner states that security officers working additional part-time hours to supplement lost income would "seem to be counterproductive to the aim of the MDO requirement."

The Petitioner states that officers who previously did not work much overtime must now "pick up the slack," sometimes to the point of being forced to work overtime. The Petitioner also states that training sometimes has to be rescheduled or canceled, because the officers facilitating the training have reached their MDO mandate.

The Petitioner states that non-management/non-supervisor security chiefs have been impacted by the use of the fatigue software, EmpCenter, at the Nine Mile Point facility. The Petitioner claims that when an employee is asked to work overtime, the chiefs must use the software to determine whether that employee will exceed the MDO requirement. The petitioner describes this extra step as a burden on the chiefs. According to the petition, the attention/focus of the chiefs is diverted by the need to coordinate with their supervisors in order to ensure compliance with the MDO requirement.

The Petitioner also claims that licensees have had to increase their staffing across affected departments, in part due to the MDO requirement, thus increasing their costs. The Petitioner claims that licensees may be required to pass these extra costs onto the rate payer. Alternatively, the Petitioner claims that licensees may explore the option of contract security as a cost-saving measure.

*The Petition*

The Petitioner requests that the NRC amend its regulations in 10 CFR part 26, Subpart I, to decrease the MDO requirement for security officers working 12-hour shifts from an average of 3 days per week to 2.5 or 2 days per week. The Petitioner claims that such a decrease in MDO would (1) bring the requirement in line with MDO requirements for Operations, Maintenance, and other personnel subject to the MDO requirements; and (2) have a sizeable impact on alleviating some of the issues the MDO requirements have caused or may cause in the future.

Dated at Rockville, Maryland, this 17th day of November 2010.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2010–29480 Filed 11–22–10; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–1157; Directorate Identifier 2010–NM–137–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, –315, –401, and –402 Airplanes

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

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

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

There have been several in-service reports of finding trapped water on the bottom of the cockpit windshield frames (or lower windshield frames) that resulted in either corrosion or water ingress into the cockpit. In one occurrence, the trapped water caused severe corrosion of numerous anchor nuts that secure the windshield to the lower windshield frame, such that the intended fastening function was seriously compromised.

Corrosion of the lower windshield frames, including the anchor nuts that secure the windshield to the aircraft structure, can result in a serious structural degradation possibly leading to the loss of the windshield during flight. Also, water could leak into the cockpit and cause either a malfunction or failure of the electrical and electronics systems in the area of the cockpit instrument panels.

* * * * *

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

**DATES:** We must receive comments on this proposed AD by January 7, 2011.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1157; Directorate Identifier 2010–NM–137–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–16, dated May 18, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several in-service reports of finding trapped water on the bottom of the cockpit windshield frames (or lower windshield frames) that resulted in either corrosion or water ingress into the cockpit. In one occurrence, the trapped water caused severe corrosion of numerous anchor nuts that secure the windshield to the lower windshield frame, such that the intended fastening function was seriously compromised.
>
> Corrosion of the lower windshield frames, including the anchor nuts that secure the windshield to the aircraft structure, can result in a serious structural degradation possibly leading to the loss of the windshield during flight. Also, water could leak into the cockpit and cause either a malfunction or failure of the electrical and electronics systems in the area of the cockpit instrument panels.
>
> The lower windshield frames do not have drain provisions to prevent moisture or water run-off from the condensation of the windshields from being trapped. The consequences of trapped water in the lower windshield frames can result in unsafe conditions, as noted above. This Directive mandates the installation of a drain system for the lower windshield frames.

For Model DHC–8–401 and –402 airplanes, the installation also includes a related investigative action, and corrective actions if necessary. The related investigative action is an inspection for corrosion of the anchor nuts and window frame. Corrective actions include replacing any corroded anchor nut with a new or serviceable anchor nut, or contacting the manufacturer for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Bombardier has issued Service Bulletins 84–53–43, dated April 27, 2010 (for Model DHC–8–401 and –402 airplanes, serial numbers 4001, 4003, 4004, 4006, and 4008 through 4274 inclusive); and 8–53–78, Revision C, dated April 29, 2010 (for Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 003 through 566 inclusive). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This Proposed AD

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

## Differences Between This AD and the MCAI or Service Information

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

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

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 191 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,660 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $641,760, or $3,360 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Bombardier, Inc.:** Docket No. FAA–2010–1157; Directorate Identifier 2010–NM–137–AD.

**Comments Due Date**

(a) We must receive comments by January 7, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315, serial numbers 003 through 566 inclusive.

(2) Model DHC–8–401, and –402 airplanes, serial numbers 4001, 4003, 4004, 4006, and 4008 through 4274 inclusive.

**Subject**

(d) Air Transport Association (ATA) of America Code 56: Windows.

**Reason**

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

There have been several in-service reports of finding trapped water on the bottom of the cockpit windshield frames (or lower windshield frames) that resulted in either corrosion or water ingress into the cockpit. In one occurrence, the trapped water caused severe corrosion of numerous anchor nuts that secure the windshield to the lower windshield frame, such that the intended fastening function was seriously compromised. Corrosion of the lower windshield frames, including the anchor nuts that secure the windshield to the aircraft structure, can result in a serious structural degradation possibly leading to the loss of the windshield during flight. Also, water could leak into the cockpit and cause either a malfunction or failure of the electrical and electronics systems in the area of the cockpit instrument panels.

* * * * *

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Actions**

(g) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, install a drain system in the cockpit windshield lower frames, and do all applicable related investigative and corrective actions, in accordance With the Accomplishment Instructions of Bombardier Service Bulletin 8–53–78, Revision C, dated April 29, 2010 (for Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes); or 84–53–43, dated April 27, 2010 (for Model DHC–8–401 and –402 airplanes); except where the service bulletins state to contact the manufacturer, contact the New York Aircraft Certification Office or Transport Canada Civil Aviation (TCCA) or its delegated agent. Do all applicable related investigative and corrective actions before further flight.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(h) For Models DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes: Modification of the drain system is also acceptable for compliance with the requirements of paragraph (g) of this AD, if done before the effective date of this AD, in accordance with Bombardier Service Bulletin 8–53–78, dated December 23, 1999; Revision A, dated June 7, 2001; or Revision B, dated May 2, 2002.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**Related Information**

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–16, dated May 18, 2010; Bombardier Service Bulletin 8–53–78, Revision C, dated April 29, 2010; and Bombardier Service Bulletin 84–53–43, dated April 27, 2010; for related information.

Issued in Renton, Washington, on November 15, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–29448 Filed 11–22–10; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0820; Directorate Identifier 2010–NE–31–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Thielert Aircraft Engines GmbH Models TAE 125–01, TAE 125–02–99, and TAE 125–02–114 Reciprocating Engines

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

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

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

Service experience has shown that a case of FADEC channel B manifold air pressure (MAP) sensor hose permeability is not always recognized as fault by the FADEC. The MAP value measured by the sensor may be lower than the actual pressure value in the engine manifold, and limits the amount of fuel injected into the combustion chamber and thus the available power of the engine. A change in FADEC software version 2.91 will change the logic in failure detection and in switching to channel B (no automatic switch to channel B if MAP difference between channel A and B is detected and lower MAP is at channel B).

In addition, previous software versions allow—under certain conditions and on DA 42 aircraft only—the initiation of a FADEC self test during flight that causes an engine in-flight shutdown.

We are proposing this AD to prevent engine in-flight shutdown or power loss, possibly resulting in reduced control of the airplane.

**DATES:** We must receive comments on this proposed AD by January 7, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–2912; e-mail: *info@centurion-engines.com* for the service information identified in this proposed AD.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0820; Directorate Identifier 2010–NE–31–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2010–0137, dated June 30, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Service experience has shown that a case of FADEC channel B manifold air pressure (MAP) sensor hose permeability is not always recognized as fault by the FADEC. The MAP value measured by the sensor may be lower than the actual pressure value in the engine manifold, and limits the amount of fuel injected into the combustion chamber and thus the available power of the engine. A change in FADEC software version 2.91 will change the logic in failure detection and in switching to channel B (no automatic switch to channel B if MAP difference between channel A and B is detected and lower MAP is at channel B).
>
> In addition, previous software versions allow—under certain conditions and on DA 42 aircraft only—the initiation of a FADEC self test during flight that causes an engine in-flight shutdown.

We are proposing to require installation of full-authority digital electronic control (FADEC) software version 2.91 to prevent automatic switching to channel B if the channel B MAP sensor hose is leaking. The current software cannot detect the difference between a manifold leak and a real manifold pressure change. This software installation will prevent the undesired limiting of fuel to the engine. Installing FADEC software version 2.91 will also prevent the FADEC from self-testing during flight, which would cause an engine in-flight shutdown.

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

## FAA's Determination and Requirements of This Proposed AD

These products have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA has notified us of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require installing full authority digital electronic control software version 2.91.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 112 engines installed on airplanes of U.S. registry. We also estimate that it would take about 0.5 work-hour per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. There are no required parts cost. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,760.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Thielert Aircraft Engines GmbH:** Docket No. FAA–2010–0820; Directorate Identifier 2010–NE–31–AD.

**Comments Due Date**

(a) We must receive comments by January 7, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Thielert Aircraft Engines GmbH models TAE 125–01, TAE 125–02–99, and TAE 125–02–114 reciprocating engines installed in, but not limited to, Cessna 172 and (Reims-built) F172 series (European Aviation Safety Agency (EASA) STC No. EASA.A.S.01527); Piper PA–28 series (EASA STC No. EASA.A.S. 01632); APEX (Robin) DR 400 series (EASA STC No. A.S.01380); and Diamond Aircraft Industries Models DA 40, DA 42, and DA 42M NG airplanes.

**Reason**

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent engine in-flight shutdown or power loss, possibly resulting in reduced control of the airplane.

**Actions and Compliance**

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

(1) Within 110 flight hours after the effective date of the AD or during next maintenance, whichever occurs first, install full-authority digital electronic control (FADEC) software version 2.91.

(2) Guidance on FADEC software installation can be found in the following:

(i) For TAE 125–01 engines, Operation & Maintenance Manual OM–01–02, Issue 3, Revision 13.

(ii) For TAE 125–02–99 and TAE 125–02–114 engines, Operation & Maintenance Manual OM–02–02, Issue 1, Revision 10.

**Prohibition of FADEC Software Earlier Versions**

(f) Once FADEC software version 2.91 is installed, do not install any earlier version of FADEC software.

**FAA AD Differences**

(g) EASA AD 2010–0137 permits installation of earlier FADEC software versions, once version 2.91 is installed. This AD does not.

(h) EASA AD 2010–0137 requires compliance within 110 flight hours after the effective date of the AD or during next maintenance, whichever occurs first, but no later than 6 months after the effective date of the AD. This AD requires compliance within 110 flight hours after the effective date of the AD or during next maintenance, whichever occurs first.

**Alternative Methods of Compliance (AMOCS)**

(i) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(j) Refer to AD 2010–0137, dated June 30, 2010, for related information. Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–2912; e-mail: *info@centurion-engines.com*, for a copy of the service information referenced in this AD.

(k) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on November 16, 2010.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2010–29449 Filed 11–22–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–0494; Directorate Identifier 2010–NE–20–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; International Aero Engines V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 Turbofan Engines

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. This proposed AD would require initial and repetitive 360° borescope inspections of high-pressure turbine (HPT) stage 1 blade outer air seal segments for evidence of certain distress conditions. This proposed AD would also require incorporation of improved durability stage 1 blade outer air seal segments at the next exposure to the HPT module subassembly, as terminating action to the repetitive inspections. This proposed AD results from three reports received of HPT case burn-through events, numerous shop reports of loss of stage 1 blade outer air seal segments, and HPT case bulging. We are proposing this AD to prevent HPT case burn-through, uncontrolled under-cowl engine fire, and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by January 24, 2011.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510, for a copy of the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Carlos Fernandes, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *carlos.fernandes@faa.gov;* telephone (781) 238–7189; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0494; Directorate Identifier 2010–NE–20–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

## Examining the AD Docket

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

## Discussion

Since August 2006 we have received three reports of IAE V2500 series engines experiencing HPT case burn-through events. There have also been numerous shop reports of loss of stage 1 blade outer air seal segments, and reports of HPT case bulging. Investigation revealed the cause to be due to HPT stage 1 blade outer air seal distress. Distress initially starts with surface erosion and cracking of the blade outer air seal segments. Continued engine operation then leads to burn-through, radial bowing of the segments into the gas path, contact with the HPT stage 1 blades, and loss of the segments from the HPT case. This condition, if not corrected, could then result in HPT case burn-through, uncontrolled under-cowl engine fire, and damage to the airplane.

## Relevant Service Information

We have reviewed and approved the technical contents of IAE Service Bulletin (SB) No. V2500–ENG–72–0580, Revision 2, dated August 12, 2010, that describes procedures for initial and repetitive 360° borescope inspections of stage 1 blade outer air seal segments for evidence of distress. We have also reviewed and approved IAE SB No. V2500–ENG–72–0483, Revision 3, dated January 7, 2009, and IAE SB No. V2500–ENG–72–0542, Revision 1, dated January 7, 2009, which incorporate improved durability stage 1 blade outer air seal segments.

## FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require initial and repetitive 360° borescope inspections of HPT stage 1 blade outer air seal segments for evidence of distress. This proposed AD would also require incorporation of improved design stage 1 blade outer air seal segments at the next exposure to the HPT module subassembly. The proposed AD would require you to use the service information described previously to perform these actions.

## Costs of Compliance

We estimate that this proposed AD would affect 34 V2500 A1 series and 510 V2500 A5/D5 series engines installed on airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per engine to perform one proposed inspection, about 3 work-hours per engine to install the improved durability stage 1 blade outer air seal segments, and that the average labor rate is $85 per work-hour. Required parts would cost about $150,882 (V2500 A1 series) and $155,195 (V2500 A5/D5 series), per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $84,556,878.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**International Aero Engines:** Docket No. FAA–2010–0494; Directorate Identifier 2010–NE–20–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 24, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. These engines are installed on, but not limited to, Airbus A319, A320, A321, and McDonnell Douglas MD–90 airplanes.

**Unsafe Condition**

(d) This AD results from three reports received of high-pressure turbine (HPT) case burn-through events. There have also been numerous shop reports of loss of stage 1 blade outer air seal segments, and HPT case bulging. We are issuing this AD to prevent HPT case burn-through, uncontrolled under-cowl engine fire, and damage to the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) For engines that have incorporated IAE Service Bulletin (SB) No. V2500–ENG–72–0483, Revision 3 or earlier, or IAE SB No. V2500–ENG–72–0542, Revision 1 or earlier, no further action is required.

**Borescope Inspections**

(g) Perform 360° borescope inspections of the HPT stage 1 blade outer air seal segments for evidence of the distress conditions listed in Appendix D of IAE SB No. V2500–ENG–72–0580, Revision 2, dated August 12, 2010.

(1) For V2525–D5 and V2528–D5 turbofan engines:

(i) Inspect within 1,000 operating hours after the engine meets all criteria as defined in Table 1 of this AD, or within 600 operating hours after the effective date of this AD, whichever is greater.

(ii) Thereafter, re-inspect within every 1,000 operating hours or as defined in Appendix D of IAE SB No. V2500–ENG–72–0580, Revision 2, dated August 12, 2010, whichever is less.

(iii) Use Accomplishment Instructions paragraphs 3.B.(1) through 3.B.(3), and Appendices A through D of IAE SB No. V2500–ENG–72–0580, Revision 2, dated August 12, 2010, to do these inspections.

(2) For V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines:

(i) Inspect within 1,200 operating hours after the engine meets all criteria as defined in Table 1 of this AD, or within 600 operating hours after the effective date of this AD, whichever is greater.

(ii) Thereafter, re-inspect within every 1,200 operating hours or as defined in Appendix D of IAE SB No. V2500–ENG–72–0580, Revision 2, dated August 12, 2010, whichever is less.

(iii) Use Accomplishment Instructions paragraphs 3.A.(1) through 3.A.(3), and Appendices A through D of IAE SB No. V2500–ENG–72–0580, Revision 2, dated August 12, 2010, to do these inspections.

TABLE 1—STAGE 1 BLADE OUTER AIR SEAL SEGMENT INSPECTION COMPLIANCE CRITERIA

| Engine model | Stage 1 blade outer air seal segments hours-since-new or since-last-repair (greater than) | Stage 1 blade outer air seal segments cycles-since-new or since-last-repair (greater than) | Exhaust gas temperature margin degrees celsius (less than) |
|---|---|---|---|
| A1 | 6,000 | 3,800 | 45 |
| A5 | 6,000 | 3,500 | 45 |
| D5 | 5,000 | 3,500 | 45 |

(h) Exhaust Gas Temperature Margin is defined as the expected margin during a sea-level takeoff on a 30-degree Celsius Outside Air Temperature Day.

**Terminating Action**

(i) As terminating action to the repetitive 360° borescope inspections required in paragraphs (g)(1)(ii) and (g)(2)(ii) above, install improved durability stage 1 blade outer air seal segments at the next HPT module subassembly exposure.

(1) For V2500–A1 turbofan engines, use paragraphs 1.B., Concurrent Requirements, and paragraphs 3.(1) through 3.(2)(b) of the Accomplishment Instructions of IAE SB No. V2500–ENG–72–0542, Revision 1, dated January 7, 2009, to do the installation.

(2) For V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines, use paragraphs 1.B., Concurrent Requirements, and paragraphs 3.(1) through 3.(2)(b) of the Accomplishment Instructions of IAE SB No. V2500–ENG–72–0483, Revision 3, dated January 7, 2009, to do the installation.

(3) Both IAE SBs No. V2500–ENG–72–0542, Revision 1, and SB No. V2500–ENG–72–0483, Revision 3, require modification of the stage 1 HPT support assembly before installing the new blade outer air seal segments. You must complete the modification using those SBs, as applicable to the appropriate engine model, to properly perform the mandatory terminating action of this AD.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(k) Contact Carlos Fernandes, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov;* telephone (781) 238–7189; fax (781) 238–7199, for more information about this AD.

(l) Contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510, for a copy of the service information referenced in this AD.

Issued in Burlington, Massachusetts, on November 16, 2010.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2010–29450 Filed 11–22–10; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 748**

**[Docket No. 100826397–0346–02]**

**RIN 0694–AE98**

## Simplified Network Application Processing System, On-Line Registration and Account Maintenance

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is proposing to implement an on-line registration process for obtaining an account to submit license applications and similar documents electronically. The current registration process requires paper and facsimile submissions. This proposed rule sets forth the information that parties registering on-line would be required to provide to BIS and sets forth the duties that registered parties would have with respect to keeping information in their accounts current.

**DATES:** Comments must be received by BIS no later than January 24, 2011.

**ADDRESSES:** Comments may be submitted via to any of the following.

- The Federal e-rulemaking portal, *regulations.gov.* The *regulations.gov* docket number for this rule is: BIS–2010–0037.
- Via e-mail at *publiccomments@bis.doc.gov*—refer to RIN 0694–AE98 in the subject line.
- Mail or delivery to Regulatory Policy Division, Room 2705, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230—refer to RIN 0694–AE98 in the comment.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, telephone 202.482.6393, e-mail *tandruko@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

BIS administers an export licensing program pursuant to the Export Administration Regulations. In connection with this program, BIS requires most parties to submit license applications, classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests in connection with the License Exceptions APP and CIV (herein "work items") electronically via BIS's Simplified Network Application Processing (SNAP–R) system. Currently, parties must register to use that system via a paper- or facsimile-based process. BIS plans to replace that registration process with one that is exclusively on-line.

Organizations or individuals who submit work items would be referred to as "filing entities." Individuals who act on behalf of filing entities would be known as "individual users." For each filing entity, at least one individual user would act as an "account administrator." An account administrator would be able to submit work items on behalf of his or her filing entity and would have additional responsibilities within the on-line registration system.

An account administrator would have the ability to add and remove individual users to or from the account of his or her filing entity. The account administrator would also be able to designate other individual users who are authorized to act on behalf of the same filing entity as account administrators or to terminate an individual user's account administrator status. The account administrator would be able to deactivate the account of an individual user and reactivate the account of a previously deactivated individual user. The account administrator would be able to update the filing entity's identifying information such as name and address and any individual user's identifying information such as name and telephone number. The account administrator would also be able to reset an individual user's password.

BIS anticipates that once this system is in place, the current processes in which BIS employees create on-line accounts for filing entities and add or remove new individual users to or from a filing entity's account in response to written or facsimile communications would cease. Account administrators for filing entities would handle routine changes to the filing entities' accounts and BIS personnel would become involved only if necessary to protect a government interest such as preventing misuse of the SNAP–R system or if necessary to assist someone attempting to register on-line or administer an account.

BIS intends to begin operating the on-line registration system on the date of publication of the final rule, but proposes to phase in mandatory use of on-line registration and account management according to the following schedule.

*New Filing Entities*

On the effective date of the final rule and for 30 days thereafter, an individual registering a filing entity that does not currently have a SNAP–R account would be able to use either the existing paper- and facsimile-based process or the new on-line registration process described in the following paragraph. Beginning 31 days after the effective date of the final rule, the on-line registration process would be mandatory for all new registrants.

*Requirement To Designate an Account Administrator at the Time of Electronic Registration*

A person registering on-line for a filing entity that does not have a SNAP–R account, will be required to enter all of the identifying information for the filing entity including a certification that the person is authorized to register the filing entity and to act as account administrator for the filing entity as well as his or her own identifying information. That person will become the initial account administrator for that filing entity.

*Deadlines for Designating an Account Administrator If the Filing Entity Was Not Registered Electronically*

Filing entities that are registered to use SNAP–R on the effective date of the final rule and filing entities that elect to use the paper and facsimile based process during the first 30 days following the effective date of the final rule would be required to designate an account administrator as described below.

On the effective date of the final rule and for 90 days thereafter, any individual user who is authorized to submit work items on behalf of a filing entity would be able to continue to access SNAP–R, submit new work items and perform any necessary tasks in connection with pending work items. In addition, the first such individual user who designates himself or herself as the account administrator would be required to certify that he or she is authorized to act as account administrator and would become the initial account administrator. BIS would inform via e-mail all other individual users who are authorized to act for that filing entity of the identity of the newly designated account administrator.

During the period beginning 91 days after the effective date of the final rule and ending 180 days after the effective date of the final rule, no individual user from a filing entity that does not have at least one account administrator would be able to access the SNAP–R system for any purpose other than to designate himself or herself as account administrator for that filing entity and certify that he or she is authorized to act as account administrator. As soon as

one individual user is designated as the account administrator, that individual user as well as all of the other individual users from that filing entity will regain full SNAP–R access.

Beginning 181 days after the effective date of the final rule, all filing entity accounts for which no account administrator has been designated would become inactive. To use the account for any purpose, an individual would have to log on to the SNAP–R Web site and furnish all of the information that would be required to register a new filing entity.

**Rulemaking Requirements**

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by OMB under control number 0694–0096. BIS believes that this rule will not materially affect the burden imposed by that collection. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2705, 14th Street, and Pennsylvania Ave., NW., Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

*Economic Impact*

BIS believes that this rule will reduce the burden on small entities. This rule will eliminate the current and archaic practice of using a paper and facsimile based process for obtaining authorization to submit work items electronically. It will also reduce the time between initial submission of registration information and receipt of authorization to use the electronic filing system. Finally, the system will allow registered filing entities to add or remove individual users without waiting for approval from BIS.

BIS implemented a revised version of its Simplified Network Applications Processing System (SNAP–R) in October 2006. The SNAP–R system provides a Web based mechanism for parties to submit license applications, classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests in connection with License Exceptions APP and CIV electronically and for BIS to respond electronically to each matter. In October 2008, BIS made use of the SNAP–R system mandatory except in five specified circumstances. SNAP–R is the vehicle through which BIS receives most of the submissions for which SNAP–R is available. In calendar year 2009, BIS received 27,245 submissions via SNAP–R and 55 submissions via paper. On-line processing provides advantages to the government and to the parties submitting work items through reduced processing times.

Despite these advantages, BIS still requires parties registering to use the SNAP–R on-line system and those who need to make changes to their accounts to use paper or facsimile transmissions to do so. A party wishing to register now obtains a description of the identifying information that the party must submit and the text of a certification that the party must make from the BIS Web site. The party copies the information onto its letterhead and sends or faxes the paper document to BIS. BIS personnel then assign a company identification number to the filing entity and a personal identification number to each individual user identified on the submission and communicate those numbers to the appropriate representative of the filing entity and to each individual user. A separate letter must be sent or faxed to BIS each time a new individual user needs to be authorized to file on behalf of the filing entity and BIS personnel issue a new personal identification number to that person via telephone or e-mail. Finally, a letter must be sent to BIS when an individual user no longer is authorized to submit work items on behalf of the filing entity. BIS personnel then deactivate that individual user's account.

Under the procedure envisioned by this proposed rule, a potential individual user, representing a filing entity would access a Web page where he or she would enter the necessary identifying information about himself or herself and about the filing entity which that person represents. That individual would also certify on-line that he or she is authorized to register the filing entity and to act as account administrator for the filing entity. That individual would receive both the company identification number and his or her personal identification number via e-mail. Upon receipt of those numbers, that individual user could submit work items on behalf of the filing entity. He or she could also register new individual users for the filing entity. Once registered, each such new individual user could log on and begin submitting work items.

The process will be entirely Web based and will not require users to purchase hardware or software. Parties who do not have access to the Internet would not be affected by this rule because they are exempt from the requirement to submit work items electronically and thus would not need to register to use SNAP–R.

*Number of Small Entities*

BIS does not collect information about the size of the entities that submit license applications, classification requests, and related submissions via the SNAP–R system. In 2007, BIS made an attempt to estimate the number of small entities that would be affected by the rule requiring electronic submissions by the following method.

BIS determined that 1,592 entities sent in two or more submissions in 2006 (entities that make no more than one submission per year are exempt from the electronic filing requirement). By reviewing public information BIS determined that 252 of these entities could not possibly be small entities because they had more than $100 million in annual sales, had more than 5,000 employees or because they were United States government agencies. BIS did not have a basis for determining whether the remaining 1340 entities were small entities.

Because many industries may be involved in exporting, BIS could not directly relate its data to the "Small Business Size Standards Matched to North American Industry Classification System" (the Standards Table) published by the Small Business Administration (SBA). However, BIS notes that the November 5, 2010, Standards Table designates business as small based on either sales or number of employees, depending on the industry. The maximum annual sales and maximum number of employees listed in that document are $35.5 million and

1,500, respectively. Both numbers are far below the threshold selected by BIS for screening entries as to size. A few entries in the Standards Table are based on having no more than million in assets, but these entries are financial institutions that are unlikely to be exporting the kinds of items that require a specific authorization from BIS.

Moreover, most of the categories in the Standards Table for which the sales limit is relatively high are unlikely to be affected by this rule because they are unlikely to engage in export or reexport transactions that require specific authorization from BIS. Examples of small entities at the higher end of the sales range of the Standards Table include: Family Clothing Stores, Food Service Contractors and Home Centers—$35.5 million each, Forest Fire Suppression—$17.5 million, New Single-Family Housing Construction Contractors—$33.5 million and Gasoline Stations with Convenience Stores—$27.0 million.

*Conclusion*

Based on the information that it does know, BIS believes that most categories of small entities identified by the Small Business Administration are unlikely to be engaged in the kinds of transactions that require specific authorization from BIS and thus would be unlikely to use BIS's SNAP–R system. The exemption from the electronic filing requirement that BIS's rules provide for parties making no more than one submission per year and parties that lack access to the Internet tend to further exclude small entities from the impact of this rule.

Significantly, the effect of this rule on all affected entities is likely to be a reduction in burden because this rule allows implementation of an electronic registration procedure for an existing electronic document filing system. In doing so, it replaces an existing paper based registration system, allowing parties who need to submit documents to BIS to register to do so in less time. Existing provisions of the Export Administration Regulations require most parties to submit work items electronically. This rule would not change that requirement nor would it change any exceptions to that requirement. Parties who qualify and who wish to submit work items on paper would not be subject to the registration requirement of this rule. However, those who either are required or choose to submit their work items electronically would no longer be subjected to a paper based registration process before they can begin electronic submissions. In addition, once registered with an account administration in place, filing entities would no longer have to submit information to BIS via paper or facsimile and wait for a response from BIS in order to add or remove individual users or to update identifying information.

**List of Subjects in 15 CFR Part 748**

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

Accordingly, the Export Administration Regulations (15 CFR Parts 730–774) are proposed to be amended as follows:

1. The authority citation for part 748 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

2. Section 748.7 is revised to read as follows:

**§ 748.7 Registering for electronic submission of license applications and related documents.**

(a) *Scope.* This section describes the procedures for registering to submit electronic documents to BIS. The procedures in this section apply to submission of export and reexport license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV.

(b) *Registration and Use of BIS's Simplified Network Applications System—Redesign (SNAP–R).* Parties wishing to submit electronically must log on to [URL to be determined] to register. Upon initial registration, the party (the filing entity) will have to supply the name of the entity that will be submitting documents electronically and its address and the name, telephone number, facsimile number and e-mail address of the person who will act as account administrator. The person will be required to certify that the information so supplied is correct and complete, that the person has authority to register the entity that will be making electronic submissions and that the person has authority to act as an account administrator for that entity.

(c) *Role of account administrator.* The account administrator is able to add and remove individual users to and from the account of the filing entity for which it is the account administrator. The account administrator can also make individual users account administrators and can terminate an individual user's administrator status. The account administrator can deactivate the account of an individual user and reactivate the account of a previously deactivated individual user. The account administrator can update the filing entity's identifying information such as name and address and any individual user's identifying information such as name, telephone number, facsimile number and e-mail address. The account administrator can reset individual users' passwords.

(d) *Role of individual users.* An individual user may submit to BIS export and reexport license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV.

(e) *Effect of submission to BIS.* BIS may refuse to accept an electronic submission if it has reason to believe that the individual user making the submission lacks authority to do so. However, BIS is not obligated to conduct any checks to determine whether an individual user has the necessary authority and will generally treat users as acting within their authority. Acting through their account administrators, parties have the ability to remove an individual user when that individual user is no longer authorized to make submissions on behalf of that party to BIS and should do so promptly.

(f) *Requirement to keep identifying information accurate and current*—(1) *Filing entities.* Filing entities must, through their account administrators, update their identifying information such as name, address and telephone number in their SNAP–R account as necessary to keep that information accurate and current.

(2) *Individual users.* Individual users must, through their account administrators, update their identifying information such as name, telephone number, facsimile number and e-mail address in their SNAP–R accounts as necessary to keep that information accurate and current.

Dated: November 15, 2010.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2010–29482 Filed 11–22–10; 8:45 am]

BILLING CODE 3510–33–P

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Parts 3, 23 and 170**

**RIN 3038—AC95**

## Registration of Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt regulations that would establish the process for registering swap dealers ("SDs") and major swap participants ("MSPs," and collectively with SDs, "swaps entities"). The proposed regulations also would require swaps entities to become members of the National Futures Association ("NFA") and to confirm that persons associated with them are not subject to a statutory disqualification under the Commodity Exchange Act ("CEA") ("Proposal"). The Commission is making the Proposal in accordance with Section 4s of the CEA, which was recently added to the CEA by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

**DATES:** Comments must be received on or before January 24, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AC95, by any of the following methods:

- *Agency Web Site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act,[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in Commission Regulation 145.9.[2] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Barbara S. Gold, Associate Director, Christopher W. Cummings, Special Counsel, or Elizabeth Miller, Attorney-Advisor, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5450 and electronic mail: *bgold@cftc.gov, ccummings@cftc.gov* or *emiller@cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[3] Title VII of the Dodd-Frank Act[4] amended the CEA[5] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight. The regulations in the Proposal concern the process for registering SDs and MSPs.

*A. Relevant Definitions*

In furtherance of the foregoing legislative goals, Section 721(a) of the Dodd-Frank Act amended the definitions of various existing terms in the CEA and added definitions of numerous new terms to the CEA. Relevant to the Proposal are the definitions of the new terms "swap dealer," "major swap participant," and "associated person of a swap dealer or major swap participant." The Commission currently is developing regulations to implement the new "swap dealer" and "major swap participant" definitions ("Definitional Rulemakings").[6] In light of the statutory mandate in new Section 4s(b)(5) of the CEA that "Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the date of enactment of the [Dodd-Frank] Act," the Commission is proposing rules that will establish a process for the registration of swaps entities by this one-year deadline—*i.e.,* by July 21, 2011.[7]

1. Swap Dealer

New Section 1a(49) of the CEA defines the term "swap dealer" as follows:

(A) IN GENERAL.—The term 'swap dealer' means any person who—

(i) holds itself out as a dealer in swaps;

(ii) makes a market in swaps;

(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.[8]

[1] 5 U.S.C. 552.

[2] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010), as amended by 75 FR 55409 (Sep. 10, 2010). They are accessible on the Commission's Web site.

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

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

[5] 7 U.S.C. 1 *et seq.* (2006).

[6] *See* Sections 721(b) and (c) of the Dodd-Frank Act, which provide the Commission with authority to define these new terms.

[7] *See also* Paragraph C of this Section I, below.

[8] New Section 1a(49) further provides:

(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

(C) EXCEPTION.—The term 'swap dealer' does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall

Continued

2. Major Swap Participant

New Section 1a(33) of the CEA defines the term "major swap participant" as follows:

(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

(I) positions held for hedging or mitigating commercial risk; and

(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.[9]

3. Associated Person of a Swap Dealer or Major Swap Participant

New Section 1a(4) of the CEA defines the term "associated person of a swap dealer or major swap participant" as follows:

(A) IN GENERAL.— The term 'associated person of a swap dealer or major swap participant' means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

(i) the solicitation or acceptance of swaps; or

(ii) the supervision of any person or persons so engaged.[10]

*B. Registration Requirements for SDs and MSPs*

New Section 4s(a) of the CEA [11] sets forth the registration requirements for SDs and MSPs as follows:

(a) REGISTRATION.—

(1) SWAP DEALERS.— It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) MAJOR SWAP PARTICIPANTS.— It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

New Section 4s(b) [12] directs the Commission to adopt rules that provide for the registration of SDs and MSPs. New Section 4s does not direct the Commission to adopt rules that provide for the registration of associated persons of SDs or MSPs. However, new Section 4s(b)(6) makes it unlawful for a swaps entity to permit a person to associate with it if the person is subject to a statutory disqualification as follows:

Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or major swap participant to permit any person associated with a swap dealer or major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

For the purpose of the Proposal, the Commission intends that a statutory disqualification is a disqualification under Section 8a(2) or 8a(3) of the CEA.[13]

Section 4s further directs the Commission to adopt rules that provide for the regulation of SDs and MSPs with respect to, among others, the following areas: Capital and margin, reporting and recordkeeping, daily trading records, business conduct standards, documentation standards, trading duties, chief compliance officer,[14] and, with respect to uncleared swaps, segregation [15] (collectively, "Section 4s Requirements"). The Section 4s Requirements are being addressed by other rulemakings. Their impact on the registration process is discussed below at Paragraph C of this Section I.

Additionally, Section 716 of the Dodd-Frank Act prohibits an insured depository institution ("IDI") from receiving Federal assistance if it is also an SD that engages in swaps activities that are not covered by the exclusion in Section 716(d).[16] Under Section 716(c), an IDI can retain its access to Federal assistance if it transfers covered activities to a non-IDI affiliate (a "Push-Out Affiliate") that is an SD or MSP, if the affiliate complies with the requirements of Section 716(c), including such requirements as the Commission may establish.[17] The Push-

promulgate regulations to establish factors with respect to the making of this determination to exempt.

[9] This section further provides:

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term 'substantial position' at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

(D) EXCLUSIONS.—The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

[10] New section 1a(4) further provides:

(B) EXCLUSION.— Other than for purposes of section 4s(b)(6), the term 'associated person of a swap dealer or major swap participant' does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

[11] Section 4s(a) was added to the CEA by Section 731 of the Dodd-Frank Act.

[12] Section 4s(b) similarly was added to the CEA by Section 731 of the Dodd-Frank Act.

[13] 7 U.S.C. 12a(2) and 12a(3). These sections of the CEA contain an extensive list of matters that constitute grounds to refuse to register a person, including, without limitation, felony convictions, commodities or securities law violations, and bars or other adverse actions taken by financial regulators.

[14] New Sections 4s(e) through (k), respectively, added to the CEA by Dodd-Frank Section 731.

[15] New Section 4s(*l*), added to the CEA by Dodd-Frank Section 724(c).

[16] Specifically, the prohibition against Federal assistance to swaps entities is set forth in paragraph (a) of Section 716 as follows:

(a) PROHIBITION ON FEDERAL ASSISTANCE.—Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

Dodd-Frank Section 716(d) carves out certain swap activities of an IDI that is an SD, and therefore a "swaps entity," from the prohibition against "Federal assistance." In particular, the prohibition against Federal assistance does not apply to the extent the IDI SD engages in: (1) Hedging and other risk-mitigating activities of the IDI; or (2) acting as an SD for swaps and security-based swaps involving rates (*e.g.,* interest rate swaps) or reference assets that are permissible investments. Engaging in non-cleared credit default swaps, however, would subject an IDI SD to the prohibition against Federal assistance.

[17] Section 716(c) provides for the Push-Out Affiliate exception as follows:

(c) AFFILIATES OF INSURED DEPOSITORY INSTITUTIONS.—The prohibition on Federal assistance contained in subsection (a) does not

Out Affiliate, however, would not have access to Federal assistance. The Commission is not proposing any specific requirements at this time for any Push-Out Affiliate. The Commission does intend, however, that any Push-Out Affiliate that comes within the statutory definition of an SD or an MSP be subject to registration and regulation as an SD or as an MSP, as the case may be.

Part 3 of the Commission's regulations governs registration under the CEA. Currently, Part 3 is not applicable to swaps entities. To fulfill the statutory mandates of the Dodd-Frank Act, and as is discussed more fully below, the Commission is proposing amendments to Regulations 3.2, 3.4, 3.10, 3.21, 3.30, 3.31 and 3.33, and adoption of new Regulation 23.21. To further accomplish these aims, the Commission also is proposing adoption of new Regulations 23.22 and 170.16.[18]

*C. Phased Implementation*

As is noted above, the Dodd-Frank Act requires the Commission to promulgate rules providing for the registration of SDs and MSPs not later than July 21, 2011.[19] Section 754 of the Dodd-Frank Act, however, permits the other separate rulemakings establishing specific criteria in the SD and MSP definitions that determine who must register, as well as the Section 4s Requirements, to become effective after July 21, 2011.[20] In order to meet the prescribed deadline to adopt rules providing for registration of swaps entities, even though the Definitional Rulemakings will not be effective until a later date and the criteria of many of the Section 4s Requirements will not be known with certainty until a later date, the Commission is proposing a provisional registration procedure for the transitional period between the July 21, 2011 date by which regulations establishing a process for swaps entities' registration must be in place and the effective dates of the Definitional Rulemakings and the rulemakings implementing the Section 4s Requirements. This approach is intended to ensure continuity of the business operations of existing swaps entities, and to avoid undue market disruption.

Moreover, to provide sufficient processing time for the initial set of applicants so that persons may be registered at the earliest possible date, persons would be able to begin applying for registration ahead of the July 21 date, beginning on April 15, 2011.[21] This process, which would be entirely voluntary, would permit a person that anticipates that it may be considered to be a "swap dealer" or "major swap participant" to apply for and obtain registration—albeit on a provisional basis—as soon as possible. SDs and MSPs who had not applied for registration by July 21 would be required to apply for registration not later than the effective date of the applicable Definitional Rulemaking.[22] In light of the possibility that the rulemakings regarding the operations and activities of swaps entities will have later compliance deadlines than the effective date of the Definitional Rulemakings, provisionally registered swaps entities would be permitted to come into compliance with the Section 4s Requirements within the compliance deadlines set forth in the respective final implementing rulemakings.[23] The Commission intends that upon the filing of an application these swaps entities would be provisionally registered, and would remain registered so long as they timely established compliance with the various Section 4s Requirements and met the standard fitness requirements. Swaps entities applying for registration after July 21, 2011 would be subject to the same provisional registration process but would have to demonstrate compliance with any applicable regulation for which a compliance deadline had passed by the time of the initial filing.

Once all of the Section 4s Requirements are adopted and effective, provisional registrants would become fully registered SDs and MSPs, provided that they demonstrate compliance with all applicable regulations. SDs and MSPs who failed to demonstrate compliance would cease to be registered, would be required to withdraw their registration application and would be prohibited from engaging in any subsequent new activity within the SD or MSP definition, as the case may be.[24] After all of the rulemakings implementing the Section 4s Requirements became effective, no provisional registrations would be granted.

By proposing a system of phased implementation, the Commission has endeavored to accomplish the registration of SDs and MSPs in a manner that is both efficient and minimally disruptive to on-going business. The Commission seeks comment on this or alternative approaches to registration, including extension of the effective date of the registration rules until such time as rules further defining the terms "swap dealer" and "major swap participant," and rulemakings implementing the Section 4s Requirements, become effective.

*D. Request for Comment on Allocation of Responsibilities*

Currently, when a person registers with the Commission, they apply electronically via NFA's online registration system.[25] NFA conducts a fitness review of the applicant, including background checks of principals and associated persons, and proficiency testing of associated persons. Presently, all registered futures commission merchants ("FCMs"), introducing brokers ("IBs"), retail foreign exchange dealers ("RFEDs"), commodity pool operators ("CPOs") and those registered commodity trading advisors ("CTAs") who manage or exercise discretion over client accounts must be members of NFA in order to conduct futures business with the

apply to and shall not prevent an insured depository institution from having or establishing an affiliate which is a swaps entity, as long as such insured depository institution is part of a bank holding company, or savings and loan holding company, that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 23A and 23B of the Federal Reserve Act and such other requirements as the Commodity Futures Trading Commission * * * may determine to be necessary and appropriate.

[18] New Regulation 23.22 would pertain to requirements applicable to SDs and MSPs with regard to associated persons and new Regulation 170.16 would require SDs and MSPs to become members of NFA. As is discussed in Item II.C.2.b. below, the Commission specifically is requesting comment on certain matters related to these proposed requirements.

[19] New Section 4s(b)(5) of the CEA.

[20] Section 754 provides that:

Unless otherwise provided in this title, the provisions of this subtitle [Subtitle A—Regulation of Over-the-Counter Swaps Markets] shall take effect on the later of 360 days after the date of enactment of this subtitle [*i.e.,* July 15, 2011], or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.

[21] This advance application procedure is authorized by Section 712(f) of the Dodd-Frank Act, which states in relevant part:

[N]otwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission * * * may, in order to prepare for the effective dates of the provisions of this Act * * * register persons under the provision of this Act * * * provided, however, that no [such] action * * * shall become effective prior to the effective date applicable to such action under the provisions of this Act.

[22] *See* Dodd-Frank Act Sections 721(b) and (c).

[23] For the purpose of this **Federal Register** release, the term "compliance" includes "ability to comply," to the extent that a regulation subsequently adopted requires demonstration of the ability to comply. *See* proposed Regulation 3.10(a)(1)(v)(A).

[24] *See* Section II.B.2., Regulation 3.10, for a fuller discussion of this matter.

[25] NFA is registered as a futures association in accordance with Section 17 of the CEA, 7 U.S.C. 21.

public.[26] Associated persons of NFA Members must become NFA Associates.[27] On an ongoing basis, NFA audits registrants for compliance with regulatory requirements applicable to the particular registration category.

In the case of SDs and MSPs, the Commission proposes that an application for registration would commence with the filing of Form 7–R by means of NFA's online registration system.[28] SDs and MSPs would also file accompanying Forms 8–R for the entity's principals by means of NFA's online registration system to verify that the principal is not subject to a statutory disqualification.[29] NFA would conduct a background check, and would provide to the SD or MSP and to the Commission any information that would indicate the principal is unfit or subject to a statutory disqualification. Currently, the structure for oversight of existing registrants' activities is that the Commission has delegated to NFA responsibility for conducting all aspects of the registration process and for monitoring for compliance with all subsequent requirements.[30] Along these lines, then, the Commission is proposing to adopt Regulation 170.16 to include SDs and MSPs among the registrants that are required to become and remain members of at least one registered futures association.[31]

The Commission believes that there are three options with respect to who should be responsible for determining initial and ongoing compliance by swaps entities with respect to the Section 4s Requirements and all other applicable requirements. Option number one would involve the Commission being directly responsible for ensuring compliance by swaps entities with all requirements applicable to them under the CEA and Commission regulations. Option number two would involve NFA (or any other association that may subsequently be registered as a futures association) being responsible for ensuring compliance, subject to Commission oversight. Option number three would involve certain compliance oversight activities being performed by the Commission and others being delegated to NFA (or a subsequently registered futures association). The Commission requests comment on these options. In the case of option number three, commenters should specify which oversight activities should be performed by the Commission and which should be delegated to, or performed by NFA (or another registered futures association).

*E. Extraterritorial Application of Swap Dealer and Major Swap Participant Registration Requirements*

New Section 2(i) of the CEA, which was added by Section 722(d) of the Dodd-Frank Act, states that provisions of the CEA that were enacted by Title VII of the Dodd-Frank Act (which includes the definition of swap dealer, and the registration requirement) shall not apply to activities outside the United States unless those activities "have a direct and significant connection with activities in, or effect on, commerce of the United States," or contravene rules or regulations the Commission may promulgate to prevent evasion.

In view of Sections 2(i) and 4s(a)(1), the Commission must determine under which circumstances a person who engages in the activities set forth in new Section 1a(49) of the CEA ("swap dealing activities") outside the U.S. shall be required to register as an SD. By its terms, Section 2(i) sets a floor that must be met for the swap provisions of the CEA to apply abroad. Thus, a person whose swap dealing activity has no connection or effect of any kind, direct or indirect, whether through affiliates or otherwise, to U.S. commerce would not be required to register as a swap dealer. The Commission also recognizes the role that considerations of international comity play in determining the proper scope of extraterritorial application of federal statutes.[32]

The Commission generally would not require a person to register as a swap dealer if their only connection to the U.S. was that the person uses a U.S.-registered swap execution facility, designated clearing organization or designated contract market in connection with their swap dealing activities,[33] or reports swaps to a U.S.-registered swap data repository.[34] On the other hand, a person outside the U.S. who engages in swap dealing activities and regularly enters into swaps with U.S. persons would likely be required to register as a swap dealer.

The Commission requests comment as to what level of swap dealing activity outside the U.S. would qualify as having a direct and significant connection with activities in or effect on commerce of the U.S., thereby requiring a person outside the U.S. to register as an SD. In particular, in view of the global nature of the swap markets and the ability to transfer swap-related risks within affiliated groups, the Commission requests comment on when swap dealing activity with or by non-U.S. affiliates of U.S. persons has a "direct and significant connection with activities in, or effect on" U.S. commerce for purposes of Section 2(i) of the CEA. For example, to what extent do persons outside the U.S. who engage in swap dealing activity with non-U.S. affiliates of U.S. persons (such as the non-U.S. subsidiary of a corporate parent headquartered in the U.S.) engage in swap dealing activity that has a direct and significant connection with activities in, or effect on, U.S. commerce?

Registration of MSPs raises different jurisdictional issues, because the definition of MSP specifically focuses on the degree of risk that an entity's swaps pose to U.S. counterparties and the U.S. market. Thus, the analysis of whether a non-U.S. entity should register as an MSP would turn upon, among other things, swap positions with U.S. counterparties (including the use of a U.S. clearing agency or swap execution facility) or that involve U.S. mails or any means or instrumentality of interstate commerce. The Commission

[26] *See* NFA Bylaw 1101.

[27] *See* NFA Bylaw 301(b).

[28] Form 7–R is the form filed with NFA by entities—*e.g.,* FCMs, IBs, RFEDs, CPOs and CTAs. The information called for includes the firm's full legal name and form of organization, business address, business records location, branch office location, principals, contact information and any disciplinary history. Form 7–R is filed electronically and not as a paper form.

[29] Form 8–R is the form that is filed with NFA by the entity applicant on behalf of certain natural persons. It calls for the person's name, address and other identifying information, any criminal history, any regulatory disciplinary history, employment, and educational history. The entity submits the Form 8–R and the person confirms the accuracy of the information. Form 8–R also is filed electronically and not as a paper form.

[30] *See, e.g.,* 75 FR 55310 (Sep. 10, 2010), delegating registration functions for RFEDs, which includes the determination of compliance with net capital requirements, to NFA.

[31] Although Section 17 of the CEA provides that "[a]ny association of persons may be registered with the Commission as a registered futures association," to date, NFA is the sole association that has applied for and has been issued registration as a futures association with the Commission.

[32] *See generally, Hartford Fire Insurance Co.* v. *California,* 509 U.S. 764, 113 S.Ct. 2891, 125 L.Ed.2d 612 (1993); 1 Restatement (Third) of Foreign Relations Law of the United States §§ 402–403 (1987).

[33] *Cf.* 17 CFR 3.10 (foreign broker not required to register as FCM if it: (1) Limits its customers to customers located outside the U.S.; (2) confines its commodity interest activities to areas outside the U.S.; and (3) submits its trades for clearing on an omnibus basis through a registered FCM; also, registration exemption for any foreign person acting in the capacity of an IB, CTA or CPO solely with respect to customers located outside the U.S., provided that all commodity interest transactions are submitted for clearing to a registered FCM).

[34] Such persons, however, may be subject to other requirements imposed on swap dealers, such as reporting obligations. Further, the provisions of the CEA and the Commission's regulations applicable to "any person" will apply as well, such as those prohibiting fraud and manipulation.

requests comment on these interpretive issues.

## II. Section-by-Section Analysis

### *A. Structure and Approach*

As noted above, the Dodd-Frank Act requires SDs and MSPs to be registered as such with the Commission, and it requires the Commission to adopt rules providing for registration of SDs and MSPs, as well as rules regulating their activities. To the extent practicable, the Commission intends to place requirements that are unique to SDs and MSPs in a new Part 23 of its regulations. However, as is noted above, the Commission's existing registration process for futures, commodity options and retail forex intermediaries, as well as for floor traders and floor brokers, is extensively set forth in Part 3 of the regulations. Replication in new Part 23 of all of the registration process requirements appropriate for SDs and MSPs would be unwieldy and potentially confusing. Accordingly, while two proposed new regulations would be in new Part 23, and one proposed new regulation would be in Part 170, most of the proposed changes in this rulemaking concern amendments to existing provisions of Part 3.[35]

### *B. Proposed Amendments to Existing Regulations*

Some of the proposed amendments to Part 3 consist entirely of adding appropriate references to SDs and MSPs in existing regulations.[36] These proposed amendments will not be separately discussed. Other proposed amendments, however, involve substantive changes to existing regulations because of the particular attributes or characteristics of SDs, MSPs and swaps. They are separately discussed below.

#### 1. Regulation 3.2—Registration Processing by the National Futures Association; Notification and Duration of Registration

Regulation 3.2 generally provides for performance by NFA of registration, temporary licensing and denial, revocation or suspension of registration. Paragraph (c) of this regulation currently requires NFA to notify various registration applicants when a temporary license has been granted under provisions of Regulation 3.40. The Commission proposes to amend Regulation 3.2(c) to add paragraph (c)(3), which would provide that NFA will notify an applicant for registration as an SD or MSP (pursuant to the provisional application procedure described below, in the discussion of proposed amendments to Regulation 3.10) that the applicant has been granted provisional registration.

#### 2. Regulation 3.10—Registration of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

Regulation 3.10 sets forth the basic registration scheme for various firms. The Proposal would amend the regulation to accommodate SD and MSP registration. It would require an applicant for registration as an SD or MSP to commence the registration process by filing Form 7–R with NFA.[37] This is the same form currently used by an entity applying for registration as an FCM, IB, RFED, CPO, or CTA. Like those other registrants, an SD's or MSP's Form 7–R would be accompanied by a Form 8–R and a fingerprint card for each principal.[38] NFA would then conduct the same background check it performs with respect to other applicants for registration.[39]

Concurrently with or subsequent to the filing of the Form 7–R, the applicant for SD or MSP registration would be required to demonstrate their compliance with such regulations as the Commission adopts implementing the Section 4s Requirements.[40] Moreover, filing of Form 7–R by an SD or MSP would authorize the Commission to conduct on-site inspection to ascertain compliance with those obligations.[41] However, this filing would not require the Commission to conduct such inspection. As is stated above, the Commission specifically is requesting comment on whether it or NFA (by delegation and subject to Commission oversight) should be directly responsible for ensuring compliance with the Section 4s Requirements.

As is noted above, the Commission is proposing a provisional registration process for the transitional period between adoption of regulations providing for registration of swaps entities, and the latest date by which applicants must comply with the final rulemakings for the Section 4s Requirements. This provisional registration process and the transition to full compliance would be incorporated into Regulation 3.10(a)(1)(v)(C). As proposed, a swaps entity would be able to file a Form 7–R at any time beginning April 15, 2011, which filing would cause the person to be provisionally registered. From and after the effective date(s) of the Definitional Rulemakings, a person within the SD or MSP definition must file a Form 7–R, and until such time as the last of the rulemakings implementing the Section 4s Requirements becomes effective, such person will also be provisionally registered. As each of the Section 4s Requirements rulemakings becomes effective, a provisionally registered SD or MSP would be required to demonstrate compliance within the timeframe required by such rulemaking. Once all of the Section 4s Requirement rulemakings are effective and an applicant has timely demonstrated compliance, the applicant would be notified that its provisional registration has become a full registration. If the applicant failed to demonstrate compliance within the prescribed period of time, it would be so notified and required to withdraw its registration application and its provisional registration would cease. In the event the applicant failed to withdraw its registration application within 30 days following receipt of notice that its application was deficient, the application would be deemed withdrawn and its provisional registration would cease. The regulation would provide that the Commission could extend the time to cure the deficiency upon written request from

[35] In this regard, however, it has not been necessary for the Commission to propose any amendments to the following Part 3 regulations in order to subject SDs and MSPs to registration with the CFTC: 3.1, 3.11, 3.12, 3.13, 3.22, 3.40–3.47, 3.50–3.64, 3.70, and 3.75. This is because these regulations either apply to "applicants" or "registrants" generally, such that they would also apply to swaps entities, or they apply to other specific registration categories (such as floor broker or floor trader), such that they would not pertain to swaps entities.

[36] *See* the proposed amendments to Regulations: 3.4(a); 3.10 title and paragraphs (a)(1)(i), (b)(1) and (d); 3.21(c); 3.30(a); 3.31(a)(1) and (c); and 3.33(a), (b) introductory text and (e).

[37] *See* the proposed amendment to Regulation 3.10(a)(1)(i). SDs and MSPs would thus be subject to the requirement in Regulation 3.10(a)(2) to file a Form 8–R for each natural person who is a principal of the firm, along with a fingerprint card for that person.

[38] *See* Section 8a(1) of the CEA. The term "principal" is defined in Regulation 3.1(a) to include generally: An officer, director, partner or similar person exercising control over an entity's activities; a person who owns or has power to vote ten percent or more of the entity's securities; or a person who has contributed ten percent or more of the entity's capital.

[39] In the event that final registration rules are adopted and published pursuant to the Proposal, the Commission would issue an order officially delegating these application and background check functions to NFA. The delegation order would require NFA to notify the Commission if it found information regarding an applicant indicating that the applicant was unfit or that it was subject to a statutory disqualification.

[40] *See* proposed Regulation 3.10(a)(1)(v)(A).

[41] *See* proposed Regulation 3.10(a)(1)(v)(B).

the applicant. Upon withdrawal—whether on the part of the applicant or upon receipt of notice of deficiency—the applicant would be prohibited from subsequently engaging in any new activity described in Section 1a(33) or 1a(49) of the CEA. Finally, the regulation would make clear that it would not affect the terms of any swap transaction to which the applicant is a party entered into prior to the notice of deficiency.[42]

The same process would apply for persons applying for registration as an SD or MSP on or after July 21, 2011. Filing of Form 7–R would commence provisional registration, and would subject the applicant to immediate compliance with any rulemaking affecting it as an SD or MSP, insofar as the rulemaking was effective and compliance required at the time the applicant filed its Form 7–R. As additional rulemakings phase in, the provisionally registered SD or MSP would be required to meet the applicable compliance deadlines. Failure to do so would result in cessation of registration under the terms and conditions discussed in the preceding paragraph of this **Federal Register** release.

Swaps entities, like other registrants, would be required to review and update at least annually the information they had provided to NFA in their application. Additionally, swaps entities would be required to review and update at least annually the information they had provided to the Commission.[43]

3. Regulation 3.21—Exemption From Fingerprinting Requirement in Certain Cases

Regulation 3.21 generally provides for submission of a copy of a fingerprint card previously submitted to the Federal Bureau of Investigation ("FBI"), instead of a new fingerprint card, and it provides for exemption from the fingerprint requirement for outside directors of a firm who are not directly involved in the firm's activities subject to Commission regulation. As is currently true with other firms registering with the Commission, *in lieu* of submitting a fingerprint card in connection with the firm's registration, under the Proposal an outside director of an SD or MSP would be able to submit a notice stating that the outside director is not engaged in soliciting business for the firm, handling its transactions, keeping its records or supervising those who are so engaged.[44]

4. Regulation 3.31—Deficiencies, Inaccuracies and Changes To Be Reported

Regulation 3.31 generally sets forth the requirements and responsibility for correcting and updating the information submitted by applicants for registration on Form 7–R and Form 8–R. Each applicant for registration or registrant as a swaps entity would be required to promptly correct any inaccuracy or deficiency of the information in a Form 7–R or Form 8–R it has filed. Each principal of a swaps entity would likewise be responsible for correcting anything that renders the information in a Form 8–R filed on behalf of such person inaccurate or incomplete.

5. Regulation 3.33—Withdrawal From Registration

Regulation 3.33 generally sets forth the forms, procedures and requirements for withdrawal from registration, and when such withdrawal becomes effective. In order to withdraw from registration, under the Proposal the Form 7–W that a swaps entity would file would specify the nature and extent of any swap counterparty actual, anticipated or threatened claims against the registrant.[45] Additionally, an SD's Form 7–W would specify that the person will not engage in any new activity described in the definition of the term "swap dealer"[46] and an MSP's Form 7–W would specify that the person will not engage in any new activity described in the definition of the term "major swap participant."[47]

As the Commission noted in adopting Regulation 3.33 (then designated as Regulation 1.10f):

Rule 1.10f provides that a request for withdrawal must contain information which is intended to inform the Commission of the status of the registrant making the withdrawal request, to substantiate the registrant's eligibility to withdraw from registration, and to enumerate any outstanding claims of its customers.[48]

Withdrawal of a registration under § 1.10f will become effective 30 days after receipt by the Registration Unit of the Commission's Division of Trading and Markets of a properly completed request.[49] The purpose of the 30 day period is to give the Commission time to review the information provided by the registrant to determine if there is any reason why withdrawal should not be allowed.[50]

*C. New Part 23*

As is stated above, the Commission expects that, to the extent practicable, various Section 4s Requirements will be included in new Part 23. At this juncture, by this **Federal Register** release, the Commission is proposing that Subpart B of Part 23 include the general requirements for the registration of SDs and MSPs and their obligations with respect to persons associated with them.[51]

1. Proposed Regulation 23.21—Registration of Swap Dealers and Major Swap Participants

Proposed Regulation 23.21 has three paragraphs. Paragraph (a) states that anyone coming within the statutory definition of the term "swap dealer" in Section 1a(49) of the CEA and the Commission's regulations issued thereunder is subject to the registration provisions under the CEA, and to Part 3 of the Commission's regulations, and paragraph (b) states that anyone coming within the statutory definition of the term "major swap participant" in Section 1a(33) of the CEA and the Commission's regulations issued thereunder is subject to the registration provisions under the CEA, and to Part 3 of the Commission's regulations. Paragraph (c) deals with Push-Out Affiliates, and requires that any Push-Out Affiliate that comes within the statutory definition of an SD or an MSP be registered as an SD or as an MSP, as the case may be. As is stated above, this requirement would apply to Push-Out Affiliates in existence on July 21, 2011,

[42] *See* Proposed Regulation 3.10(a)(1)(v)(D)(*3*). Section 739 of the Dodd-Frank Act, in language to be codified as new Section 22(a)(5)(A) of the CEA, states:

EFFECT ON SWAPS—Unless specifically reserved in the applicable swap, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the swap.

[43] *See* the proposed amendment to Regulation 3.10(d).

[44] *See* the proposed amendment to Regulation 3.21(c).

[45] *See* the proposed amendment to Regulation 3.33(b)(6)(vi).

[46] *See* proposed Regulation 3.33(b)(6)(viii).

[47] *See* proposed Regulation 3.33(b)(6)(ix).

[48] [Footnote in original] As used in § 1.10f, the term "customer" includes the customers of FCMs and the clients of CTAs, as well as the customers of any category of registrant that may be established in the future. Section 1.10f also refers to "commodity pool participants"—*i.e.*, those persons who have a direct financial interest in a commodity pool. *See* § 4.10(c), 46 FR 26004, 26014 (May 8, 1981).

[49] [Footnote in original] A request will be considered to be "received" when it is delivered to the address specified in the rule.

[50] 46 FR 48915 (Oct. 5, 1981).

[51] The Commission intends that regulations applicable to the SD and MSP definitions will be placed in Subpart A of Part 23, and accordingly is proposing to reserve Regulations 23.1 through 23.20 for that purpose.

as well as to those that are organized and are active subsequent thereto.

2. Proposed Regulation 23.22—Requirements Applicable in the Case of an Associated Person of a Swap Dealer or Major Swap Participant

a. The Proposed Regulation

Proposed Regulation 23.22 incorporates the statutory prohibition in new Section 4s(b)(6) against swaps entities permitting persons subject to a statutory disqualification to be associated with them. For the purposes of this regulation, paragraph (a) defines the term "person" as a shorthand substitute for the statutory term "associated person of a swap dealer or major swap participant." Paragraph (b) restates the statutory prohibition.

b. Request for Comment

Associated persons of existing Commission registrants (*e.g.,* FCMs, IBs, RFEDs, CPOs or CTAs) are required to be registered. The term "associated person" in the context of existing Commission registrants is not defined in the CEA. That term is defined in the Commission's regulations. Specifically, Regulation 1.3(aa) provides that "[T]his term [*i.e.,* associated person] means any *natural person* who is associated with", *e.g.,* an FCM, IB, CPO or CTA in any capacity that involves solicitation or the supervision of any person or persons so engaged (emphasis added). "Associated person" has typically referred to a salesperson of a registrant. Thus, a corporation, partnership or other legal entity has never been considered an associated person. The use of the term "natural person" in the current associated person definition is intended to distinguish between the rights and responsibilities of persons acting as associated persons of a registrant and persons acting as IBs.[52] However, in the absence of any language in the Dodd-Frank Act restricting associated persons of swaps entities to natural persons, the Commission is not proposing such a definition. The Commission nonetheless requests comment on whether it should by regulation in fact restrict associated persons of swaps entities to natural persons.

The Commission also requests comment on implementing the statutory prohibition against SDs and MSPs permitting persons subject to a statutory disqualification to be associated with them. Currently, in connection with registration applications for associated persons of existing registrants, NFA conducts a thorough background check in order to determine whether an individual is subject to statutory disqualification. This process includes submission of fingerprint cards, which are sent to the FBI to determine if the applicant has a criminal record. As for associated persons of swaps entities, the Commission is proposing that the responsibility of ensuring that such persons are not subject to statutory disqualification would fall upon the SD or MSP employing them. The Commission seeks comment on how SDs and MSPs could conduct background checks or otherwise fulfill this requirement. Possible alternatives include voluntary or required submission of identification information and fingerprint cards to NFA for the type of fitness review NFA conducts for existing registrants.

*D. New Regulation 170.16*

Part 170 of the Commission's regulations pertains to registered futures associations.[53] It concerns standards governing Commission review of applications for registration as a futures association, the registration statement that a futures association must submit to the Commission, and membership in a registered futures association.[54] With respect to the last subject area, Regulation 170.15 requires that, with the exception of certain "notice-registered" FCMs,[55] each person registered as an FCM "must become and remain a member of" at least one registered futures association that provides for FCM membership (unless no such registered futures association exists). The Commission is proposing that, like FCMs, SDs and MSPs be required to become and remain members of a registered futures association. Proposed Regulation 170.16 would thus closely follow the existing requirement for FCMs in Regulation 170.15.

**III. Related Matters**

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA") [56] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and if so, provide a regulatory flexibility analysis respecting the impact. The Commission has already established certain definitions of "small entities" to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[57] SDs and MSPs are new categories of registrant. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for purposes of the RFA.

The Commission previously has determined that FCMs should not be considered to be small entities for purposes of the RFA. The Commission's determination was based in part upon their obligation to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[58] Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms. The Commission is required to exempt from designation entities that engage in a *de minimis* level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for this and future rulemakings, the Commission is hereby proposing that SDs not be considered "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.

The Commission has also previously determined that large traders are not "small entities" for RFA purposes.[59] The Commission considered the size of a trader's position to be the only appropriate test for purposes of large trader reporting.[60] MSPs maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this and future rulemakings, the Commission is hereby proposing

[52] *See* Regulation 166.4, which provides in pertinent part that "[e]ach branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name." and 48 FR 35248, 35252 (Aug. 3, 1983), in which the Commission explained the history of the regulation. *See also* CFTC Staff Letters 84–10, Comm. Fut. L. Rep. (CCH) ¶22,252 (May 29, 1984) and 84–26, Comm. Fut. L. Rep. (CCH) ¶22,472 (Dec. 6, 1984), in which Commission staff further explained and interpreted this requirement. An entity that solicits for a registrant, but that is not a branch office of the registrant, must register as an IB.

[53] As is noted above, NFA is the sole association that has applied for and has been issued registration as a futures association with the Commission.

[54] Application forms for NFA membership are incorporated in Form 7–R.

[55] Regulation 3.10(a)(3) provides for notice registration of an FCM (or IB) in the case of certain persons registered as securities brokers or dealers in connection with trading security futures products.

[56] 5 U.S.C. 601 *et seq.*

[57] 47 FR 18618 (Apr. 30, 1982).

[58] *Id.* at 18619.

[59] 47 FR at 18620.

[60] *Id.*

that MSPs not be considered "small entities" for essentially the same reasons that large traders have previously been determined not to be small entities.

The Commission is carrying out Congressional mandates by proposing these rules. The Commission is incorporating registration of SDs and MSPs into the existing registration structure applicable to other registrants. In so doing, the Commission has attempted to accomplish registration of SDs and MSPs in the manner that is least disruptive to ongoing business and most efficient and expeditious, consistent with the public interest, and accordingly believes that these registration rules will not present a significant economic burden on any entity subject thereto. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA)[61] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review. If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR Part 145, "Commission Records and Information." In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[62]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB has not yet assigned a control number to the new collection.

1. Information Provided/by Reporting Entities/Persons

The burden associated with the proposed new rules implementing registration of SDs and MSPs is estimated to be 752 hours, which will result from (1) application for registration by SDs and MSPs and submission of required information on behalf of their respective principals; (2) initially, no withdrawals from registration by SDs or MSPs and a relatively small decrease in the number of their respective principals; and (3) initially, no reported corrections. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency.

The respondent burden for this collection is estimated to average 0.5 hours per response for the Form 7–R; 0.4 hours per response for the Form 8–R; 3 minutes per response for the Form 7–W; 6 minutes per response for the Form 8–T; and 3 minutes per response for the Form 3–R. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information. While staff believes that there may likely be approximately 200 swap dealers, we have taken a conservative approach in estimating that there will be 250 SDs for PRA purposes. The estimated burden was thus calculated as follows:

*Form 7–R*

*Respondents/Affected Entities:* 300.

*Estimated number of responses:* 300.

*Estimated total annual burden on respondents:* 0.5 hours.

*Frequency of collection:* On occasion and annually.

*Burden statement:* 300 respondents × 0.5 hours = 150 Burden Hours.

*Form 8–R*

*Respondents/Affected Entities:* 5 principals per each of 300 SDs and MSPs.

*Estimated number of responses:* 1,500.

*Estimated total annual burden on respondents:* 0.4 hours.

*Frequency of collection:* On occasion.

*Burden statement:* 1,500 respondents × 0.4 hours = 600 Burden Hours.

*Form 8–T*

*Respondents/Affected Entities:* 1 principal per each of 20 SDs and MSPs.

*Estimated number of responses:* 20.

*Estimated total annual burden on respondents:* 6 minutes.

*Frequency of collection:* On occasion.

*Burden statement:* 20 respondents × 0.1 hours = 2 Burden Hours.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to 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 automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

*C. Cost-Benefit Analysis*

Section 15(a) of the CEA[63] requires the Commission to consider the costs and benefits of its action before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine

[61] 44 U.S.C. 3501 *et seq.*

[62] 5 U.S.C. 552a.

[63] 7 U.S.C. 19(a).

whether the benefits of the rulemaking outweigh its costs; rather, it simply requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

*Summary of Proposed Requirements.* The proposed rules would create a process to implement the registration requirements for swaps entities under the CEA pursuant to the Dodd-Frank Act generally through amendments to the existing regulatory framework.

*Costs.* With respect to costs, the Commission has determined that the costs of the new registration requirements imposed on SDs and MSPs will consist primarily of the fees that NFA will charge: (1) For application for registration of SDs and MSPs, which are expected to be $500 per application; (2) to process fingerprints and background information for principals, which are expected to be $85 per person; and (3) for NFA membership, which are expected to be $7,500 for an SD and $5,600 for an MSP annually. Time and expense to registrants relating to the registration process alone are expected to be relatively minimal as the forms are not complicated. Time and expense relating to the new registration requirements are therefore not expected to be a barrier to entry of registrants or to adversely affect the liquidity of any markets.

For purposes of this rulemaking, the costs of the new registration requirements do not include costs to registrants resulting from any need to create or augment an internal compliance and reporting infrastructure as a result of the Section 4s Requirements that are being addressed by other Commission rulemakings. The Commission therefore views the costs of the new registration requirements to be insubstantial when viewed in the context of the broader purpose of Congress to promote systemic safety for the financial markets as embodied in the Dodd-Frank Act.

*Benefits.* With respect to benefits, the Commission has determined that the benefits of registering swaps entities are significant. Registration will enable the Commission to identify the universe of SDs and MSPs, which will enable these entities to be monitored for compliance with the Dodd-Frank Act and the rules being implemented by the Commission thereunder. This will enable the protection of market participants and the public, promote efficiency and transparency of markets, promote sound risk management practices and promote the public interest, as described in the rules being proposed by the Commission implementing the substantive provisions of the Dodd-Frank Act. Similarly, the Commission has determined that the benefits of requiring swaps entities to become and remain members of a registered futures association are significant. Membership will provide the Commission with flexibility with regard to its oversight of compliance with the Dodd-Frank Act and Commission regulations.

*Public Comment.* The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

**List of Subjects**

*17 CFR Part 3*

Definitions, Customer protection, Licensing, Registration, Swaps.

*17 CFR Part 23*

Swaps, Swap dealers, Major swap participants, Registration.

*17 CFR Part 170*

Authority delegations (Government agencies), Commodity futures, Swaps, Reporting and recordkeeping requirements.

For the reasons presented above, the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 3—REGISTRATION

1. The authority citation for part 3 is amended to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

2. Section 3.2 is amended by adding paragraph (c)(3) to read as follows:

**§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.**

* * * * *

(c) * * *

(3) Upon filing of an application for registration pursuant to § 3.10(a)(1)(v) of this part by a swap dealer or major swap participant the National Futures Association shall notify the swap dealer or major swap participant that it is provisionally registered pending completion of a fitness review by the National Futures Association.

* * * * *

3. Section 3.4 is amended by revising paragraph (a) to read as follows:

**§ 3.4 Registration in one capacity not included in registration in any other capacity.**

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, floor trader, associated person (other than an associated person of a swap dealer or major swap participant), commodity trading advisor, commodity pool operator, introducing broker, and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity; *Provided, however,* That a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

4. Section 3.10 is amended by:

a. Revising the heading;

b. Revising paragraph (a)(1);

c. Adding paragraph (a)(1)(v); and

d. Revising paragraphs (b) and (d) to read as follows:

**§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants.**

(a) * * *

(1)(i) Except as provided in paragraph (a)(3) of this section, application for registration as a futures commission merchant, retail foreign exchange dealers, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant or

introducing broker must accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7–R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7–R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7–R with a Form 2–FR in accordance with the provisions of § 2–FR of this chapter.

(v)(A) Applicants for registration as a swap dealer or major swap participant must demonstrate, concurrently with or subsequent to the filing of their Form 7–R with the National Futures Association, compliance with regulations adopted by the Commission pursuant to sections 4s(e), 4s(f), 4s(g), 4s(h), 4s(i), 4s(j) and 4s(k) of the Act, and, as applicable, section 4s(*l*) of the Act; *Provided, however, that* for the purposes of this paragraph (a)(1)(v) the term "compliance" includes the term "the ability to comply," to the extent that a particular regulation may require demonstration of the ability to comply with a requirement.

(B) The filing of the Form 7–R by the applicant swap dealer or major swap participant authorizes the Commission to conduct on-site inspection of the applicant to determine compliance with the regulations referred to in paragraph (a)(1)(v)(A) of this section.

(C)(*1*) Any person may apply to be registered as a swap dealer or major swap participant by filing a form 7–R at any time from April 15, 2011 until such time as regulations adopted by the Commission further defining the terms "swap dealer" and "major swap participant" become effective.

(*2*) From and after such time as regulations adopted by the Commission further defining the terms "swap dealer" and "major swap participant" become effective, each swap dealer or major swap participant must apply to be registered as a swap dealer or major swap participant by filing a form 7–R.

(*3*) Any person who applies to be registered as a swap dealer or major swap participant before such time as all of the regulations specified in paragraph (a)(1)(v)(A) of this section have become effective will be granted provisional registration as a swap dealer or major swap participant, as the case may be, upon filing a Form 7–R and such documentation as may be required to demonstrate compliance with such of the regulations specified in paragraph (a)(1)(v)(A) of this section as are effective as of the date of such filing; *Provided, however, that:* Where the applicant has been granted provisional registration as a swap dealer or major swap participant, it must provide such documentation as may be required to demonstrate compliance with the remaining regulations specified in paragraph (a)(1)(v)(A) of this section by no later than the respective effective date of each such regulation.

(D)(*1*) Where an applicant for registration as a swap dealer or major swap participant that has been granted provisional registration has timely demonstrated compliance with the regulations specified in paragraph (a)(1)(v)(A) of this section in accordance with paragraph (a)(1)(v)(C) of this section, the applicant will be notified that its provisional registration has ceased to be provisional and it has become fully registered as a swap dealer or major swap participant.

(*2*) Where an applicant for registration as a swap dealer or major swap participant that has been granted provisional registration has failed to timely demonstrate compliance with any of the regulations specified in paragraph (a)(1)(v)(A) of this section in accordance with paragraph (a)(1)(v)(C) of this section the applicant will be notified that its application is deficient, whereupon it must withdraw its registration application, it must not engage in any new activity described in the definition of "swap dealer" in section 1a(49) of the Act or the definition of "major swap participant" in section 1a(33) of the Act as such terms may be further defined by Commission regulations, and its provisional registration shall cease; *Provided, however, that* in the event the applicant fails to withdraw its registration application or cure the deficiency within 30 days following receipt of notice that its application is deficient, its application will be deemed withdrawn and thereupon its registration shall cease; *Provided further, however, that* upon written request by the applicant submitted to the Director of the Division of Clearing and Intermediary Oversight, the Commission may in its discretion extend the time within which the deficiency may be cured.

(*3*) Unless specifically reserved in the applicable swap, no withdrawal, deemed withdrawal, cessation or revocation of registration as a swap dealer or major swap participant pursuant to paragraph (a)(1)(v)(D)(*2*) of this section or paragraph (b) of this section shall constitute a termination event, force majeure, an illegality, increased costs, a regulatory change, or a similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend or supplement one or more transactions under the swap.

* * * * *

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Such person will immediately be prohibited from engaging in new activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

* * * * *

(d) On a date to be established by the National Futures Association, and in accordance with procedures established by the National Futures Association, each registrant as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant or leverage transaction merchant shall, on an annual basis, review and update registration information maintained with the National Futures Association and additionally, in the case of a swap dealer or major swap participant, with the Commission. The failure to complete the review and update within thirty days following the date established by the National Futures Association shall be deemed to be a request for withdrawal from registration, which shall be processed in accordance with the provisions of § 3.33(f).

5. Section 3.21 is amended by:

a. Revising paragraph (c) introductory text; and paragraph (c)(1)(iv);

b. Adding paragraph (c)(1)(v);

c. Revising paragraph (c)(2)(i); and

d. Revising paragraph (c)(4)(i) to read as follows:

**§ 3.21 Exemption from fingerprinting requirement in certain cases.**

* * * * *

(c) *Outside directors.* Any futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(2), file a "Notice Pursuant to § 3.12(c) of the Commission's Regulations" with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) * * *

(iv) The solicitation of leverage customers' orders for leverage transactions,

(v) The solicitation of a swap agreement;

(2) * * *

(i) Commodity interest or swap transactions;

* * * * *

(4) * * *

(i) The name of the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

* * * * *

6. Section 3.30 is amended by revising paragraph (a) to read as follows:

**§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.**

(a) The address of each registrant, applicant for registration, and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: *Provided, that* the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, swap dealer, major swap participant, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to an associated person to the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, swap dealer, major swap participant, introducing broker, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

* * * * *

7. Section 3.31 is amended by revising paragraphs (a)(1), (b) and (c)(2) to read as follows:

**§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.**

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Form 8–R which no longer renders accurate and current the information contained therein. Each such correction shall be made on Form 3–R and shall be prepared and filed in accordance with the instructions thereto. *Provided, however,* that where a registrant is reporting a change in the form of organization from or to a sole proprietorship, the registrant must file a Form 7–W regarding the pre-existing organization and a Form 7–R regarding the newly formed organization.

* * * * *

(b)(1) Each applicant for registration or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(2) Each applicant for registration or registrant as a swap dealer or major swap participant and each principal of a swap dealer or major swap participant, must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(c) * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, swap dealer, major swap participant, introducing broker or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

8. Section 3.33 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b) introductory text and paragraphs (b)(6)(vi) through (b)(6)(vii);

c. Adding paragraphs (b)(6)(viii) and (b)(6)(ix); and

d. Revising paragraph (e) to read as follows:

**§ 3.33 Withdrawal from registration.**

(a) A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W,

completed and filed with National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by a person duly authorized by the registrant and must specify:

(6) * * *

(vi) The nature and extent of any pending customer, retail forex customer, option customer, leverage customer, swap counterparty or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer, leverage customer, swap counterparty or commodity pool participant claims against the registrant;

(vii) In the case of a futures commission merchant or a retail foreign exchange dealer which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration;

(viii) In the case of a swap dealer, that the person will not engage in any new activity described in the definition of the term "swap dealer" in section 1a(49) of the Act, as such term may be further defined by Commission regulations; and

(ix) In the case of a major swap participant, that the person will not engage in any new activity described in the definition of the term "major swap participant" in section 1a(33) of the Act, as such term may be further defined by Commission regulations.

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant or leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, must be filed with the National Futures Association and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Clearing and Intermediary Oversight, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

* * * * *

9. Part 23 is added to read as follows:

## PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

### Subpart A—[Reserved]

Sec.
23.1–23.20 [Reserved]

### Subpart B—Registration

23.21 Registration of swap dealers and major swap participants.
23.22 Prohibition against statutory disqualification in the case of an associated person of a swap dealer or major swap participant.
23.23–23.40 [Reserved]

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

### Subpart A—[Reserved]

#### §§ 23.1–23.20 [Reserved]

### Subpart B—Registration

#### § 23.21 Registration of swap dealers and major swap participants.

(a) Each person who comes within the definition of the term "swap dealer" in section 1a(49) of the Act, as such term may be further defined by Commission regulations, is subject to the registration provisions under the Act and to part 3 of this chapter.

(b) Each person who comes within the definition of the term "major swap participant" in section 1a(33) of the Act, as such term may be further defined by Commission regulations, is subject to the registration provisions under the Act and to part 3 of this chapter.

(c) Each affiliate of an insured depository institution described in section 716(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203 § 716(c), 124 Stat. 1376 (2010)) is required to be registered as a swap dealer if the affiliate is a swap dealer, or as a major swap participant if the affiliate is a major swap participant.

#### § 23.22 Prohibition against statutory disqualification in the case of an associated person of a swap dealer or major swap participant.

(a) *Definition.* For purposes of this section, the term "person" means an "associated person of a swap dealer or major swap participant" as defined in section 1a(4) of the Act.

(b) *Fitness.* No swap dealer or major swap participant may permit a person who is subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knows, or in the exercise of reasonable care should know, of the statutory disqualification.

#### §§ 23.23–23.40 [Reserved]

## PART 170—REGISTERED FUTURES ASSOCIATIONS

1. The authority citation for part 170 is revised to read as follows:

**Authority:** 7 U.S.C. 6p, 12a and 21.

2. Section 170.16 is added to read as follows:

#### § 170.16 Swap dealers and major swap participants.

Each person registered as a swap dealer or a major swap participant must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such swap dealer or major swap participant, as the case may be, unless no such futures association is so registered.

Issued in Washington, DC, on November 10, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Statement of Chairman Gary Gensler**

**Registration of Swap Dealers and Major Swap Participants**

I support the proposed rulemaking to establish a process for the registration of swap dealers and major swap participants. This proposal would implement Congress's mandate that these entities be subject to registration and regulation for their swaps business. Registration will enable the Commission to monitor swap dealers and major swap participants for compliance with the Dodd-Frank Act and Commission rulemakings. Through regulation of the dealers, the Commission will be able to protect market participants and the public and promote sound risk management practices. The proposal includes a requirement that swaps dealers and major swap participants register with a registered futures association, such as the National Futures Association. This would provide the Commission with flexibility with regard to its oversight of swap dealers and major swap participants for compliance with the Dodd-Frank Act.

[FR Doc. 2010–29024 Filed 11–22–10; 8:45 am]

BILLING CODE 6351–01–P

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 23**

**RIN 3038–AC96**

## Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed regulations establish conflicts of interest requirements for swap dealers (SDs) and major swap participants (MSPs) for the purpose of ensuring that such persons implement adequate policies and procedures in compliance with the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Act.

**DATES:** Comments must be received on or before January 24, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number 3038–AC96 and SD–MSP Conflicts of Interest, by any of the following methods:

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

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

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

**FOR FURTHER INFORMATION CONTACT:** Sarah E. Josephson, Associate Director, Division of Clearing and Intermediary Oversight, (202) 418–5684, *sjosephson@cftc.gov,* or Ward P. Griffin, Counsel, Office of General Counsel, (202) 418–5425, *wgriffin@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

### I. Background

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

This proposed rulemaking relates to the conflicts of interest provisions set forth in section 731 of the Dodd-Frank Act. Section 731 of the Dodd-Frank Act, in relevant part, adds a new section 4s(j)(5) to the CEA to direct each SD and MSP to implement conflicts of interest systems and procedures that establish safeguards within the firm to ensure that any persons researching or analyzing the price or market for any commodity or swap are separated by "appropriate informational partitions" within the firm from review, pressure, or oversight of persons whose involvement in pricing, trading or clearing activities might potentially bias the judgment or supervision of the persons. Section 731 also requires additional partitions between persons "acting in a role of providing clearing activities or making determinations as to accepting clearing customers" from persons involved in pricing, trading or clearing activities. Section 731 emphasizes that pricing, trading and clearing activities should comply with open access and business conduct standards set forth elsewhere in the Act, and mandates that the required conflicts of interest systems and procedures "address such other issues as the Commission determines to be appropriate."

Section 754 of the Dodd-Frank Act establishes that "[u]nless otherwise provided in this title, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle." Consequently, the Commission will seek to promulgate rules—by July 15, 2011—implementing the conflicts of interest provisions of section 731 of the Dodd-Frank Act.

Accordingly, pursuant to authority granted under sections 4s(h)(1)(D), 4s(h)(3)(D), 4s(j)(7), and 8a(5) of the CEA, as amended by the Dodd-Frank Act, the Commission is proposing to adopt Rule 23.605 to address potential conflicts of interest in the preparation and release of research reports by SDs and MSPs; the establishment of "appropriate informational partitions" within such firms; and potential conflicts of interest that may arise concerning whether to accept customers for clearing. The proposed rule also will address other issues, such as enhanced disclosure requirements, in order to minimize the potential that conflicts of interest will arise within SDs and MSPs.

The proposed rules reflect consultation with staff of the following agencies: (i) The Securities and Exchange Commission; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to the proposal, and the proposed rules incorporate elements of the comments provided.

The Commission requests comment on all aspects of the proposed rules, as

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

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

[3] 7 U.S.C. 1 *et seq.*

well as comment on the specific provisions and issues highlighted in the discussion below.

## II. Proposed Regulations

### *A. Conflicts of Interest in Research or Analysis*

Section 731 of the Dodd-Frank Act requires, in relevant part, that SDs and MSPs "establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap * * * are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision."

Much of the relevant language in section 731 of the Dodd-Frank Act is similar to certain language contained in section 501(a) of the Sarbanes-Oxley Act of 2002,[4] which amended the Securities Exchange Act of 1934 by creating a new section 15D. In relevant part, section 15D(a) mandates that the Securities and Exchange Commission, or a registered securities association or national securities exchange, adopt "rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed * * * to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision * * *."

Unlike section 15D of the Securities Exchange Act of 1934, section 731 of the Dodd-Frank Act does not expressly limit the requirement for informational partitions to only those persons who are responsible for the preparation of the substance of research reports; rather, section 731 could be read to require informational partitions between persons involved in pricing, trading or clearing activities and any person within a SD or MSP who engages in "research or analysis of the price or market for any commodity or swap," whether or not such research or analysis is to be made part of a research report that may be publicly disseminated.

However, the Commission believes that an untenable outcome could result from implementing informational partitions between persons involved in pricing, trading or clearing activities and all persons who may be engaged in "research or analysis of the price or market for any commodity or swap," given that persons involved in pricing, trading or clearing activities are routinely—or even primarily—engaged in "research or analysis of the price or market for" commodities or swaps. Sound pricing, trading and/or clearing activities necessarily require some form of pre-decisional research or analysis of the facts supporting such determinations.

Therefore, given the untenable alternative, the proposed rules reflect the Commission's belief that the Congressional intent underlying section 731 with respect to "research and analysis of the price or market of any commodity or swap" is primarily intended to prevent undue influence by persons involved in pricing, trading or clearing activities over the substance of research reports that may be publicly disseminated, and to prevent pre-public dissemination of any material information in the possession of a person engaged in research and analysis, or of the research reports, to traders.

Many elements of the proposed rule, particularly those provisions relating to potential conflicts of interest surrounding research and analysis, have been adapted from National Association of Securities Dealers (NASD) Rule 2711. To construct the "structural and institutional safeguards" mandated by Congress under section 731 of the Dodd-Frank Act, the proposed rule establishes specific restrictions on the interaction and communications between persons within a SD or MSP involved in research or analysis of the price or market for any derivative and persons involved in pricing, trading or clearing activities. The proposed rules also impose duties and constraints on persons involved in the research or analysis of the price or market for any derivative.[5] For instance, such persons will be required to disclose conspicuously during public appearances any relevant personal financial interests relating to any derivative of a type that the person follows. SDs and MSPs similarly will be obligated to make certain disclosures clearly and prominently in research reports, including third-party research reports that are distributed or made available by the SD or MSP. Further, SDs and MSPs, as well as employees involved in pricing, trading or clearing activities, will be prohibited from retaliating against any person involved in the research or analysis of the price or market for any derivative who produces, in good faith, a research report that adversely impacts the current or prospective pricing, trading or clearing activities of the SD or MSP.

To address the possibility that the proposed rules could be evaded by employing research analysts in an affiliate of a SD or MSP, the proposed rules also will restrict communications with research analysts employed by an affiliate. An affiliate will be defined as an entity controlling, controlled by, or under common control with, a SD or MSP. Moreover, the exceptions to the definition of "research report" are designed to address issues typically found in smaller firms where individuals in the trading unit perform their own research to advise their clients or potential clients. These exceptions do not in any way impact or lessen the restrictions placed on firms that prepare research reports and release them for public consumption. Any attempt by such firms to move research personnel into a trading unit to attempt to avail themselves of the exception will result in insufficient "structural and institutional safeguards" and will be a violation of Section 731 of the Dodd-Frank Act and these Regulations.

### *B. Conflicts of Interest of Swap Dealers and Major Swap Participants in Clearing Activities*

Section 4s(j)(5), as established by section 731 of the Dodd-Frank Act, requires SDs and MSPs to implement conflicts of interest systems and procedures that "establish structural and institutional safeguards to ensure that the activities of any person within the firm * * * acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act."

The Commission interprets the conflicts of interest provision under section 4s(j)(5) to require informational

[4] Public Law 107–204, 116 Stat. 745 (2002) (codified at 15 U.S.C. 78o–6).

[5] Use of the term "derivative" is based upon the products listed in the definitions of futures commission merchant and introducing broker in sections 1a(28) and 1a(29) of the CEA.

partitions between (1) persons making clearing determinations and (2) persons involved in pricing and trading swaps (*i.e.,* risk-taking units). This interpretation would protect against potential bias or interference in relation to "providing clearing activities." The provision of clearing activities includes, but is not limited to, acts relating to (i) Whether to offer clearing services and activities to customers; (ii) whether to accept a particular customer for the purposes of clearing derivatives; (iii) whether to submit a transaction to a particular derivatives clearing organization; (iv) setting risk tolerance levels for particular customers; (v) determining acceptable forms of collateral from particular customers; or (vi) setting fees for clearing services. However, the proposed rules are not intended to hinder the execution of sound risk management programs by SDs or MSPs, or by any affiliate of a SD or MSP.

To prevent anti-competitive discrimination in providing access to central clearing, the Commission proposes rules that will subject SDs and MSPs to restrictions that prevent risk-taking units from interfering with decisions by any affiliated clearing member of a derivatives clearing organization regarding whether to accept a client for clearing services. Under the proposed restrictions, all such decisions regarding the acceptance of customers for clearing should be made in accordance with publicly disclosed, objective, written criteria. Risk-taking units (*i.e.,* those persons involved in pricing and trading swaps) would also be prevented from interfering with the provision of clearing activities.

An affiliate will be defined as an entity controlling, controlled by, or under common control with, a SD or MSP. Under the term "affiliate," in any situation where a person is dually registered as a SD or MSP, and as a futures commission merchant (FCM), the restrictions on clearing activities set forth in the proposed regulations are intended to apply to the relationship between the business trading unit of the SD or MSP and the clearing unit of the FCM, even though the business trading unit and clearing unit reside within the same entity.

*C. Other Issues*

In addition to mandating the establishment of "appropriate informational partitions" within SDs and MSPs that focus on the activities of persons involved in the "research or analysis of the price or market for any commodity or swap," section 731 of the Dodd-Frank Act also requires SDs and MSPs to "implement conflict-of-interest systems and procedures that * * * address such other issues as the Commission determines to be appropriate." Having considered the potential conflicts of interest that may arise in a SD or MSP, the Commission is proposing rules that will address the potential for undue influence on customers. The intended cumulative effect of the proposed rules is to fulfill Congress's objective that SDs and MSPs construct "structural and institutional safeguards" to minimize the potential conflicts of interest that could arise within such firms.

The Commission recognizes the potential development of a complex web of incentives and relationships surrounding SDs and MSPs, particularly with respect to such questions as: (1) Whether to enter into a cleared or uncleared trade, (2) whether to refer a counterparty to a particular futures commission merchant for clearing, or (3) whether to send a cleared trade to a particular derivatives clearing organization. To address this issue, the Commission is proposing to require that each SD and MSP implement policies and procedures mandating the disclosure to its customers of any material incentives or any material conflicts of interest it has that relate to a customer's decision on the execution or clearing of a transaction. Such disclosures will enable customers to make fully-informed business decisions, thereby minimizing the potential influence of any incentives or conflicts of SDs and MSPs.

**III. Related Matters**

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)[6] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[7] The proposed rules would affect SDs and MSPs.

SDs and MSPs are new categories of Commission registrants. Accordingly, the Commission has not addressed previously the question of whether such persons are, in fact, small entities for the purposes of the RFA. However, the Commission previously has determined that futures commission merchants, an existing category of registrants, are not small entities for the purposes of the RFA. The Commission's determination was based, in part, upon the obligation of futures commission merchants to meet minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[8] Like FCMs, SDs will be subject to minimum capital and margin requirements. SDs are expected to comprise the largest global financial firms, and the Commission is required to exempt from designation entities that engage in a *de minimis* level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that SDs not be considered small entities for essentially the same reasons that FCMs previously have been determined not to be small entities and in light of the exemption from the definition of SD for those engaging in a *de minimis* level of swap dealing. The Commission anticipates that this exemption would tend to exclude small entities from registration.

The Commission also has previously determined that large traders are not small entities for RFA purposes.[9] In that determination, the Commission considered that a large trading position was indicative of the size of the business. MSPs, by statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that MSPs not be considered small entities for the same reasons that large traders have previously been determined not to be small entities.

The Commission is carrying out Congressional mandates by proposing this regulation. Specifically, the Commission is proposing these rules to comply with the Dodd-Frank Act, the aim of which is to reduce the systemic risks presented by SDs and MSPs through comprehensive regulation. The Commission does not believe that there are regulatory alternatives to those being proposed that would be consistent with the statutory mandate. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed rules will not have a significant economic impact

[6] 5 U.S.C. 601–611.

[7] 47 FR 18618, Apr. 30, 1982.

[8] *Id.* at 18619.

[9] *Id.* at 18620.

on a substantial number of small entities.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA)[10] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of this proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants." The OMB has not yet assigned this collection a control number. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information under these proposed rules is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential to ensuring that SDs and MSPs develop and maintain the required conflicts of interest systems and procedures. The Commission's staff would use the information collected when conducting examination and oversight to evaluate the completeness and effectiveness of the conflicts of interest procedures and disclosures of SDs and MSPs.

If the proposed regulations are adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[11]

1. Information Provided by Reporting Entities/Persons

The proposed rules will require SDs and MSPs to adopt conflicts of interest policies and procedures that may impose PRA burdens, particularly through the implementation of certain recordkeeping requirements. For purposes of the PRA, the term "burden" means the "time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency."[12] This burden will result from the recordkeeping obligations related to a SD and MSP's obligations to adopt and implement written policies and procedures reasonably designed to ensure compliance with the proposed regulation, document certain communications between non-research personnel and research department personnel, record the basis upon which a research analyst's compensation was determined, and provide certain disclosures. The burden relates solely to recordkeeping requirements; the proposed regulation does not contain any reporting requirements.

The burden for compliance per respondent is expected to be 44.5 hours and $4,450. This estimate includes the time needed to review applicable laws and regulations; develop and update conflicts of interest policies and procedures and to maintain records of certain communications and disclosures periodically required by the proposed regulation. The Commission does not expect respondents to incur any start-up costs in connection with this proposed regulation as it anticipates that respondents already maintain personnel and systems for regulatory recordkeeping.

It is not currently known how many SDs and MSPs will become subject to these rules, and this will not be known to the Commission until registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes that there may likely be approximately 200 SDs and 50 MSPs, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 SDs and MSPs who will be required to establish and implement conflicts of interest policies and procedures under the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to the Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 13–1041, "Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $38.77.[13] Because SDs and MSPs include large financial institutions whose compliance employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of $100 per hour. Accordingly, the estimated burden was calculated as follows:

Recordkeeping Related to Maintenance of Conflicts of Interest Policies and Procedures

*Number of registrants:* 300.
*Average number of annual responses by each registrant:* 1.
*Estimated average hours per response:* 2.
*Frequency of collection:* Annually.
*Aggregate annual burden:* 300 registrants × 1 response × 2 hours = 600 burden hours

Recordkeeping Related to Communications Between Certain Personnel

*Number of registrants:* 300.
*Average number of annual responses by each registrant:* 20.
*Estimated average hours per response:* 0.5.
*Frequency of collection:* As needed.
*Aggregate annual burden:* 300 registrants × 20 responses × 0.5 hours = 3,000 burden hours.

Recordkeeping Related to Disclosure Requirements

*Number of registrants:* 300.
*Average number of annual responses by each registrant:* 65.
*Estimated average hours per response:* 0.5.
*Frequency of collection:* As needed.
*Aggregate annual burden:* 300 registrants × 65 responses × 0.5 hours = 9,750 burden hours.

Based upon the above, the aggregate cost for all registrants is 13,350 burden hours and $1,335,000 [13,350 burden hours × $100 per hour].

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed

[10] 44 U.S.C. 3501 *et seq.*

[11] 5 U.S.C. 552a.

[12] 44 U.S.C. 3502(2).

[13] *http://www.bls.gov/oes/current/oes131041.htm.*

collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *http://www.RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication.

*C. Cost-Benefit Analysis*

Section 15(a) of the CEA[14] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of the rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions.

Section 15(a) further specifies that the costs and benefits of a proposed rulemaking shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

1. Summary of Proposed Requirements

The proposed regulations would implement certain provisions of section 731 of the Dodd-Frank Act, which adds a new section 4s(j)(5) to the CEA[15] to direct each SD and MSP to implement conflicts of interest systems and procedures that establish safeguards within the firm to ensure that any persons researching or analyzing the price or market for any commodity or swap, and any persons acting in a role of providing clearing activities or making determinations as to accepting clearing customers, are separated by "appropriate informational partitions" within the firm from review, pressure, or oversight of persons whose involvement in pricing, trading or clearing activities might potentially bias the judgment or supervision of the persons. Such conflicts of interest systems and procedures also must address any other issues that the Commission determines to be appropriate.

2. Costs

With respect to costs, the Commission has determined that costs to SDs and MSPs would be minimal because the anticipated implementation of the proposed rules would require little additional resources beyond internal organizational changes to prevent compliance violations.

3. Benefits

With respect to benefits, the Commission has determined that formal conflicts of interest rules will enhance transparency, bolster confidence in markets, reduce risk and allow regulators to better monitor and manage risks to our financial system.

4. Public Comment

The Commission invites public comment on its cost-benefit considerations. Commenters also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed regulations with their comment letters.

[14] 7 U.S.C. 19(a).

[15] To be codified at 7 U.S.C. 6s(j)(5).

**List of Subjects in 17 CFR Part 23**

Antitrust, Brokers, Commodity futures, Conduct standards, Conflicts of interest, Major swap participants, Reporting and recordkeeping requirements, Swap dealers, Swaps.

For the reasons stated in this release, the Commission proposes to amend 17 CFR part 23 (as proposed in a separate proposed rule published elsewhere in this issue of the **Federal Register**) as follows:

## PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

2. Section 23.605 is added in its entirety as follows:

### § 23.605 Implementation of conflicts of interest policies and procedures

(a) *Definitions.* For purposes of this section, the following terms shall be defined as provided.

(1) *Affiliate.* This term means, with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit.* This term means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs or is involved in any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a swap dealer or major swap participant.

(3) *Clearing unit.* This term means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs or is involved in any proprietary or customer clearing activities on behalf of a swap dealer or major swap participant.

(4) *Derivative.* This term means:

(i) A contract for the purchase or sale of a commodity for future delivery;

(ii) A security futures product;

(iii) A swap;

(iv) Any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act;

(v) Any commodity option authorized under section 4c of the Act; and (vi) any leverage transaction authorized under section 19 of the Act.

(5) *Non-research personnel.* This term means any employee of the business trading unit or clearing unit, or any other employee of the swap dealer or

major swap participant who is not directly responsible for, or otherwise involved with, research concerning a derivative, other than legal or compliance personnel.

(6) *Public appearance.* This term means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons, or interview or appearance before one or more representatives of the media, radio, television or print media, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning a derivatives transaction. This term does not include a password-protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading, or no longer applicable.

(7) *Research analyst.* This term means the employee of a swap dealer or major swap participant who is primarily responsible for, and any employee who reports directly or indirectly to such research analyst in connection with, preparation of the substance of a research report relating to any derivative, whether or not any such person has the job title of "research analyst."

(8) *Research department.* This term means any department or division that is principally responsible for preparing the substance of a research report relating to any derivative on behalf of a swap dealer or major swap participant, including a department or division contained in an affiliate of a swap dealer or major swap participant.

(9) *Research report.* This term means any written communication (including electronic) that includes an analysis of the price or market for any derivative, and that provides information reasonably sufficient upon which to base a decision to enter into a derivatives transaction. This term does not include:

(i) Communications distributed to fewer than 15 persons;

(ii) Periodic reports or other communications prepared for investment company shareholders or commodity pool participants that discuss individual derivatives positions in the context of a fund's past performance or the basis for previously-made discretionary decisions;

(iii) Any communication generated by an employee of the business trading unit that is conveyed as a solicitation for entering into a derivatives transaction, and is conspicuously identified as such; and

(iv) Internal communications that are not given to current or prospective customers.

(b) *Policies and Procedures.* Each swap dealer and major swap participant subject to this rule must adopt and implement written policies and procedures reasonably designed to ensure that the swap dealer or major swap participant and its employees comply with the provisions of this rule.

(c) *Research Analysts and Research Reports.* (1) *Restrictions on Relationship with Research Department.* (i) Non-research personnel shall not influence the content of a research report of the swap dealer or major swap participant.

(ii) No research analyst may be subject to the supervision or control of any employee of the swap dealer's or major swap participant's business trading unit or clearing unit, and no personnel engaged in pricing, trading or clearing activities may have any influence or control over the evaluation or compensation of a research analyst.

(iii) Except as provided in paragraph (c)(1)(iv) of this section, non-research personnel, other than the board of directors and any committee thereof, shall not review or approve a research report of the swap dealer or major swap participant before its publication.

(iv) Non-research personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report, to provide for non-substantive editing, to format the layout or style of the research report, or to identify any potential conflicts of interest, provided that:

(A) Any written communication between non-research personnel and research department personnel concerning the content of a research report must be made either through authorized legal or compliance personnel of the swap dealer or major swap participant or in a transmission copied to such personnel; and

(B) Any oral communication between non-research personnel and research department personnel concerning the content of a research report must be documented and made either through authorized legal or compliance personnel acting as an intermediary or in a conversation conducted in the presence of such personnel.

(2) *Restrictions on Communications.* Any written or oral communication by a research analyst to a current or prospective counterparty, or to any employee of the swap dealer or major swap participant, relating to any derivative must not omit any material fact or qualification that would cause the communication to be misleading to a reasonable person.

(3) *Restrictions on Research Analyst Compensation.* A swap dealer or major swap participant may not consider as a factor in reviewing or approving a research analyst's compensation his or her contributions to the swap dealer's or major swap participant's trading or clearing business. No employee of the business trading unit or clearing unit of the swap dealer or major swap participant may influence the review or approval of a research analyst's compensation.

(4) *Prohibition of Promise of Favorable Research.* No swap dealer or major swap participant may directly or indirectly offer favorable research, or threaten to change research, to an existing or prospective counterparty as consideration or inducement for the receipt of business or compensation.

(5) *Disclosure Requirements.* (i) *Ownership and Material Conflicts of Interest.* A swap dealer or major swap participant must disclose in research reports and a research analyst must disclose in public appearances:

(A) Whether the research analyst maintains, from time to time, a financial interest in any derivative of a type that the research analyst follows, and the general nature of the financial interest; and

(B) any other actual, material conflicts of interest of the research analyst or swap dealer or major swap participant of which the research analyst has knowledge at the time of publication of the research report or at the time of the public appearance.

(ii) *Prominence of Disclosure.* Disclosures and references to disclosures must be clear, comprehensive, and prominent. With respect to public appearances by research analysts, the disclosures required by paragraph (c)(5) of this section must be conspicuous.

(iii) *Records of Public Appearances.* Each swap dealer and major swap participant must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements under paragraph (c)(5) of this section.

(iv) *Third-Party Research Reports.*

(A) For the purposes of paragraph (c)(5)(iv) of this section, "independent

third-party research report" shall mean a research report, in respect of which the person or entity producing the report:

(*1*) Has no affiliation or business or contractual relationship with the distributing swap dealer or major swap participant, or that swap dealer's or major swap participant's affiliates, that is reasonably likely to inform the content of its research reports; and

(*2*) makes content determinations without any input from the distributing swap dealer or major swap participant or that swap dealer's or major swap participant's affiliates.

(B) Subject to paragraph (c)(5)(iv)(C) of this section, if a swap dealer or major swap participant distributes or makes available any independent third-party research report, the swap dealer or major swap participant must accompany the research report with, or provide a Web address that directs the recipient to, the current applicable disclosures, as they pertain to the swap dealer or major swap participant, required by this section. Each swap dealer and major swap participant must establish written policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(C) The requirements of paragraph (c)(5)(iv)(B) of this section shall not apply to independent third-party research reports made available by a swap dealer or major swap participant to its customers:

(*1*) Upon request; or

(*2*) through a Web site maintained by the swap dealer or major swap participant.

(6) *Prohibition of Retaliation Against Research Analysts.* No swap dealer or major swap participant, and no employee of a swap dealer or major swap participant who is involved with the swap dealer's or major swap participant's pricing, trading or clearing activities, may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the swap dealer or major swap participant or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made, in good faith, by the research analyst that may adversely affect the swap dealer's or major swap participant's present or prospective pricing, trading or clearing activities.

(d) *Clearing activities.* (1) No swap dealer or major swap participant shall directly or indirectly interfere with or attempt to influence the decision of any affiliated clearing member of a derivatives clearing organization with regard to the provision of clearing services and activities, including but not limited to:

(i) Whether to offer clearing services and activities to customers;

(ii) Whether to accept a particular customer for the purposes of clearing derivatives;

(iii) Whether to submit a transaction to a particular derivatives clearing organization;

(iv) Setting risk tolerance levels for particular customers;

(v) Determining acceptable forms of collateral from particular customers; or

(vi) Setting fees for clearing services.

(2) Each swap dealer and major swap participant shall create and maintain an appropriate informational partition, as specified in section 4s(j)(5)(A) of the Act, between business trading units of the swap dealer or major swap participant and clearing member personnel of any affiliated clearing member of a derivatives clearing organization. At a minimum, such informational partitions shall require that no employee of a business trading unit of a swap dealer or major swap participant shall supervise, control, or influence any employee of a clearing member of a derivatives clearing organization.

(e) *Undue Influence on Counterparties.* Each swap dealer and major swap participant must adopt and implement written policies and procedures that mandate the disclosure to its counterparties of any material incentives and any material conflicts of interest regarding the decision of a counterparty:

(1) Whether to execute a derivative on a swap execution facility or designated contract market, or

(2) Whether to clear a derivative through a derivatives clearing organization.

(f) All records that a swap dealer or major swap participant is required to maintain pursuant to this regulation shall be maintained in accordance with 17 CFR 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of the applicable prudential regulator, as defined in 7 U.S.C. 1a(39).

Issued in Washington, DC, on November 10, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Statement of Chairman Gary Gensler**

**Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants**

I support the proposed rulemakings that establish firewalls to ensure a separation between the research arm, the trading arm and the clearing activities of swap dealers, major swap participants, futures commission merchants and introducing brokers. This rule proposal relates to the conflicts-of-interest provisions of the Dodd-Frank Act that direct swap dealers and major swap participants to have appropriate informational partitions. The proposal builds upon similar protections in the securities markets as mandated in the Sarbanes-Oxley Act. The proposed rules will protect market participants and the public while also promoting the financial integrity of the marketplace.

[FR Doc. 2010–29006 Filed 11–22–10; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 23

**RIN 3038–AC96**

## Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission is proposing regulations to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed regulations set forth certain duties imposed upon swap dealers and major swap participants registered with the Commission with regard to: Risk management procedures; monitoring of trading to prevent violations of applicable position limits; diligent supervision; business continuity and disaster recovery; disclosure and the ability of regulators to obtain general information; and antitrust considerations. The proposed regulations would implement the new statutory framework of section 4s(j) of the Commodity Exchange Act, added by section 731 of the Dodd-Frank Act, excepting regulations related to conflicts of interest pursuant to section 4s(j)(5), which will be addressed in a separate rulemaking. These regulations set forth certain duties with which swap dealers and major swap participants must comply to maintain registration as a swap dealer or major swap participant.

**DATES:** Submit comments on or before January 24, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number 3038–AC96 and Duties of Swap Dealers and Major Swap Participants, by any of the following methods:

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

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

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

**FOR FURTHER INFORMATION CONTACT:**

Sarah E. Josephson, Associate Director, 202–418–5684, *sjosephson@cftc.gov;* Frank N. Fisanich, Special Counsel, 202–418–5949, *ffisanich@cftc.gov;* or Jocelyn Partridge, Special Counsel, 202–418–5926, *jpartridge@cftc.gov;* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## I. Background

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

Section 731 of the Dodd-Frank Act amends the CEA by inserting after section 4r a new section 4s that sets forth registration and regulatory requirements, including a variety of business conduct standards and duties, with which swap dealers and major swap participants must comply to maintain registration as a swap dealer or major swap participant.

As part of an overall business conduct regime for swap dealers and major swap participants, section 4s(j) of the CEA sets forth certain duties for swap dealers and major swap participants, including the duty to: (1) Monitor trading to prevent violations of applicable position limits; (2) establish risk management procedures adequate for managing the day-to-day business of the swap dealer or major swap participant; (3) disclose to the Commission and to applicable prudential regulators[4] general information relating to swaps trading, practices, and financial integrity; (4) establish and enforce internal systems and procedures to obtain information needed to perform all of the duties prescribed by Commission regulations; (5) implement conflict-of-interest systems and procedures;[5] and (6) refrain from taking any action that would result in an unreasonable restraint of trade or impose a material anticompetitive burden on trading or clearing. In this release, the Commission is proposing six regulations specifically addressing risk management, monitoring of positions limits, diligent supervision, business continuity and disaster recovery, the availability of general information, and antitrust considerations. The Commission would adopt these implementing regulations pursuant to authority granted under sections 4s(h)(1)(D), 4s(h)(3)(D), 4s(j)(7), and 8a(5) of the CEA.[6] The Dodd-Frank Act requires the Commission to promulgate these provisions by July 15, 2011.

The proposed regulations reflect consultation with staff of the following agencies: (i) The Securities and Exchange Commission; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to the proposal, and the proposed regulations incorporate elements of the comments provided.

The Commission requests comment on all aspects of the proposed regulations, as well as comment on the specific provisions and issues highlighted in the discussion below. The Commission further requests comment on an appropriate effective date for final regulations, including comment on whether it would be appropriate to have staggered or delayed effective dates for some regulations based on the nature or characteristics of the activities or entities to which they apply. Moreover, the Commission recognizes that there will be differences in the size and scope of the business of particular swap dealers and major swap participants. Therefore, comments are solicited on whether certain provisions of the proposed regulations should be modified or adjusted to reflect the differences among swap dealers or major swap participants.

## II. Proposed Regulations

### *A. Structure and Approach*

The proposed regulations set forth business conduct standards with which swap dealers and major swap participants must comply. Such duties

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

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

[3] 7 U.S.C. 1 *et seq.*

[4] This term is defined for the purposes of this rulemaking and generally has the same meaning as section 1(a)(39) of the Commodity Exchange Act, which includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency.

[5] Conflicts of interest under section 4s(j)(5) of the CEA will be addressed in a separate rulemaking and the rules pertaining to conflicts of interest are not included in the following proposed rules.

[6] Section 8a(5) of the CEA authorizes the Commission, to promulgate such regulations as, in the judgement of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

are outlined in section 4s(j) of the CEA and include: (1) Monitoring of trading; (2) risk management procedures; (3) disclosure of general information; (4) ability to obtain information; (5) conflicts of interest; and (6) antitrust considerations. Section 4s(j)(7) requires the Commission to prescribe rules implementing the enumerated duties.

The proposed regulations will be grouped under a new subpart to part 23, chapter I, title 17 of the Code of Federal Regulations. The proposed regulations generally address monitoring of trading and risk management together in a single rule requiring each swap dealer and major swap participant to establish a comprehensive risk management program (rule 23.600). Although part of a comprehensive risk management program, monitoring of trading for compliance with applicable position limits (rule 23.601); diligent supervision of a swap dealer's or major swap participant's business (rule 23.602); and business continuity and disaster recovery requirements (rule 23.603) are addressed in separate rules for ease of reference. The availability for disclosure and inspection of general information (rule 23.606) and antitrust considerations (rule 23.607) also are addressed in separate rules. Conflicts of interest under section 4s(j)(5) of the CEA (rule 23.605) will be addressed in a separate notice of proposed rulemaking to be released at the same time as this proposal.

*B. Risk Management*

1. Overview

Sections 4s(h)(1)(D), 4s(h)(3)(D), and 4s(j) of the CEA authorize the Commission to adopt those regulations regarding business conduct and risk management that the Commission deems necessary for the public interest and in furtherance of the CEA. Pursuant to this authority, the Commission is proposing regulation 23.600 to require swap dealers and major swap participants to establish a risk management program for monitoring and managing the risks associated with their business activities.

The proposed risk management regulation contemplates that each legal entity that falls within the definition of swap dealer or major swap participant under the CEA and Commission regulations would be required to establish a risk management program and risk management unit. However, the Commission recognizes that the business activities engaged in and risks faced by one affiliate may increase the risk exposure or alter overall risk profile of another affiliate or the entity as a whole, and that, to be effective, a risk management program must protect against the risks resulting from the activities of interconnected or otherwise related entities. Accordingly, the proposed regulations would require each swap dealer and major swap participant to be able to demonstrate that, to the extent possible, it is taking an integrated approach to risk management at the consolidated entity level.

Participants in the swap markets are exposed to various risks, including, but not limited to: (1) Market risk; [7] (2) credit risk; [8] (3) liquidity risk; [9] (4) foreign currency risk; [10] (5) legal risk; [11] (6) operational risk; [12] and (7) settlement risk.[13] Managing all relevant risks should be integrated into the swap dealer and major swap participant's overall risk management structure. The Commission believes this approach is particularly warranted given that swap dealers and major swap participants may hold positions in a variety of financial instruments.

Some of these risks are due, in part, to the characteristics of swap products and the way swap markets have evolved over time. For example, some swaps are customized or designed with unique characteristics that may present previously unforeseen or unpredictable risks. Also, for swaps not accepted for clearing, market participants face risks associated with the financial and legal ability of counterparties to perform under the terms of specific transactions. As part of a risk management program, risk managers must carefully review any unique product characteristics that may pose unusual risks and take steps to manage potential risks before trading commences.

In the past, the importance of risk management has been highlighted by significant losses experienced by several large financial firms. Some of these losses were caused by unauthorized and undisclosed employee trading. In each case, these losses went virtually undetected by management because of the lack of proper internal procedures, including the separation of responsibility for recording the trades on the firms' books from the personnel responsible for trading. Internal risk management policies and procedures promote the stability, safety, and soundness of firms by reducing the risk of significant losses, which, in turn, may reduce the risk that spreading losses would cause defaults by multiple firms, thereby undermining markets as a whole.

The Commission recognizes that an individual firm must have the flexibility to implement specific policies and procedures unique to its circumstances. The Commission's rule has been designed such that the specific elements of a risk management program will vary depending on the size and complexity of a swap dealer's or major swap participant's business operations. Risk management policies are expected to provide for appropriate risk measurement methodologies, compliance monitoring and reporting, and on-going testing and assessment of the overall effectiveness of the program. Consequently, proposed regulations 23.600, 23.601, 23.602, and 23.603 would establish the general parameters for the design, implementation, review, and testing of a swap dealer's or major swap participant's risk management program, as well as a limited number of additional elements that the Commission believes are essential to an appropriate risk management program.

The proposed rules would require a swap dealer or major swap participant to adopt policies and procedures to monitor and manage its risks, assess the effectiveness of those policies and procedures, and modify or update them, as necessary, from time to time. In addition, the proposed rule would require certain elements to be included in each swap dealer and major swap participant's risk management program to ensure that internal systems protect against universal risks. For example, to ensure the independence of the risk management process, the unit at the firm responsible for monitoring risk must be independent from the business trading unit whose activities create the risks. In addition, to ensure that trading

[7] Market risk includes the risk that prices or rates will adversely change due to economic forces. This risk includes, among other things, changes in correlations between or among products (including all types of basis risk), volatility of market prices, and the sensitivity of option positions to other market factors.

[8] Credit risk includes the risk that a counterparty will be unable to meet fully its financial obligations when due or at any time in the future.

[9] Liquidity risk includes the risk that a firm will not be able to settle its obligations when due and/or without adverse price changes.

[10] Foreign currency risk is the risk arising from movements of foreign exchange rates.

[11] Legal risk includes risk of loss due to an unenforceable contract, an ultra vires act of a counterparty, or failure to comply with applicable law.

[12] Operational risk includes the risk of loss due to deficiencies in information systems, internal processes and staffing, or disruptions from external events that result in the reduction, deterioration, or breakdown in services or controls within the firm.

[13] Settlement risk includes the risk of loss arising when a party meets its payment obligation under a contract before its counterparty meets its payment obligation. Settlement risk lasts from the time an outgoing payment instruction can no longer be canceled unilaterally until the time the incoming payment is received with finality and reconciled.

losses cannot be hidden, personnel responsible for recording transactions in the books of the swap dealer or major swap participant cannot be the same as those responsible for executing transactions. Similarly, all accounts, including suspense accounts, must be monitored.

Finally, the swap dealer's or major swap participant's management must periodically review the firm's business activities for consistency with established risk management policies. This will ensure that personnel are operating within the scope of activity that management has determined to be permissible.

2. Risk Management Program

Proposed regulation 23.600(b) provides a general requirement that a swap dealer or major swap participant establish and maintain a risk management program reasonably designed to monitor and manage the risks associated with its business as a swap dealer or major swap participant. It further provides (1) That such risk management program consist of written policies and procedures; (2) that such policies and procedures be approved by the governing body of the swap dealer or major swap participant and be furnished to the Commission; and (3) that a risk management unit that is independent from the business trading unit be established to administer the risk management program.

The proposed regulations would require swap dealers and major swap participants to provide copies of the risk management policies and procedures to the Commission in order to allow the Commission to monitor the status of risk management practices among swap dealers and major swap participants. Submission of such policies and procedures to the Commission without further comment or action by the Commission or Commission staff should not be construed as an endorsement of the completeness or effectiveness of the risk management policies and procedures and no swap dealer or major swap participant should make a representation to the contrary. The Commission invites comments on the submission of risk management policies and procedures and, more generally, on whether the provisions of 23.600 have achieved a sufficient level of detail for the purposes of designing a comprehensive risk management program.

Proposed regulation 23.600(c) would provide a non-exclusive list of the elements that must be a part of the risk management program of a swap dealer or major swap participant. Such policies and procedures should include: (1) Identifying risks and setting of risk tolerance limits; (2) providing periodic risk exposure reports to senior management and the governing body; (3) establishing a new product policy; and (4) establishing a risk management program that takes into account market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, and settlement risk, including a process for evaluating and addressing risks associated with the use of models to derive market valuations or otherwise calculate or evaluate risk exposures. The regulation also would establish requirements for supervision of the business unit of a swap dealer or major swap participant, including monitoring of limits on individual traders and establishing procedures governing the use, supervision, and testing of any algorithmic trading program. The objective is to ensure that those capable of committing the capital of the swap dealer or major swap participant are properly supervised and subject to approved limits. Additionally, the risk management program should set forth requirements for compliance with Commission regulations related to capital and margin and for monitoring overall compliance with the risk management program. The rule also would require that swap dealers and major swap participants establish policies and procedures (1) to require the use of central counterparties for clearing where clearing is required pursuant to Commission regulation or order, and (2) to use central clearing as a means of mitigating counterparty credit risk.

To ensure the continued effectiveness of a risk management program, proposed regulation 23.600(e) would require quarterly review and testing of the adequacy of each swap dealer and major swap participant's risk management program by internal audit staff or a qualified external, third party service. The Commission requests comment on these proposed audit and review requirements.

*C. Monitoring of Position Limits*

Proposed regulation 23.601 would require swap dealers and major swap participants to establish policies and procedures to monitor, detect, and prevent violations of applicable position limits established by the Commission, a designated contract market, or a swap execution facility. This rule implements section 4s(j)(1) of the CEA, which requires each swap dealer and major swap participant to monitor its trading in swaps to prevent violations of applicable position limits. In order to prevent violations, each swap dealer and major swap participant would be required to provide training to all relevant employees on applicable position limits, actively monitor trading, implement an early warning system, test the effectiveness of its policies and procedures, and report quarterly to its senior management and governing body on compliance with applicable position limits. The Commission requests comment on how much time would be needed for swap dealers and major swap participants to come into compliance with new position limits that may be imposed.

*D. Diligent Supervision*

Proposed regulation 23.602 implements section 4s(h)(1)(B) of the CEA, which requires each swap dealer and major swap participant to conform with Commission regulations related to diligent supervision of the business of the swap dealer and major swap participant. The proposed regulation provides (1) a requirement for diligent supervision reasonably designed to achieve compliance with the CEA and Commission regulations, and (2) requirements for qualification of supervisors and grants of appropriate supervisory authority.

*E. Business Continuity and Disaster Recovery*

Given the observed interconnectedness of the current swap market, and as part of a comprehensive risk management program, the Commission believes that each swap dealer and major swap participant should be required to establish and maintain a business continuity and disaster recovery plan that is reasonably designed to minimize any disruption to the financial markets in the event of an emergency or a disruption of a swap dealer's or major swap participant's business operations. Proposed regulation 23.603 would require swap dealers and major swap participants to establish and maintain a business continuity and disaster recovery plan designed to enable the swap dealer or major swap participant to resume normal operations within one business day of an emergency or other disruption.

To accomplish this task, swap dealers and major swap participants would be required to provide the Commission with emergency contacts; identify essential documents, data, facilities, infrastructure, and personnel, and maintain sufficient back-up facilities in a reasonably separate geographic location; design a plan for communicating with persons essential

for recovery; and annually test the business continuity and disaster recovery plan's effectiveness.

The Commission invites comments regarding whether a comprehensive business continuity and disaster recovery plan is necessary for all entities that may register with the Commission as swap dealers or major swap participants and whether one business day is sufficient time for recovery of essential business operations. The Commission also invites comments regarding an appropriate effective date for this regulation given the amount of time and cost that may be necessary for implementation of a comprehensive business continuity and disaster recovery plan.

*F. Disclosure and Ability To Obtain Information*

In order to carry out its oversight and examination responsibilities, the Commission would require access to certain information of swap dealers and major swap participants.[14] Sections 4s(j)(3) and 4s(j)(4) of the CEA require a swap dealer or major swap participant to (1) disclose to the Commission and to the swap dealer's or major swap participant's prudential regulator information regarding the terms and conditions of its swaps, its swap trading operations, mechanisms, and practices; its financial integrity protections relating to swaps, and other information relevant to its trading in swaps; and (2) establish internal systems to obtain necessary information to perform any of the functions described in section 4s and for disclosure of information to the Commission or prudential regulator upon request. Proposed regulation 23.606 would implement these requirements.

Proposed regulation 23.606(a) requires that swap dealers and major swap participants make available for disclosure and inspection all information required by the Commission, including those items listed in section 4s(j)(3). This information would be required to be disclosed promptly to the Commission or applicable prudential regulator in the manner and frequency as set forth in the relevant regulation. Proposed regulation 23.606(b) would require a swap dealer or major swap participant to establish and maintain adequate internal systems that will permit it to obtain any information required to satisfy its duties under section 4s(j) of the CEA.

*G. Antitrust Considerations*

Section 4s(j)(6) of the CEA prohibits a swap dealer or major swap participant from adopting any process or taking any action that results in any unreasonable restraint of trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the CEA. Proposed regulation 23.607 would implement these prohibitions by requiring that the swap dealer or major swap participant adopt policies and procedures that would prevent unreasonable restraint of trade or the imposition of a material anticompetitive burden on trading or clearing.

## III. Related Matters

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities.[15] The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[16] The proposed rules would affect swap dealers and major swap participants.

Swap dealers and major swap participants are new categories of registrants. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. However, the Commission previously has determined that futures commission merchants should not be considered to be small entities for purposes of the RFA.[17] The Commission's determination was based, in part, upon the obligation of futures commission merchants to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of futures commission merchants generally.[18] Like futures commission merchants, swap dealers will be subject to minimum capital and margin requirements and are expected to comprise the largest global financial firms. The Commission is required to exempt from swap dealer designation any entities that engage in a *de minimis* level of swaps dealing in connection with transactions with or on behalf of customers. The Commission anticipates that this exemption would tend to exclude small entities from registration. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that swap dealers not be considered "small entities" for essentially the same reasons that futures commission merchants have previously been determined not to be small entities and in light of the exemption from the definition of swap dealer for those engaging in a *de minimis* level of swap dealing.

The Commission has also previously determined that large traders are not "small entities" for RFA purposes.[19] In that determination, the Commission considered that a large trading position was indicative of the size of the business. Major swap participants, by statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that major swap participants not be considered "small entities" for essentially the same reasons that large traders have previously been determined not to be small entities.

Moreover, the Commission is carrying out Congressional mandates by proposing this regulation. Specifically, the Commission is proposing these regulations to comply with the Dodd-Frank Act, the aim of which is to reduce systemic risks presented by swap dealers and swap market participants through comprehensive regulation. The Commission does not believe that there are regulatory alternatives to those being proposed that would be consistent with the statutory mandate. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA)[20] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of

[14] The oversight, supervision, and examination regimes for swap dealers and major swap participants remain under consideration by the Commission. The Commission is considering whether it will directly handle oversight, whether it may delegate authority to perform oversight to one or more self-regulatory organizations (SROs), or whether a combination of Commission and SRO oversight would be the optimal approach.

[15] 5 U.S.C. 601 *et seq.*

[16] 47 FR 18618, Apr. 30, 1982.

[17] *Id.* at 18619.

[18] *Id.*

[19] *Id.* at 18620.

[20] 44 U.S.C. 3501 *et seq.*

information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants." The OMB has not yet assigned this collection a control number. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information under these proposed rules is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential to ensuring that swap dealers and major swap participants maintain risk management programs, business continuity and disaster recovery plans, procedures to ensure compliance with position limits, and antitrust procedures. Commission staff would use the information when conducting the Commission's examination and oversight program to evaluate the completeness and effectiveness of the procedures adopted by the registrants.

If the proposed regulations are adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

The proposed regulation would require each swap dealer and major swap participant to establish a risk management program (including specific policies for compliance with position limits and to ensure business continuity and disaster recovery); establish policies to prevent unreasonable restraints of trade and anticompetitive burdens; establish systems to diligently supervise the activities relating to its business; and make certain information available for disclosure and inspection by the Commission. These requirements may impose PRA burdens. The burden associated with the proposed regulation per registrant is estimated to be 204.5 hours per year, at an annual cost of $20,450. For purposes of the PRA, the term "burden" means the "time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal Agency." [21] This burden will result from the development of the required policies and procedures, satisfaction of various reporting obligations and the documentation of required testing.

It is not currently known how many swap dealers and major swap participants will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes that there may likely be approximately 200 swap dealers and 50 major swap participants, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 swap dealers and major swap participants who will be required to establish and implement risk management policies and procedures under the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, "Financial Managers," (which includes financial risk managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $74.41.[22] Because swap dealers and major swap participants include large financial institutions whose risk management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of $100 per hour. Accordingly, the estimated burden was calculated as follows:

Drafting, Filing, Updating and Distributing Risk Management Program (Including Position Limit Procedures and Business Continuity and Disaster Recovery Plan)

*Number of registrants:* 300.
*Estimated number of responses:* 300.
*Estimated total annual burden per registrant:* 160 hours.
*Frequency of collection:* One-time filing with the Commission, annual distribution, updating as needed.
*Total annual burden:* 48,000 burden hours [300 registrants × 160 hours].

Quarterly Risk Exposure Reports

*Number of registrants:* 300.
*Estimated number of responses:* 1,200 [300 registrants × 4 reports].
*Estimated total annual burden per registrant:* 32 hours.
*Frequency of collection:* Quarterly.
*Total annual burden:* 9,600 burden hours [300 registrants × 32 hours].

Quarterly Documentation of Risk Management Testing

*Number of registrants:* 300.
*Estimated number of responses:* 1,200 [300 registrants × 4 tests].
*Estimated total annual burden per registrant:* 4 hours.
*Frequency of collection:* Quarterly.
*Total annual burden:* 1,200 hours [300 registrants × 4 hours].

Documentation of Annual Position Limit Compliance Training and Audit

*Number of registrants:* 300.
*Estimated number of responses:* 300.
*Estimated total annual burden per registrant:* 2 hours.
*Frequency of collection:* Annually.
*Total annual burden:* 600 hours [300 registrants × 2 hours].

Quarterly Documentation of Position Limit Compliance

*Number of registrants:* 300.
*Estimated number of responses:* 1,200 [300 registrants × 4 reports].
*Estimated total annual burden per registrant:* 2 hours.
*Frequency of collection:* Quarterly.
*Total annual burden:* 600 hours [300 registrants × 2 hours].

Documentation of Position Limit Violations

*Number of registrants:* 300.
*Estimated number of responses:* 600 [300 registrants × 2 documents].
*Estimated total annual burden per registrant:* .5.
*Frequency of collection:* As needed.
*Total annual burden:* 150 hours [300 registrants × .5 hours].

Filing Emergency Contact Information and Annual Documentation of Business Continuity Testing

*Number of registrants:* 300.
*Estimated number of responses:* 300.
*Estimated total annual burden per registrant:* 1 hour.
*Frequency of collection:* Annual.
*Total annual burden:* 300 hours.

[21] 44 U.S.C. 3502(2).

[22] *http://www.bls.gov/oes/current/oes113031.htm.*

Documentation of Risk Assessment of New Products

*Number of registrants:* 300.

*Estimated number of responses:* 1,500 [300 registrants × 5 documents].

*Estimated total annual burden per registrant:* 3 hours.

*Frequency of collection:* As needed.

*Total annual burden:* 900 hours [300 registrants × 3 hours].

Based upon the above, the aggregate cost for all registrants is 61,350 burden hours and $6,135,000 [61,350 × $100 per hour].

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *http://www.RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB (and the Commission) receives it within 30 days of publication.

*C. Cost-Benefit Analysis*

Section 15(a) of the CEA [23] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the rule outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions.

Section 15(a) further specifies that costs and benefits of a proposed rulemaking shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

*Summary of proposed requirements.* The proposed regulations would implement certain provisions of section 731 of the Dodd-Frank Act, which adds a new section 4s(j) to the Commodity Exchange Act. The proposed regulations would set forth certain duties imposed upon swap dealers and major swap participants registered with the Commission with regard to: (1) Risk management procedures; (2) monitoring of trading to prevent violations of applicable position limits; (3) diligent supervision; (4) business continuity and disaster recovery; (5) disclosure and the ability of regulators to obtain general information; and (6) antitrust considerations.

*Costs.* With respect to costs, the Commission has determined that for swap dealers and major swap participants, costs to institute risk management systems and personnel in order to satisfy the new regulatory requirements are far outweighed by the benefits to the financial system as a whole. The proposed rules would require a swap dealer or major swap participant to consider a number of issues affecting its business environment when creating its risk management system. For example, a swap dealer or major swap participant would need to consider, among other things, the experience and qualifications of relevant risk management personnel, as well as the separation of duties among personnel in the business unit, when designing and implementing its risk management policies and procedures. These considerations would help facilitate the development of a risk management program that appropriately addresses the risks posed by the swap dealer's or major swap participant's business and the environment in which such business is being conducted. In addition, these considerations would guide a swap dealer or major swap participant in the implementation of specific policies and procedures unique to its circumstances.

It is estimated that the average amount of time a swap dealer or major swap participant would spend annually implementing its comprehensive risk management program would be 204.5 hours. Based on an hourly wage rate of $100, Commission staff estimates that each registrant could expend up to $20,450 annually to comply with the proposed rules. This would result in an aggregated cost of $6,135,000 annually (300 registrants × $20,450).

Most swap dealers and major swap participants have adequate resources and existing risk management structures that are capable of adjusting to the new regulatory framework without material diversion of resources away from commercial operations.

*Benefits.* With respect to benefits, the proposed regulations would require swap dealers and major swap participants to assess and monitor the adequacy of their risk management under standards established by the Commission. This would further the goal of avoiding market disruptions and financial losses to market participants and the general public. The proposed regulations also would promote prudent risk management, oversight and stability, thereby fostering efficiency and a greater ability to compete in the broader financial markets. The proposed regulations would reward efficiency insofar as swap dealers and major swap participants that operate efficiently would have lower operating costs and thus would require fewer resources to comply with the regulations. Finally, the proposed regulations are designed to ensure that swap dealers and major swap participants can sustain their market operations and meet their financial obligations to market participants, thus contributing to the integrity of the financial markets. Therefore, the Commission believes it is prudent to require risk management

[23] 7 U.S.C. 19(a).

requirements for swap dealers and major swap participants.

*Public Comment.* The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed rules with their comment letters.

**List of Subjects in 17 CFR Part 23**

Antitrust, Commodity futures, Conduct standards, Conflict of interests, Major swap participants, Reporting and recordkeeping, Swap dealers, Swaps.

For the reasons stated in this release, the Commission proposes to amend 17 CFR part 23 (as proposed in a separate proposed rule published elsewhere in this issue of the **Federal Register**) as follows:

## PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

### Authority and Issuance

1. The authority citation for part 23 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

2. Subpart J is added to read as follows:

**Subpart J—Duties of Swap Dealers and Major Swap Participants**

Sec.

23.600 Risk Management Program for swap dealers and major swap participants.
23.601 Monitoring of position limits.
23.602 Diligent supervision.
23.603 Business continuity and disaster recovery.
23.604 [Reserved]
23.605 [Reserved]
23.606 General information: Availability for disclosure and inspection.
23.607 Antitrust considerations.

## Subpart J—Duties of Swap Dealers and Major Swap Participants

### § 23.600 Risk Management Program for swap dealers and major swap participants.

(a) *Definitions.* For purposes of this subpart J, the following terms shall be defined as provided.

(1) *Affiliate.* This term means, with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit.* This term means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs or is involved in any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(3) *Clearing unit.* This term means any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs any proprietary or customer clearing activities on behalf of a registrant.

(4) *Governing body.* This term typically means, with respect to:

(i) A sole proprietorship, the proprietor;

(ii) A corporation, its board of directors;

(iii) A partnership, any general partner;

(iv) A limited liability company or limited liability partnership, the manager, managing member or those members vested with management authority; or

(v) Any other person, the body or person with ultimate decision-making authority over the activities of such person.

(5) *Prudential regulator.* This term has the same meaning as section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant. The term also includes the Federal Deposit Insurance Corporation, with respect to any financial company as defined in section 201 of under the Dodd-Frank Wall Street Reform and Consumer Protection Act or any insured depository institution under the Federal Deposit Insurance Act, and with respect to each affiliate of any such company or institution.

(6) *Senior management.* This term means, with respect to a registrant, such registrant's chief executive officer and any officer with supervisory duties who reports directly to the chief executive officer.

(b) *Risk management program.* (1) *Purpose.* Each swap dealer and major swap participant shall establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the business of the swap dealer or major swap participant. For purposes of this regulation, such policies and procedures shall be referred to collectively as a "Risk Management Program."

(2) *Written policies and procedures.* Each swap dealer and major swap participant shall maintain written policies and procedures that describe the Risk Management Program of the swap dealer or major swap participant.

(3) *Approval by governing body.* The Risk Management Program and the written risk management policies and procedures shall be approved, in writing, by the governing body of the swap dealer or major swap participant.

(4) *Furnishing to the Commission.* Each swap dealer and major swap participant shall furnish a copy of its written risk management policies and procedures to the Commission upon application for registration. Where there is a material change in the risk management policies and procedures, updated risk management policies and procedures reflecting that change shall be furnished to the Commission within sixty (60) calendar days after the end of the fiscal quarter in which the change occurred.

(5) *Risk management unit.* As part of its Risk Management Program, each swap dealer and major swap participant shall establish and maintain a risk management unit with sufficient authority; qualified personnel; and financial, operational, and other resources to carry out the risk management program established pursuant to this regulation. The risk management unit shall report directly to senior management and shall be independent from the business trading unit.

(c) *Elements of the Risk Management Program.* The Risk Management Program of each swap dealer and major swap participant shall include, at a minimum, the following elements:

(1) *Identification of risks and risk tolerance limits.* (i) The Risk Management Program should take into account market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risks together with a description of the risk tolerance limits set by the swap dealer or major swap participant and the underlying methodology. The risk tolerance limits shall be reviewed and approved quarterly by senior management and annually by the governing body. Exceptions to risk tolerance limits shall require prior approval of, at a minimum, a supervisor in the risk management unit.

(ii) The Risk Management Program shall take into account risks posed by affiliates and take an integrated approach to risk management at the consolidated entity level.

(iii) The Risk Management Program shall include policies and procedures for detecting breaches of risk tolerance limits set by the swap dealer or major swap participant, and alerting supervisors within the risk management unit and senior management, as appropriate.

(2) *Periodic Risk Exposure Reports.* (i) The risk management unit of each swap dealer and major swap participant shall provide to senior management and to its governing body quarterly written reports setting forth the market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risk exposures of the swap dealer or major swap participant; any recommended changes to the Risk Management Program; the recommended time frame for implementing those changes; and the status of any incomplete implementation of previously recommended changes to the Risk Management Program. For purposes of this regulation, such reports shall be referred to as "Risk Exposure Reports." The Risk Exposure Reports also shall be provided to the senior management and the governing body immediately upon detection of any material change in the risk exposure of the swap dealer or major swap participant.

(ii) *Furnishing to the Commission.* Each swap dealer and major swap participant shall furnish copies of its Risk Exposure Reports to the Commission within five (5) business days of providing such reports to its senior management.

(3) *New product policy.* The Risk Management Program of each swap dealer and major swap participant shall include a new product policy that is designed to identify and take into account the risks of any new product prior to engaging in transactions involving the new product. The new product policy should include the following elements:

(i) Consideration of the type of counterparty with which the new product will be transacted; the product's characteristics and economic function; and whether the product requires a novel pricing methodology or presents novel legal and regulatory issues.

(ii) Identification and analysis of the relevant risks of the new product and how they will be managed. The risk analysis should include an assessment of any product, market, credit, liquidity, foreign currency, legal, operational, settlement, and any other risks associated with the new product. Product risk characteristics may include, but are not limited to, volatility, non-linear price characteristics, jump-to-default risk, and any correlation between the value of the product and the counterparty's creditworthiness.

(iii) An assessment, signed by a supervisor in the risk management unit, as to whether the new product would materially alter the overall entity-wide risk profile of the swap dealer or major swap participant. If the new product would materially alter the overall risk profile of the swap dealer or major swap participant, the new product must be pre-approved by the governing body before any transactions are effectuated.

(iv) A requirement that the risk management unit review the risk analysis to identify any necessary modifications to the Risk Management Program and implement such modifications prior to engaging in transactions involving the new product.

(4) *Specific risk management considerations.* The Risk Management Program of each swap dealer and major swap participant shall include, but not be limited to, policies and procedures necessary to monitor and manage the following risks:

(i) *Market risk.* Market risk policies and procedures shall take into account, among other things:

(A) Daily measurement of market exposure, including exposure due to unique product characteristics, volatility of prices, basis and correlation risks, leverage, sensitivity of option positions, and position concentration, to comply with market risk tolerance limits;

(B) Timely and reliable valuation data derived from, or verified by, sources that are independent of the business trading unit, and if derived from pricing models, that the models have been independently validated by qualified, independent persons; and

(C) Reconciliation of profits and losses resulting from valuations with the general ledger at least once each business day.

(ii) *Credit risk.* Credit risk policies and procedures shall take into account, among other things:

(A) Daily measurement of overall credit exposure to comply with counterparty credit limits;

(B) Monitoring and reporting of violations of counterparty credit limits performed by personnel that are independent of the business trading unit; and

(C) Regular valuation of collateral used to cover credit exposures and safeguarding of collateral to prevent loss, disposal, rehypothecation, or use unless appropriately authorized.

(iii) *Liquidity risk.* Liquidity risk policies and procedures shall take into account, among other things:

(A) Daily measurement of liquidity needs;

(B) Testing of procedures to liquidate all non-cash collateral in a timely manner and without significant effect on price; and

(C) Application of appropriate collateral haircuts that accurately reflect market and credit risk.

(iv) *Foreign currency risk.* Foreign currency risk policies and procedures shall take into account, among other things:

(A) Daily measurement of the amount of capital exposed to fluctuations in the value of foreign currency to comply with applicable limits; and

(B) Establishment of safeguards against adverse currency fluctuations.

(v) *Legal risk.* Legal risk policies and procedures shall take into account, among other things:

(A) Determinations that transactions and netting arrangements entered into have a sound legal basis; and

(B) Establishment of documentation tracking procedures designed to ensure the completeness of relevant documentation and to resolve any documentation exceptions on a timely basis.

(vi) *Operational risk.* Operational risk policies and procedures shall take into account, among other things:

(A) Secure and reliable operating and information systems with adequate, scalable capacity, and independence from the business trading unit;

(B) Safeguards to detect, identify, and promptly correct deficiencies in operating and information systems; and

(C) Reconciliation of all operating and information systems.

(vii) *Settlement risk.* Settlement risk policies and procedures shall take into account, among other things:

(A) Establishment of standard settlement instructions with each counterparty;

(B) Procedures to track outstanding settlement items and aging information in all accounts, including nostro and suspense accounts; and

(C) Procedures to ensure timely payments to counterparties and to resolve any late payments.

(5) *Use of central counterparties.* Each swap dealer and major swap participant shall establish policies and procedures relating to its use of central counterparties. Such policies and procedures shall:

(i) Require the use of central counterparties where clearing is required pursuant to Commission regulation or order, unless the counterparty has properly invoked a clearing exemption under Commission regulations;

(ii) Set forth the conditions for use of central counterparties for clearing when available as a means of mitigating counterparty credit risk; and

(iii) Require diligent investigation into the adequacy of the financial resources

and risk management procedures of any central counterparty through which the swap dealer or major swap participant clears.

(6) *Compliance with margin and capital requirements.* Each swap dealer and major swap participant shall satisfy all capital and margin requirements established by the Commission or prudential regulator, as applicable.

(7) *Monitoring of compliance with Risk Management Program.* Each swap dealer and major swap participant shall establish policies and procedures to detect violations of the Risk Management Program; to encourage employees to report such violations to senior management, without fear of retaliation; and to take specified disciplinary action against employees who violate the Risk Management Program.

(d) *Business trading unit.* Each swap dealer and major swap participant shall establish policies and procedures that, at a minimum:

(1) Require all trading policies be approved by the governing body of the swap dealer or major swap participant;

(2) Require that traders execute transactions only with counterparties for whom credit limits have been established;

(3) Provide specific quantitative or qualitative limits for traders and personnel able to commit the capital of the swap dealer or major swap participant;

(4) Monitor each trader throughout the trading day to prevent the trader from exceeding any limit to which the trader is subject, or from otherwise incurring undue risk;

(5) Require each trader to follow established policies and procedures for executing and confirming all transactions;

(6) Establish means to detect unauthorized trading activities or any other violation of policies and procedures;

(7) Ensure that trade discrepancies are brought to the immediate attention of management of the business trading unit and are documented;

(8) Ensure that the risk management unit reviews brokers' statements, reconciles brokers' charges to estimates, reviews and monitors broker's commissions, and initiates payment to brokers;

(9) Ensure that use of algorithmic trading programs is subject to policies and procedures governing the use, supervision, maintenance, testing, and inspection of the program; and

(10) Require the separation of personnel in the business trading unit from personnel in the risk management unit.

(e) *Review and testing.* (1) Risk Management Programs shall be reviewed and tested on at least a quarterly basis, or upon any material change in the business of the swap dealer or major swap participant that is reasonably likely to alter the risk profile of the swap dealer or major swap participant.

(2) The quarterly reviews of the Risk Management Program shall include an analysis of adherence to, and the effectiveness of, the risk management policies and procedures, and any recommendations for modifications to the Risk Management Program. The quarterly testing shall be performed by qualified internal audit staff that are independent of the business trading unit being audited or by a qualified third party audit service reporting to staff that are independent of the business trading unit. The results of the quarterly reviews of the Risk Management Program shall be promptly reported to and reviewed by, the chief compliance officer, senior management, and governing body of the swap dealer or major swap participant.

(3) Each swap dealer and major swap participant shall document all internal and external reviews and testing of its Risk Management Program and written risk management policies and procedures including the date of the review or test; the results; any deficiencies identified; the corrective action taken; and the date that corrective action was taken. Such documentation shall be provided to Commission staff, upon request.

(f) *Distribution of risk management policies and procedures.* The Risk Management Program shall include procedures for the timely distribution of its written risk management policies and procedures to relevant supervisory personnel. Each swap dealer and major swap participant shall maintain records of the persons to whom the risk management policies and procedures were distributed and when they were distributed.

(g) *Recordkeeping.* (1) Each swap dealer and major swap participant shall maintain copies of all written approvals required by this section.

(2) All records or reports that a swap dealer or major swap participant is required to maintain pursuant to this regulation shall be maintained in accordance with 17 CFR 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

**§ 23.601 Monitoring of position limits.**

(a) Each swap dealer and major swap participant shall establish and enforce written policies and procedures that are designed to monitor for and prevent violations of applicable position limits established by the Commission, a designated contract market, or a swap execution facility, and to monitor for and prevent improper reliance upon any exemptions or exclusions from such position limits. For purposes of this regulation, such policies and procedures shall be referred to as "Position Limit Procedures." The Position Limit Procedures shall be incorporated into the Risk Management Program of the swap dealer or major swap participant.

(b) For purposes of the Position Limit Procedures, each swap dealer and major swap participant shall convert all swap positions into equivalent futures positions using the methodology set forth in Commission regulations.

(c) Each swap dealer and major swap participant shall provide training to all relevant personnel on applicable position limits on an annual basis and promptly upon any change to applicable position limits. Each swap dealer and major swap participant shall maintain records of such training including the substance of the training and the identity of those receiving training.

(d) Each swap dealer and major swap participant shall diligently monitor its trading activities and diligently supervise the actions of its partners, officers, employees, and agents to ensure compliance with the Position Limit Procedures of the swap dealer or major swap participant.

(e) The Position Limit Procedures of each swap dealer and major swap participant shall implement an early warning system designed to detect and alert its senior management when position limits are in danger of being breached (such as when trading has reached a percentage threshold of the applicable position limit, and when position limits have been exceeded). Any detected violation of applicable position limits shall be reported promptly to the firm's governing body and to the Commission. Each swap dealer and major swap participant shall maintain a record of any early warning received, any position limit violation detected, any action taken as a result of either, and the date action was taken.

(f) Each swap dealer and major swap participant shall test its Position Limit Procedures for adequacy and effectiveness each month and maintain records of such monthly tests; the results thereof; any action that is taken as a result thereof including, without limitation, any recommendations for

modifications to the firm's Position Limit Procedures; and the date action was taken.

(g) Each swap dealer and major swap participant shall document its compliance with applicable position limits established by the Commission, a designated contract market, or a swap execution facility in a written report on a quarterly basis. Such report shall be promptly reported to and reviewed by the chief compliance officer, senior management, and governing body of the swap dealer or major swap participant, and shall include, without limitation, a list of all early warnings received, all position limit violations, the action taken in response, the results of the monthly position limit testing required by this regulation, any deficiencies in the Position Limit Procedures, the status of any pending amendments to the Position Limit Procedures, and any action taken to amend the Position Limit Procedures to ensure compliance with all applicable position limits. Each swap dealer and major swap participant shall retain a copy of this report.

(h) On an annual basis, each swap dealer and major swap participant shall audit its Position Limit Procedures as part of the audit of its Risk Management Program required by Commission regulations.

(i) All records required to be maintained pursuant to these regulations shall be maintained in accordance with 17 CFR 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

**§ 23.602 Diligent supervision.**

(a) *Supervision.* Each swap dealer and major swap participant shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function). Such system shall be reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission regulations.

(b) *Supervisory System.* Such supervisory system shall provide, at a minimum, for the following:

(1) The designation, where applicable, of a person with authority to carry out the supervisory responsibilities of the swap dealer or major swap participant for all activities relating to its business as a swap dealer or major swap participant.

(2) The use of reasonable efforts to determine that all supervisors are qualified and meet such standards of training, experience, competence, and such other qualification standards as the Commission finds necessary or appropriate.

**§ 23.603 Business continuity and disaster recovery.**

(a) *Business continuity and disaster recovery plan required.* Each swap dealer and major swap participant shall establish and maintain a written business continuity and disaster recovery plan that outlines the procedures to be followed in the event of an emergency or other disruption of its normal business activities. The business continuity and disaster recovery plan shall be designed to enable the swap dealer or major swap participant to continue or to resume any operations by the next business day with minimal disturbance to its counterparties and the market, and to recover all documentation and data required to be maintained by applicable law and regulation.

(b) *Essential components.* The business continuity and disaster recovery plan of a swap dealer or major swap participant shall include the following components:

(1) Identification of the documents, data, facilities, infrastructure, personnel and competencies essential to the continued operations of the swap dealer or major swap participant and to fulfill the obligations of the swap dealer or major swap participant.

(2) Identification of the supervisory personnel responsible for implementing each aspect of the business continuity and disaster recovery plan and the emergency contacts required to be provided pursuant to this regulation.

(3) A plan to communicate with the following persons in the event of an emergency or other disruption, to the extent applicable to the operations of the swap dealer or major swap participant: Employees; counterparties; swap data repositories; execution facilities; trading facilities; clearing facilities; regulatory authorities; data, communications and infrastructure providers and other vendors; disaster recovery specialists and other persons essential to the recovery of documentation and data, the resumption of operations, and compliance with the Commodity Exchange Act and Commission regulations.

(4) Procedures for, and the maintenance of, back-up facilities, systems, infrastructure, personnel and other resources to achieve the timely recovery of data and documentation and to resume operations as soon as reasonably possible and generally within the next business day.

(5) Maintenance of back-up facilities, systems, infrastructure and personnel in one or more areas that are geographically separate from the swap dealer's or major swap participant's primary facilities, systems, infrastructure and personnel (which may include contractual arrangements for the use of facilities, systems and infrastructure provided by third parties).

(6) Back-up or copying, with sufficient frequency, of documents and data essential to the operations of the swap dealer or major swap participant or to fulfill the regulatory obligations of the swap dealer or major swap participant and storing the information off-site in either hard-copy or electronic format.

(7) Identification of potential business interruptions encountered by third parties that are necessary to the continued operations of the swap dealer or major swap participant and a plan to minimize the impact of such disruptions.

(c) *Distribution to employees.* Each swap dealer and major swap participant shall distribute a copy of its business continuity and disaster recovery plan to relevant employees and promptly provide any significant revision thereto. Each swap dealer and major swap participant shall maintain copies of the business continuity and disaster recovery plan at one or more accessible off-site locations. Each swap dealer and major swap participant shall train relevant employees on applicable components of the business continuity and disaster recovery plan.

(d) *Commission notification.* Each swap dealer and major swap participant shall promptly notify the Commission of any emergency or other disruption that may affect the ability of the swap dealer or major swap participant to fulfill its regulatory obligations or would have a significant adverse effect on the swap dealer or major swap participant, its counterparties, or the market.

(e) *Emergency contacts.* Each swap dealer and major swap participant shall provide to the Commission the name and contact information of two employees who the Commission can contact in the event of an emergency or other disruption. The individuals identified shall be authorized to make key decisions on behalf of the swap dealer or major swap participant and have knowledge of the firm's business continuity and disaster recovery plan. The swap dealer or major swap participant shall provide the Commission with any updates to this information promptly.

(f) *Review and modification.* A member of the senior management of each swap dealer and major swap participant shall review the business continuity and disaster recovery plan annually or upon any material change to the business. Any deficiencies found or corrective action taken shall be documented.

(g) *Testing.* Each business continuity and disaster recovery plan shall be tested annually by qualified, independent internal audit personnel or a qualified third party audit service. The date the testing was performed shall be documented, together with the nature and scope of the testing, any deficiencies found, any corrective action taken, and the date that corrective action was taken.

(h) *Business continuity and disaster recovery plans required by other regulatory authorities.* A swap dealer or major swap participant shall comply with the requirements of this regulation in addition to any business continuity and disaster recovery requirements that are imposed upon the swap dealer or major swap participant by its prudential regulator or any other regulatory or self-regulatory authority.

(i) *Recordkeeping.* The business continuity and disaster recovery plan of the swap dealer and major swap participant and all other records required to be maintained pursuant to this section shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

**§ 23.604 [Reserved]**

**§ 23.605 [Reserved]**

**§ 23.606 General information: Availability for disclosure and inspection.**

(a) *Disclosure of information.* (1) Each swap dealer and major swap participant shall make available for disclosure to and inspection by the Commission and its prudential regulator, as applicable, all information required by, or related to, the Commodity Exchange Act and Commission regulations, including:

(i) The terms and condition of its swaps;

(ii) Its swaps trading operations, mechanisms, and practices;

(iii) Financial integrity and risk management protections relating to swaps; and

(iv) Any other information relevant to its trading in swaps.

(2) Such information shall be made available promptly, upon request, to Commission staff and the staff of the applicable prudential regulator, at such frequency and in such manner as is set forth in the Commodity Exchange Act, Commission regulations, or the regulations of the applicable prudential regulator.

(b) *Ability to provide information.* (1) Each swap dealer and major swap participant shall establish and maintain reliable internal data capture, processing, storage, and other operational systems sufficient to capture, process, record, store, and produce all information necessary to satisfy its duties under the Commodity Exchange Act and Commission regulations. Such systems shall be designed to produce the information within the time frames set forth in the Commodity Exchange Act and Commission regulations or upon request, as applicable.

(2) Each swap dealer and major swap participant shall establish, implement, maintain, and enforce written procedures for the capture, processing, recording, storage, and production of all information necessary to satisfy its duties under the Commodity Exchange Act and Commission regulations.

(c) *Record retention.* All records or reports that a swap dealer or major swap participant is required to maintain pursuant to this regulation shall be maintained in accordance with 17 CFR 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

**§ 23.607 Antitrust considerations.**

(a) No swap dealer or major swap participant shall adopt any process or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Commodity Exchange Act.

(b) Consistent with its obligations under paragraph (a) of this section, each swap dealer and major swap participant shall adopt policies and procedures to prevent actions that result in unreasonable restraint of trade, or impose any material anticompetitive burden on trading or clearing.

Issued in Washington, DC, on November 10, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Statement of Chairman Gary Gensler**

**Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants**

I support the proposed business conduct standards rulemaking that establishes risk management policies for swap dealers and major swap participants. One of the primary goals of the Dodd-Frank Act was to bring swap dealers and major swap participants under comprehensive regulation to reduce risk to the financial system and to the economy as a whole. The proposed rules are consistent with the Congressional requirement that swap dealers and major swap participants: (1) Monitor trading to prevent violations of position limits; (2) establish risk management procedures for managing their day-to-day business; (3) disclose to the Commission and to applicable prudential regulators general information relating to trading practices and financial integrity of swaps; (4) establish and enforce internal systems and procedures to obtain information needed to perform all of the duties prescribed; (5) implement conflicts of interest systems and procedures; and (6) refrain from unreasonably restraining trade or imposing an anticompetitive burden on trading or clearing.

[FR Doc. 2010–29009 Filed 11–22–10; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2010–0997]**

**RIN 1625–AA00**

## Safety Zones: Fireworks Displays in the Captain of the Port Columbia River Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the enforcement period for the safety zone established for the Oregon Symphony Concert Fireworks Display in Portland, Oregon. The amendment is necessary because in recent years the actual date of the event has differed from that listed in the enforcement period of the regulation.

**DATES:** Comments and related material must be received by the Coast Guard on or before February 22, 2011. Requests for public meetings must be received by the Coast Guard on or before January 7, 2011. The Coast Guard anticipates that

this proposed rule will be effective and enforced annually one day between the third week of August and the third week of September.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0997 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 MST1 Jaime Sayers, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, e-mail *D13-SG-M-MSUPortlandWWM@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–2010–0997), 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 (via *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 telephone 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 Rule" and insert "USCG–2010–0997" 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 comments 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–2010–0997" 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 on or before January 7, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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**.

## Basis and Purpose

The Oregon Symphony Concert Fireworks Display in Portland, Oregon is an annual fireworks event requiring a safety zone to ensure the safety of the maritime public due to the inherent dangers associated with such events. Although the safety zone is codified in 33 CFR 165.1315(a)(7), in recent years the enforcement period in that regulation has not covered the actual date of the event. As such, the Coast Guard has had to publish a new safety zone for the event. This amendment will change the enforcement period in 33 CFR 165.1315(a)(7) to more accurately cover the time period of when the event occurs each year.

## Discussion of Proposed Rule

This proposal would amend 33 CFR 165.1315(a)(7) to change the enforcement period from "one day in late August" to "one day between the third week of August and the third week of September." Notice of the actual date that the safety zone will be effective and enforced each year will be given by one of the methods listed in 33 CFR 165.7.

## 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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that this rule only changes the period during which the safety zone established in 33 CFR 165.1315(a)(7) may be made effective and enforced.

## 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 rule may affect the following entities some of which may be small entities: The owners or operators of vessels wishing to transit the safety zone established by this rule. This rule will not have a significant economic impact on a substantial number of small entities, however, because it only changes the period during which the safety zone established in 33 CFR 165.1315(a)(7) may be made effective and enforced.

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 MST1 Jaime Sayers, Marine Safety Unit Portland, U.S. Coast Guard, at telephone number 503–240–9319 or e-mail *D13-SG-M-MSUPortlandWWM@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 would 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 guide 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 that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves amending the enforcement period of an existing safety zone. 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 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Amend § 165.1315 by revising paragraph (a)(7)(ii) to read as follows:

**§ 165.1315 Safety Zones: Fireworks displays in the Captain of the Port Columbia River Zone.**

*(a)* * * *

(7) * * *

(ii) *Enforcement period.* One day between the third week of August and the third week of September.

* * * * *

Dated: *November 5, 2010.*

**D.E. Kaup,**

*Captain, U.S. Coast Guard, Captain of the Port, Columbia River.*

[FR Doc. 2010–29423 Filed 11–22–10; 8:45 am]

BILLING CODE 9110–04–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MB Docket No. 08–197, RM–11491; DA 10–2117]**

## Radio Broadcasting Services; Silverpeak, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** The Audio Division dismisses the petition for rule making filed by Shamrock Communications, Inc., proposing the allotment of Channel 291C at Silverpeak, Nevada, as the community's first local transmission service. The reason for the dismissal is that, in light of the prior dismissal of a proposed channel substitution at Amargosa Valley, Nevada, the proposal to allot Channel 291C at Silverpeak, Nevada, does not meet the Commission's spacing requirements for FM services. For that reason, the Audio Division dismissed the petition for rule making and terminated the proceeding without adoption of a final rule.

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

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–197, adopted November 3, 2010, and released November 5, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The *Report and Order* is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.)

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 2010–29388 Filed 11–22–10; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 75, No. 225

Tuesday, November 23, 2010

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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Meeting of the Assembly of the Administrative Conference

**AGENCY:** Administrative Conference of the United States (the Conference).

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Assembly of the Administrative Conference of the United States to consider particular organizational matters related to the functions of the Conference, and to consider a proposed recommendation for improved agency procedures in considering regulations that may preempt state law. To facilitate public participation, the Conference is inviting public comment on the recommendation that will be considered at the meeting, to be submitted in writing no later than December 3, 2010.

**DATES:** Meeting dates are Thursday, December 9, 2010, 2 to 5:30 p.m.; and Friday, December 10, 2010, 9 a.m. to noon. Comments on the recommendation must be received by Friday, December 3, 2010.

**ADDRESSES:** Meeting will be held at the William G. McGowan Theater, National Archives and Records Administration building, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001. Submit comments to either of the following:

(1) *E-mail: comments@acus.gov*, with "Plenary Preemption Recommendation" in the subject line; or

(2) *Mail:* Plenary Preemption Recommendation Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Scott Rafferty, Designated Federal Officer, Administrative Conference of the Unites States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2082. [**Note:** this is not a toll free number.]

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the Unites States regarding the improvement of Federal administrative procedures. (5 U.S.C. 594). The objectives of these recommendations are to ensure that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest to: promote more effective public participation and efficiency in the rulemaking process, reduce unnecessary litigation in the regulatory process, improve the use of science in the regulatory process, and improve the effectiveness of laws applicable to the regulatory process (5 U.S.C. 591).

The membership of the Conference meeting in plenary session constitutes the Assembly of the Conference (5 U.S.C. 595). The Assembly will meet in plenary session to consider a proposed recommendation on Federal agency preemption of state law.

The Assembly will also consider revised bylaws and set staggered terms for its public (non-government) members. New members will be sworn in at the outset of the plenary session. The agenda will include breakout sessions to discuss future topics for Conference study.

This meeting will be open to the public and may end prior to the designated end time if business is concluded earlier. Members of the public are invited to attend the meeting in person, subject to space limitations; and the Conference will also provide remote public access to the meeting. Anyone who wishes to attend the meeting in person is asked to RSVP to *comments@acus.gov*, no later than December 7, 2010, in order to facilitate entry. Members of the public who attend the meetings of the full Assembly, may be permitted to speak only at the discretion of the Chairman, with unanimous approval of the members. The Conference welcomes the attendance of the public and will make every effort to accommodate persons with physical disabilities or special needs. An interpreter will be provided for the hearing impaired. If you need additional special accommodations due to disability, please inform the Designated Federal Officer no later than 7 days in advance of the meeting using the contact information provided above.

Members of the public may submit written comments on the Preemption Recommendation to either of the addresses listed above no later than December 3, 2010. A copy of the recommendation and information on remote access will be available at *http://www.acus.gov*. All comments will be delivered to the Designated Federal Officer listed on this notice. The Designated Federal Officer will post all comments that relate to the Plenary Preemption Recommendation on the Conference's Web site after the close of the comment period.

Dated: November 18, 2010.

**Paul R. Verkuil,**

*Chairman.*

[FR Doc. 2010–29504 Filed 11–22–10; 8:45 am]

BILLING CODE 6110–01–P

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Notice of Public Meeting of the Committee on Administration

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Administrative Conference of the United States will host a public meeting of the Committee on Administration of the Assembly of the Conference on Thursday, December 9, 2010 from 9 a.m. to 11 a.m. to consider a draft recommendation on the application of ethics rules to government contractors and their employees. To facilitate public participation, the Administrative Conference is inviting public comment on the report and recommendation to be considered at the meeting, to be submitted in writing no later than December 6, 2010.

**DATES:** Meeting to be held December 9, 2010. Comments must be received by December 6, 2010.

**ADDRESSES:** Meeting to be held at Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC

20036. Submit comments to either of the following:

(1) *E-mail: Comments@acus.gov,* with "Ethics Rules" in the subject line; or

(2) *Mail:* Ethics Rules Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Reeve T. Bull, Designated Federal Officer, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2083.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States (ACUS) is charged with developing recommendations for the improvement of Federal administrative procedures (5 U.S.C. 591).

The Conference has engaged a Professor of Law at Washington University in St. Louis School of Law, Kathleen Clark, to research and prepare a report regarding whether ethics regulations analogous to those applicable to government employees should apply to government contractors and, if so, how such regulations should be imposed (the "Ethics Report"). A copy of the Ethics Report is available at *http://www.acus.gov.* The Committee on Administration met on November 3, 2010 to discuss the Ethics Report and the broader issue of whether and how the regulations applicable to government contractors and their employees should be expanded.

From 9 a.m. to 11 a.m. on December 9, 2010, the committee will discuss a draft recommendation based on the Ethics Report and on the discussion from the first meeting. A copy of the draft recommendation will be made available at *http://www.acus.gov* prior to the December 9, 2010 meeting. This meeting will be open to the public and may end prior to 11 a.m. if business is concluded prior to that time. Members of the public are invited to attend the meeting in person, subject to space limitations, and the Conference will also provide remote public access to the meeting.

Anyone who wishes to attend the meeting in person is asked to RSVP to *Comments@acus.gov.* Remote access information will be posted on the Conference's Web site, *http://www.acus.gov,* by no later than December 6, 2010 and will also be available by the same date by calling the phone number listed above. Members of the public who attend the Committee's meeting may be permitted to speak only at the discretion of the Committee Chair, with unanimous approval of the Committee. The Conference welcomes the attendance of the public and will make every effort to accommodate persons with physical disabilities or special needs. If you need special accommodations due to a disability, please inform the Designated Federal Officer no later than 7 days in advance the meeting using the contact information provided above.

Members of the public may submit written comments on the report and recommendation to either of the addresses listed above no later than December 6, 2010. All comments will be delivered to the Designated Federal Officer listed on this notice. The Designated Federal Officer will post all comments that relate to the report and/or recommendation on the Conference's Web site after the close of the comments period.

Dated: November 18, 2010.

**Paul R. Verkuil,**

*Chairman.*

[FR Doc. 2010–29506 Filed 11–22–10; 8:45 am]

**BILLING CODE 6110–01–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by January 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159–S, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–8435. E-mail *Michele.Brooks@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–8435.

*Title:* 7 CFR Part 1783, "Revolving Fund Program."

*OMB Control Number:* 0572–0138.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Rural Development supports the sound development of rural communities and the growth of our economy without endangering the environment. Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Revolving Fund Program (RFP) has been established to assist communities with water or wastewater systems. Qualified private non-profit organizations will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from Rural Development Water and Waste Disposal and Wastewater loan and grant programs. As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems.

The collection of information consists of the materials to file a grant application with the agency, including forms, certifications and required documentation.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 8.24 hours per response.

*Respondents:* Non-profit institutions.

*Estimated Number of Respondents:* 5.

*Estimated Number of Responses per Respondent:* 7.6.

*Estimated Total Annual Burden on Respondents:* 313 hours.

Copies of this information collection can be obtained from Joyce McNeil, Management Analyst, Program Development and Regulatory Analysis, at (202) 720–0812; FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 17, 2010.

**Jessica Zufolo,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2010–29487 Filed 11–22–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by January 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159–S, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–8435. E-mail *Michele.Brooks@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave., SW., Room 5159–S, STOP 1522, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–8435.

*Title:* 7 CFR Part 1776, "Household Water Well System Grant Program."

*OMB Control Number:* 0572–0139.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* Rural Development supports the sound development of rural communities and the growth of our economy without endangering the environment. Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Household Water Well System (HWWS) Grant Program makes grants to qualified private non-profit organizations which will help homeowners finance the cost of private wells. As the grant recipient, non-profit organizations will establish a revolving loan fund lending program to provide water well loans to individuals who own or will own private wells in rural areas. The individual loan recipients may use the funds to construct, refurbish, and service their household well systems for an existing home.

The collection of information consists of the materials to file a grant application with the agency, including forms, certifications and required documentation.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 144 hours per response.

*Respondents:* Non-profit institutions.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 17.5.

*Estimated Total Annual Burden on Respondents:* 1,112 hours.

Copies of this information collection can be obtained from Joyce McNeil, Management Analyst, Program Development and Regulatory Analysis, at (202) 720–0812; FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 17, 2010.

**Jessica Zufolo,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2010–29485 Filed 11–22–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Questa Ranger District, Carson National Forest; Taos County, NM; Taos Ski Valley's 2010 Master Development Plan—Phase 1 Projects

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Taos Ski Valley (TSV) is a downhill ski area located in the Sangre de Cristo Mountains, about 20 miles northeast of Taos, New Mexico, at the terminus of State Road 150, on the Rio Hondo, in Taos County. The Forest Service is proposing to authorize several (Phase I) projects included in the Taos Ski Valley (TSV) 2010 Master Development Plan (MDP). These proposed projects include: Adding new lifts to serve terrain that is currently only accessible by hiking; replacing old lifts; creating new gladed terrain; improving traffic circulation throughout the day parking lots and a new drop-off area; construction of the Taos Adventure Center (snowtubing and snowshoeing trails); and a lift-served mountain biking trail. All proposed projects are within the existing special use permit (SUP) area. The Forest Service is preparing an environmental impact statement (EIS) to consider and disclose the anticipated environmental

effects of Taos Ski Valley's 2010 Master Development Plan—Phase 1 Projects.

**DATES:** Comments concerning the scope of the analysis should be received by January 17, 2011. The draft environmental impact statement (draft EIS) is expected to be available for public review in August 2011 and the final environmental impact statement (final EIS) and record of decision (ROD) are expected in December 2011.

**ADDRESSES:** Send written comments to Carson National Forest, Taos Ski Valley MDP—Phase 1 Projects, 208 Cruz Alta Road, Taos, NM 87571. Comments may also be sent via e-mail to *comments-southwestern-carson@fs.fed.us* or facsimile to (575) 758–6213.

**FOR FURTHER INFORMATION CONTACT:** Additional information related to the proposed project can be obtained from the Forest's Web page at: *http://www.fs.fed.us/r3/carson/.* The Forest Service contact is Audrey Kuykendall, who can be reached at 575–758–6200.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** In 2010, Kendall Clark, Forest Supervisor for the Carson National Forest, accepted a new MDP for Taos Ski Valley, which provides a comprehensive plan for future improvements to the resort.

*Purpose and Need for Action:* Taos Ski Valley has not made any significant infrastructural or qualitative improvements within its permit area over the past two decades. In order to remain economically viable in the competitive destination skier/rider market and continue to provide a quality recreational experience into the future, TSV needs to refocus on meeting its guests' demands and expectations. The proposed action is designed to address TSV's economic and recreational needs within its existing permit area. These needs are:

1. Lift service to high-alpine, advanced intermediate and expert terrain.
2. Access to heavily treed portions of the existing permit area.
3. Quality alternative winter and summer activities.
4. A more efficient lift network.
5. Better resort access.
6. Improved vehicular circulation throughout the day parking lots.

*Proposed Action:* In order to meet the purpose and need, the Forest Service is proposing several projects within TSV's existing special use permit boundary administered by the Carson National Forest. The proposed action includes:

—Developing two new lift-served, gladed areas—the Minnesota Glades and the Wild West Glades (approx. 108 ac). These areas would be accessible by both new and proposed lifts.
—Installing a new bottom-drive, fixed-grip chairlift—the Main Street Lift—to service approximately 63 acres of terrain above Chair 4 that are currently only accessible by an approximate 45-minute hike along Highline Ridge. The proposed Main Street Lift would provide low capacity lift service up to an elevation of 12,466 feet.
—Installing a new bottom-drive, fixed-grip chairlift—the Ridge Lift—to access existing terrain off West Basin Ridge as well, as the proposed Wild West Glades. Round-trip skiing/riding this terrain would require use of the existing Lift 8, as well as the proposed Ridge Lift.
—Constructing a dedicated snowtubing facility—the Adventure Center—within the northwestern portion of the SUP area. The Adventure Center would include yurts for guest services, a carpet conveyor lift serving four tubing lanes, and a small building for tube storage. A shuttle would provide access to the Taos Adventure Center from TSV's base area, and parking spaces in TSV's existing day lots would be dedicated for Adventure Center guests.
—Establishing a 2-mile (approx.) network of marked interpretive snowshoeing trails beginning near the Adventure Center to supplement non-sliding winter activities.
—Constructing a 3.6-mile, lift served mountain bike trail between the top of Lift 1 and the base area to provide alternative summer recreational activities.
—Reconfiguring the existing parking lots to better accommodate traffic circulation and pedestrian access to the base area. The Bear and Bison lots would be reconfigured to allow the Bison lot to become a thoroughfare.
—Constructing an extra parking bay north of the Armadillo lot. The reconfiguration and extra parking bay would have no net gain or loss of day parking.
—Replacing Lifts 4, 5, and 7, which are antiquated and in need of modernizing and upgrading.

*Responsible Official:* The responsible official is Kendall Clark, Forest Supervisor for the Carson National Forest.

*Nature of Decision To Be Made:* Based on the analysis that will be documented in the forthcoming EIS, the responsible official will decide whether or not to implement, in whole or in part, the proposed action or another alternative that may be developed by the Forest Service as a result of scoping.

*Scoping Process:* This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the draft EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: November 16, 2010.

**Kendall Clark,**

*Carson National Forest Supervisor.*

[FR Doc. 2010–29456 Filed 11–22–10; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2010–0027]**

### Notice of Decision To Issue Permits for the Importation of Wall Rocket Leaves From the United Kingdom Into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our decision to begin issuing permits for the importation into the continental United States of wall rocket leaves from the United Kingdom. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, 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 wall rocket leaves from the United Kingdom.

**DATES:** *Effective Date:* November 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

**SUPPLEMENTARY INFORMATION:**

## Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, 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 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on July 8, 2010 (75 FR 39203–39204, Docket No. APHIS–2010–0027), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of wall rocket (*Diplotaxis tenuifolia* (L)) leaves from the United Kingdom. We solicited comments on the notice for 60 days ending on September 7, 2010. We received one comment by that date, from a State department of agriculture.

The PRA concluded that there was a low likelihood of the leafminer pests associated with wall rocket leaves from the United Kingdom escaping detection at the port of entry. The commenter stated that the likelihood of eggs or early instars with no or difficult-to-detect mines being present or of interior plant parts being infested would allow some immature pests to escape detection.

We acknowledge that eggs or very early instars may be present with tunnels too small to be seen. However, after wall rocket leaves have been harvested and enter the commercial consumption pathway, they are generally refrigerated, so it would be unlikely that the eggs or early instar larvae could complete development. Thus, there is a low risk associated with the life stages of these pests that might escape detection.

The PRA also concluded that there is a low likelihood of the pests associated with wall rocket leaves from the United Kingdom coming into contact with host material suitable for reproduction. The commenter stated that, because of the highly polyphagous nature of leafminers, if egg- or larva-infested commodity arrives in the United States, there is a high probability of adults emerging and coming into contact with suitable hosts in favorable environments, such as the one in the commenter's State.

The majority of this commodity will be consumed and any plant material not consumed will be disposed of in environments not suitable for pest escape. In addition, the cut commodity rapidly wilts and desiccates, preventing the complete development of the insect. Taking into consideration the fact that both pests are poor flyers with relatively short lifespans, we have concluded that the low rating for this risk element is appropriate. As such, we have determined that no changes to the PRA are necessary based on the comment.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of wall rocket leaves from the United Kingdom subject to the following phytosanitary measures:

- Each consignment of wall rocket leaves must be accompanied by a phytosanitary certificate issued by the Department of Environment Food and Rural Affairs with the following additional declaration: "Wall rocket leaves in this consignment were inspected and found free from *Chromatomyia horticola* and *Liriomyza strigata*."
- The wall rocket leaves must be imported as commercial consignments only.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to those specific measures, wall rocket leaves from the United Kingdom will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

**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 17th day of November 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–29500 Filed 11–22–10; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the PRA, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0027.*

## 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 provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Coast Pilot Report.

*OMB Control Number:* 0648–0007.

*Form Number(s):* NOAA 77–6.

*Type of Request:* Regular submission (renewal of a current information collection).

*Number of Respondents:* 100.

*Average Hours per Response:* 30 minutes.

*Burden Hours:* 50.

*Needs and Uses:* This notice is for renewal of a current information collection.

NOAA produces the U.S. Coast Pilot, a series of nine books that supplement marine nautical charts. The Coast Pilot contains information essential to navigators in U.S. coastal and intra-coastal waters but that cannot be shown graphically on paper nautical charts. This publication is required by Federal Regulations (*33 CFR 164.33*) to be carried on-board all vessels of 1,600 gross tons and greater, while traversing U.S. waters. The Coast Pilot Report form is offered to the public as a means for recommending changes to the publication.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

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 *OIRA_Submission@omb.eop.gov.*

Dated: November 18, 2010.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–29471 Filed 11–22–10; 8:45 am]

BILLING CODE 3510–JE–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 101105538–0538–02]**

### 2010 Company Organization Survey

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** The Bureau of the Census (Census Bureau) is conducting the 2010 Company Organization Survey. The survey's data are needed, in part, to update the multilocation companies in the Business Register. The survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for each establishment of companies with more than one location. We have determined that annual data collected from this survey are needed to aid the efficient performance of essential governmental functions, and that these data have significant application to the needs of the public and industry. The data derived from this survey are not available from any other source.

**ADDRESSES:** The Census Bureau will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

**FOR FURTHER INFORMATION CONTACT:** Joy P. Pierson, Economic Planning and Coordination Division, U.S. Census Bureau, Room 8K319, Washington, DC 20233–6100 or by e-mail at <*joy.p.pierson@census.gov*>.

**SUPPLEMENTARY INFORMATION:** Sections 182, 195, 224, and 225 of Title 13, United States Code (U.S.C.), authorize the Census Bureau to undertake surveys necessary to furnish current data on the subjects covered by the major censuses. In years that do not end in 2 and 7, companies report only on basic company affiliation and operations of establishments not within scope of the economic censuses. In these non-census years, all multi-establishment companies with 250 or more employees report survey information. Also, groups of smaller companies that are divided into panels may be selected to report information for one of the non-census years. Smaller companies may be selected if an organizational change within the company is indicated, or if they have been selected through the probability sampling procedure. The next economic census will be conducted for the year 2012. The data collected in the Company Organization Survey will be within the general scope, type, and character of those that are covered in the economic censuses. Forms NC–99001 and NC–99007 (for single-location companies) will be used to collect the desired data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act, 44 U.S.C., Chapter 35, the OMB approved Forms NC–99001 and NC–99007 under OMB Control Number 0607–0444. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

I have, therefore, directed that the 2010 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: November 16, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2010–29408 Filed 11–22–10; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Manufacturing Council Membership

**AGENCY:** International Trade Administration, U.S. Department of Commerce

**ACTION:** Notice of an opportunity to apply for membership on the Manufacturing Council.

**SUMMARY:** The Department of Commerce is currently seeking applications to fill one vacant position on the Manufacturing Council (Council). The purpose of the Council is to advise the Secretary of Commerce on matters relating to the competitiveness of the manufacturing sector and to provide regular communication between Government and the manufacturing sector.

**ADDRESSES:** Please submit application information via e-mail to *jennifer.pilat@trade.gov* or by mail to Jennifer Pilat, Office of Advisory Committees, Manufacturing Council Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

**DATES:** All applications must be received by the Office of Advisory Committees by close of business on December 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Pilat, The Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone: 202–482–4501, e-mail: *jennifer.pilat@trade.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Advisory Committees is accepting applications for one vacant position on the Council for the current two-year charter term that began April 8, 2010. The member shall serve until the Council's charter expires on April 8,

2012. The member will be selected, in accordance with applicable Department of Commerce guidelines, based on his or her ability to advise the Secretary of Commerce on matters relating to the U.S. manufacturing sector, to act as a liaison among the stakeholders represented by the membership and to provide a forum for those stakeholders on current and emerging issues in the manufacturing sector. The Council's membership shall reflect the diversity of American manufacturing by representing a balanced cross-section of the U.S. manufacturing industry in terms of industry sectors, geographic locations, demographics, and company size, particularly seeking the representation of small- and medium-sized enterprises. Based on the diversity of the manufacturing industry currently represented on the Council for this charter term, the Department particularly is encouraging applicants from the high-tech or bio-tech manufacturing sectors. Additional factors which may be considered in the selection of this Council member includes the candidate's proven experience in promoting, developing and marketing programs in support of manufacturing industries, job creation in the manufacturing sector, or the candidate's proven abilities to manage manufacturing organizations. Given the duties and objectives of the Council, the Department particularly seeks applicants who are active manufacturing executives (Chief Executive Officer, President, or a comparable level of responsibility) that are leaders within their local manufacturing communities and industries.

Each Council member serves as the representative of a U.S. entity in the manufacturing sector. For the purposes of eligibility, a U.S. entity is defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

The appointment to the Council will be made by the Secretary of Commerce. All Council members serve at the discretion of the Secretary of Commerce. Council members shall serve in a representative capacity, representing the views and interests of their particular subsector within the manufacturing sector. Council members are not Special Government Employees.

Council members receive no compensation for their participation in Council activities. Members participating in Council meetings and events are responsible for their travel, living and other personal expenses. Meetings are held regularly and not less than annually, usually in Washington, DC. Members are required to attend a majority of the Council's meetings. The current Council met initially on October 14, 2010 in Washington, DC. The next meeting is scheduled to take place in January 2011.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration. A sponsor letter from the applicant on his or her entity's letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's manufacturing-related experience, including any manufacturing trade policy experience. The applicant's personal resume. An affirmative statement that the applicant meets all eligibility criteria.

2. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended. An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that, if appointed, the applicant will not be allowed to continue to serve as a Council member if the applicant becomes a federally registered lobbyist. Information regarding the control of the entity to be represented, including the governing structure and stock holdings, as appropriate, signifying compliance with the criteria set forth above.

3. The entity's size and ownership, product or service line and major markets in which the entity operates. Please include all relevant contact information such as mailing address, fax, e-mail, phone number, and support staff information where relevant.

Dated: November 18, 2010.

**Jennifer Pilat,**

*Executive Secretary, The Manufacturing Council.*

[FR Doc. 2010–29505 Filed 11–22–10; 8:45 am]

**BILLING CODE 3510–DR–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 75, No. 219, Monday, November 15, 2010, page 69640.

**ANNOUNCED TIME AND DATE OF MEETING:** 9 a.m.–12 Noon, Wednesday November 17, 2010.

**CHANGES TO MEETING:** Meeting Rescheduled to 9 a.m.–12 Noon, Wednesday November 24, 2010.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: November 17, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–29597 Filed 11–19–10; 11:15 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, November 24, 2010, 9 a.m.–12 Noon.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public.

### Matter To Be Considered

*Decisional Matter:* Publically Available Consumer Product Safety Information Database—Final Rule.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 17, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–29598 Filed 11–19–10; 11:15 am]

**BILLING CODE 6355–01–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed implementation of AmeriCorps National Civilian Community Corp's NCCC Sponsor Survey. This survey was developed to support NCCC performance measurement for use in program development, funding, and evaluation. The survey instrument will be completed by NCCC project sponsors following completion of each NCCC project. Completion of this information collection is not required to be considered for or obtain grant funding support from AmeriCorps NCCC.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 24, 2011.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service National Civilian Community Corps; Attention Colleen Clay, Assistant Director Projects and Partnerships, Room 9305; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3462, Attention: Colleen Clay, Assistant Director Projects and Partnerships.

(4) Electronically through *http://www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Colleen Clay, (202) 606–7561, or by e-mail at *cclay@cns.gov.*

**SUPPLEMENTARY INFORMATION:**

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

### Background

This NCCC Sponsor Survey was developed to evaluate the program's performance impact on sponsoring organizations and communities. Specifically, NCCC has been asked to develop a set of measures that capture the immediate and long-term outcomes of the NCCC program on the organizations and communities it serves. In order to achieve this goal, NCCC has developed a set of five performance measurement instruments corresponding to the most common service projects requested by the organizations that sponsor NCCC teams in their community. One of these measures, Successful Service Intervention, is universal to all projects, and measures the success of the NCCC team in completing the stated project goals of the project sponsor. The other four measures correspond to specific activities with volunteers or in disaster, housing, or environmental activities. The surveys will be administered electronically to all project sponsors after each project round is completed.

### Current Action

This is a new information collection request. The NCCC Sponsor Survey consists of a menu of five performance surveys of approximately 10 questions each. All sponsors will receive their survey as a single instrument. The individual survey will be generated based on the project type and applicability of each survey to the specific project. Each sponsor survey will begin with the Successful Service Intervention survey, and include one or more of the other four surveys depending on project type. It is estimated that an average survey will consist of two to three of the survey sections. No survey will include all five sections.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* NCCC Sponsor Survey.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* The NCCC sponsor survey will be administered to the project sponsor for any NCCC service project. These sponsors apply to receive a 10-person NCCC team for a period of six–eight weeks to implement local service projects. There are approximately 165 projects in each of four project rounds per year. The project sponsors are uniquely able to provide the information sought in the NCCC Sponsor Survey.

*Total Respondents:* Based on the number of projects completed last fiscal year, NCCC expects to administer 660 surveys each fiscal year. These may not be unique responders as many sponsors receive teams on a rotating basis and thus may complete the survey more than once per year. Assuming the distribution of project types remains constant, the number of survey sections completed by a given sponsor will be distributed as follows: One section—54 respondents; two sections—228 respondents; three sections—270 respondents; four sections—108 respondents.

*Frequency:* Quarterly distribution. Each sponsor will complete only one survey per project.

*Average Time per Response:* One section—8 minutes.

Two sections—15 minutes.

Three sections—22 minutes.

Four sections—30 minutes.

*Estimated Total Burden Hours:* 217 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 17, 2010.

**Charles Davenport,**

*Director, Projects and Partnerships, National Civilian Community Corps.*

[FR Doc. 2010–29465 Filed 11–22–10; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Defense Policy Board

**AGENCY:** Defense Policy Board, DoD

**ACTION:** Notice.

**SUMMARY:** The Defense Policy Board will meet in closed session on December 13, 2010, from 0800 hrs until 1800 hrs and on December 14, 2010, from 0730 hrs until 1000 hrs at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Hansen, 703–571–9232.

Dated: November 17, 2010.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison Officer.*

[FR Doc. 2010–29452 Filed 11–22–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of the Final Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Brunswick, ME

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy (DoN) with the Federal Aviation Administration (FAA) acting as a cooperating agency, has prepared and filed the Final Environmental Impact Statement (EIS) evaluating the potential environmental consequences associated with the disposal and reuse of Naval Air Station (NAS) Brunswick, Maine. The DoN is required to close NAS Brunswick per Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended in 2005.

**FOR FURTHER INFORMATION CONTACT:** Director, BRAC Program Management Office Northeast, 4911 South Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, fax 215–897–4902, e-mail: *david.drozd@navy.mil*.

**SUPPLEMENTARY INFORMATION:** DoN acting as a lead agency with the FAA acting as a cooperating agency had prepared and filed the Notice of Intent for the EIS, published in the **Federal Register** on October 24, 2008, and the Draft EIS published in the **Federal Register** on May 5, 2010, in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Sections 4321–4345) and its implementing regulations (40 CFR Parts 1500–1508). The purpose of the proposed action is to dispose of NAS Brunswick, Maine in a manner consistent with the Brunswick Naval Air Station Reuse Master Plan as developed by the Brunswick Local Redevelopment Authority (BLRA) in December 2007. The DoN is required to close NAS Brunswick, Maine in accordance with Public Law 101–510, the Defense Base closure and Realignment Act of 1990, as amended in 2005. NAS Brunswick must be closed on or before September 15, 2011. This EIS has indentified and considered two alternatives for the disposal and reuse of NAS Brunswick, and the no-action alternative.

Alternative 1 includes the disposal of NAS Brunswick and its outlying properties by the DoN and its reuse in a manner consistent with the Brunswick Naval Air Station Reuse Master Plan. This alternative would maintain the existing airfield for private aviation purposes. It is anticipated that full build-out of the Plan would be implemented over a 20-year period. The Brunswick Naval Air Station Reuse Master Plan calls for the development of approximately 1,630 acres (51%) of the total base property. In addition, approximately 1,570 acres (49%) of the base would be dedicated to a variety of active and passive land uses, including recreation, open space, and natural areas. The plan reuses the existing airfield and its supporting infrastructure, provides a mix of land use types and densities, and preserves open space and natural areas. The DoN has recognized Alternative 1 as the preferred alternative.

Alternative 2 includes the disposal of NAS Brunswick and its outlying properties by the DoN and its reuse in a manner that features a higher density of residential and community mixed-use development and does not include reuse of the airfield. Similar to Alternative 1, this alternative includes a mix of land use types, preserves open space and natural areas. It is anticipated that full build-out of the high-density scenario would be implemented over a 20-year period. Under Alternative 2 there would be development of approximately 1,580 acres (49%) of the total base property. In addition, approximately 1,620 acres (51%) of the base would be dedicated to a variety of active and passive land uses, including recreation, open space, and natural areas. Although this alternative would have less developable acres than Alternative 1, the density of residential and community mixed-uses would be higher.

Alternative 3 is required by NEPA and evaluates the impacts at NAS Brunswick in the event that the property is not disposed. Under this alternative, existing mission and support operations would be relocated; however, the installation would be retained by the U.S. government in caretaker status. No reuse or redevelopment would occur at the facility. The Final EIS addresses environmental impacts of each alternative pertaining to the disposal and reuse of the NAS Brunswick property.

The Final EIS addresses any potential environmental impacts under each alternative associated with: water resources; air quality; biological resources; soils, topography, and geology; land use; noise exposure levels; socioeconomic resources; community facilities; transportation; environmental management; infrastructure; and cultural resources. The analyses includes direct and indirect impacts, and accounts for cumulative impacts from other foreseen Federal, State, or local activities at and around NAS Brunswick. The Final EIS has been distributed to various Federal, State, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Final EIS have been distributed to the following libraries and publicly accessible facilities for public review:

1. Curtis Memorial Library, 23 Pleasant Street, Brunswick, ME 04011–2261.

2. Town of Brunswick—Department of Planning and Development. 28 Federal Street. Brunswick, ME 04011.
3. Topsham Public Library, 25 Foreside Road, Topsham, ME 04086–1832.

An electronic copy of the Final EIS is available for public viewing at *http://www.bracpmo.navy.mil/*. Federal, State, and local agencies, as well as interested parties, are invited to review this Final EIS. Comments can be submitted in writing or e-mailed to: Director, BRAC Program Management Office (PMO) Northeast, 4911 South Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, fax 215–897–4902, e-mail: *david.drozd@navy.mil*.

Dated: November 16, 2010.

**D. J. Werner,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2010–29460 Filed 11–22–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Independent Panel To Review the Judge Advocate Requirements of the Department of the Navy

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Independent Panel to Review the Judge Advocate Requirements of the Department of the Navy (DoN) (hereinafter referred to as the Panel) will hold an open meeting. The Panel will meet in order to conduct deliberations and may hear witness testimony concerning the judge advocate requirements of the DoN. The session will be open to the public, subject to the availability of space. In keeping with the spirit of the Federal Advisory Committee Act (FACA), the Panel welcomes written comments concerning its work from the public at any time. Interested citizens are encouraged to attend the sessions.

**DATES:** The meeting will be held on Wednesday, December 8, 2010, from 1 p.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Residence Inn Arlington Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning these meetings or wishing to submit written comments may contact: Mr. Frank A. Putzu, Designated Federal Official, Department of the Navy, Office of the General Counsel, Naval Sea Systems Command, Office of Counsel, 1333 Isaac Hull Avenue, SE., Washington Navy Yard, Building 197, Room 4W–3153, Washington, DC 20376, via Telephone: 202–781–3097; Fax: 202–781–4628; or E-mail: *frank.putzu@navy.mil*.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of section 506 of Public Law 111–84, FACA of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, this is a public meeting and interested citizens are encouraged to attend the sessions.

Interested persons may submit a written statement for consideration by the Panel at any time prior to December 1, 2010.

Dated: November 16, 2010.

**D. J. Werner,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2010–29459 Filed 11–22–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for the autumn meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on March 18, 2010 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

*Date:* Friday, December 3, 2010.

*Time:* 8 a.m. to 3 p.m.

*Location:* 7161 Richardson Circle, Fort Benning, Georgia.

*Proposed Agenda:* The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on June 17, 2010, as well as receive other information appropriate to its interests.

**FOR FURTHER INFORMATION CONTACT:** WHINSEC Board of Visitors Secretariat at (703) 692–7421 or (913) 526–0377.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 by 5 p.m. EST on Tuesday, November 30, 2010, for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 9:30 to 9:45 a.m. during the meeting. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with his/her name, phone number, e-mail address, and the full text of his/her comments (no longer than two typewritten pages) by 5 p.m. EST on Tuesday, November 30, 2010. The first five requestors will be notified by 5 p.m. EST on Wednesday, December 1, 2010, of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available on a first-come, first-served basis.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2010–29470 Filed 11–22–10; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF EDUCATION

### Notice Announcing OMB Approval of Information Collections

**AGENCY:** Department of Education.

**ACTION:** Notice announcing OMB Approval of Information Collections.

**SUMMARY:** The Department of Education (Department) announces that the Office of Management and Budget (OMB) has approved certain collections of information, listed in the Supplementary Information below, following the Department's submission of requests for approvals under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This notice describes the information collections that have been approved, their OMB control numbers, and their current expiration dates.

**FOR FURTHER INFORMATION CONTACT:** For the Talent Search Program: Geraldine Smith, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–7020. Telephone: (202) 502–7543 or via the Internet at *Geraldine.Smith@ed.gov*.

For the Training Program for Federal TRIO Programs: Suzanne Ulmer, U.S.

Department of Education, 1990 K Street, NW., Room 7092, Washington, DC 20006–7092. Telephone: (202) 502–7789 or via the Internet at *Suzanne.Ulmer@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 this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to any of the contact people listed in this section.

**SUPPLEMENTARY INFORMATION:** The PRA and its implementing regulations require Federal agencies to display OMB control numbers and inform respondents of their legal significance after OMB has approved an agency's information collections. In accordance with those requirements, the Department notifies the public that the following information collections have been approved (or re-approved) by OMB following the Department's submission of an information collection request (ICR):

- OMB Control No. 1840–0814, Application for Grants under the Training Program for Federal TRIO Programs. The expiration date for this information collection is June 30, 2013.
- OMB Control No. 1840–0818, Talent Search Grant Application. The expiration date for this collection is October 31, 2013.

### Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 17, 2010.

**Eduardo Ochoa,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 2010–29469 Filed 11–22–10; 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 January 24, 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: November 17, 2010.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services Office of Management.*

### Office of the Secretary

*Type of Review:* Extension.

*Title of Collection:* Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.

*OMB Control Number:* 1894–0004.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* As necessary.

*Affected Public:* State, Local, or Tribal Government, State Education Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 1.

*Total Estimated Number of Annual Burden Hours:* 1.

*Abstract:* This information collection clearance request seeks an extension of approval for an established expedited process which permits U.S. Department of Education (ED) program offices to make selection criteria substitutions under the Education Department General Administrative Regulations (EDGAR) grant application without having to submit to OMB a previously cleared application package for another review. Usage of the streamlined process for EDGAR approved grant applications, establishes a process for programs to submit an abbreviated list of items for an expedited streamlined approval process by OMB. Many discretionary grant programs in ED use the generic application package cleared under OMB #1894–0006 which allows programs to pick and choose the selection criteria for their grant competitions from among the general EDGAR selection criteria shown at 34 CFR 75.210. The remaining discretionary grant programs use program-specific application packages, cleared by OMB on a case-by-case basis, that require applicants to address specific selection criteria unique to the program, usually derived from program legislation or regulation. During the three-year period for which its specific application package is cleared, a program might need to substitute one or more of the EDGAR generic selection criteria, mentioned above, for one or more of the program-specific criteria contained in the package originally cleared by OMB. These substitutions generally result in a minor alteration in the burden hours imposed by the collection. Using an already approved

application package for such actions reduces burden on the public best reaching the Departments goal of administering application competitions in a timely and efficient manner.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4449. 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. 2010–29532 Filed 11–22–10; 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 January 24, 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: November 17, 2010.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* New.

*Title of Collection:* National Educational Study of Transition.

*OMB Control Number:* Pending.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Once.

*Affected Public:* Individuals or households; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 600.

*Total Estimated Number of Annual Burden Hours:* 20,025.

*Abstract:* To gauge progress in addressing the needs of youth with disabilities, the U.S. Department of Education is sponsoring a five-year longitudinal study focused on the educational and transitional experiences of youth between the ages of 13 and 21 in December 2011. The study focuses on three sets of research questions: What are the characteristics of youth with disabilities? What services and accommodations do they receive and what are their courses of study? What are their transitional experiences as they leave high school and their educational, social, and economic outcomes?

To shed light on the distinctive experiences of youth with disabilities the study will contrast them with those of youth without disabilities. The study will also compare the experiences of youth with disabilities with those of two previous cohorts of youth with similar disabilities, providing information on progress in addressing the needs of these youth.

Districts and youth will be randomly selected to ensure that they are nationally representative. The study sample will include approximately 300 school districts and 15,000 students. Phase I data collection will occur in spring 2012 and spring 2014, when sample members will be ages 13–21 and 15–23, respectively. The study will collect data from parents, youth, principal teachers, and student school records.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4454. 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. 2010–29530 Filed 11–22–10; 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 January 24, 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: November 18, 2010.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

## Federal Student Aid

*Type of Review:* Revision.

*Title of Collection:* Federal Perkins Loan Program and General Provision Regulations.

*OMB Control Number:* 1845–0019.

*Agency Form Number(s):* N/A.

*Frequency of Responses:*

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 1,930.

*Total Estimated Number of Annual Burden Hours:* 133,520.

*Abstract:* Under the Federal Perkins Loan Program regulations, the information collected, recorded, and/or disclosed will continue to be used as necessary to provide for the making and servicing of Perkins Loans. If the Department did not require the collection, recordation, and/or disclosure of information as specified in the Perkins regulations, the processing of Perkins Loans would not be possible.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4455. 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. 2010–29529 Filed 11–22–10; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, December 8, 2010, 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* The main meeting presentation will be on issues related to the Focused Feasibility Study and Proposed Plan for Zone 1 at East Tennessee Technology Park.

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on November 18, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–29531 Filed 11–22–10; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### DOE/NSF Nuclear Science Advisory Committee

**AGENCY:** Department of Energy, Office of Science.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, December 8, 2010, 9 a.m.–4 p.m.

**ADDRESSES:** Holiday Inn National Airport, 2650 Jefferson Davis Highway, Arlington, Virginia 22202, 703–684–7200.

**FOR FURTHER INFORMATION CONTACT:** Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; *Telephone:* 301–903–0536.

**SUPPLEMENTARY INFORMATION:** *Purpose of Meeting:* To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

*Tentative Agenda:* Agenda will include discussions of the following:

Wednesday, December 8, 2010:

- Perspectives from Department of Energy and National Science Foundation
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Offices
- Technical Talk on FRIB
- Public Comment (10-minute rule)

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available on the U.S. Department of Energy's *Office of Nuclear Physics* Web site for viewing.

Issued in Washington, DC on November 18, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–29533 Filed 11–22–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2088–000]**

### Border Energy Electric Services, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 16, 2010.

This is a supplemental notice in the above-referenced proceeding, of Border Energy Electric Services, Inc.'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 December 6, 2010.**

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29437 Filed 11–22–10; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2108–000]**

### North Wind Turbines, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 16, 2010.

This is a supplemental notice in the above-referenced proceeding, of North Wind Turbines, 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 December 6, 2010.**

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29439 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2112–000]**

### Blue Creek Wind Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 16, 2010.

This is a supplemental notice in the above-referenced proceeding, of Blue Creek Wind Farm, 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 December 6, 2010.**

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29440 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2107–000]**

### North Community Turbines, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 16, 2010.

This is a supplemental notice in the above-referenced proceeding, of North Community Turbines, 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 December 6, 2010.**

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29438 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2020–000]**

### Domtar Paper Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 16, 2010.

This is a supplemental notice in the above-referenced proceeding, of Domtar Paper Company, 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 December 6, 2010.**

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(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29436 Filed 11–22–10; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No.13866–000]**

### Clean River Power 12, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2010.

On October 15, 2010, Clean River Power 12, 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 Ruth Creek Hydroelectric Project (Ruth Creek project) to be located on Ruth Creek in the vicinity of Glacier, in Whatcom 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 will consist of the following: (1) A 100-foot-long, 8-foot-high, reinforced concrete diversion weir on Ruth Creek; (2) a 45-foot-long, 15-foot-wide, 12-foot-high reinforced concrete intake structure adjacent to the weir with a trash rack, fish screen, and closure gate; (3) a 0.1-acre impoundment created by the diversion weir; (4) an 8,000-foot-long, 3.5-foot-diameter steel penstock from the intake structure to the powerhouse; (5) a 60-foot-long, 40-foot-wide reinforced concrete powerhouse containing one horizontal impulse turbine with a capacity of 2.5 megawatts (MW); (6) a 40-foot-long, concrete and rip rap-lined tailrace channel to return flows from the powerhouse to Ruth Creek; (7) a 4.16/55 kilovolt (kV) three stage step up transformer; (8) an approximately 2.2-mile-long, 55-kV transmission line which will tie into an undetermined interconnection; and (9) appurtenant facilities. The estimated annual generation of the Ruth Creek project would be 10.0 gigawatt-hours.

*Applicant Contact:* Ramya Swaminthan, Clean River Power 12, LLC, 33 Commercial St., Gloucester, MA 01930; phone: (978) 283–2822.

*FERC Contact:* Ryan Hansen, (202) 502–8074.

*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. 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–13866–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29442 Filed 11–22–10; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13867–000]**

### Clean River Power 11, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2010.

On October 15, 2010, Clean River Power 11, 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 Swamp Creek Hydroelectric Project (Swamp Creek project) to be located on Swamp Creek in the vicinity of Glacier, in Whatcom 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 will consist of the following: (1) A 50-foot-long, 8-foot-high reinforced concrete diversion weir on Swamp Creek; (2) a 45-foot-long, 15-foot-wide, 12-foot-high reinforced concrete intake structure adjacent to the weir with a trash rack, fish screen, and closure gate; (3) a 0.15-acre impoundment created by the weir; (4) a 5,200-foot-long, 3-foot-diameter steel penstock from the intake structure to the powerhouse; (5) a 60-foot-long, 40-foot-wide reinforced concrete powerhouse containing one horizontal impulse turbine with a capacity of 3.5 megawatts (MW); (6) a 40-foot-long, concrete and rip-rap-lined tailrace channel to return flows to Swamp Creek; (7) a 4.6/55 kilovolt (kV) three stage step up transformer; (8) an approximately 6.75-mile-long, 55-kV transmission line which will tie into an undetermined interconnection; and (9) appurtenant facilities. The estimated annual generation of the Swamp Creek project would be 15.0 gigawatt-hours.

*Applicant Contact:* Ramya Swaminthan, Clean River Power 11, LLC, 33 Commercial St., Gloucester, MA 01930; phone: (978) 283–2822.

*FERC Contact:* Ryan Hansen, (202) 502–8074.

*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. 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–13867–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29443 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13865–000]**

### Clean River Power 14, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2010.

On October 15, 2010, Clean River Power 14, 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 Martin Creek Hydroelectric Project (Martin Creek project) to be located on Martin and Kelley Creeks in the vicinity of Grotto, in King 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 will consist of the following: (1) A 40-foot-long, 8-foot-high, reinforced concrete diversion weir on Martin Creek; (2) a 45-foot-long, 15-foot-wide, 12-foot-high reinforced concrete intake structure adjacent to the Martin Creek weir with a trash rack, fish screen, and closure gate; (3) a 0.15-acre impoundment created by the Martin Creek weir; (4) a 1,100-foot-long, 3.5-foot-diameter steel penstock from the Martin Creek intake structure; (5) a 30-foot-long, 6-foot-high reinforced concrete diversion weir on Kelley Creek; (6) a 30-foot-long, 10-foot-wide, 12-foot-high reinforced concrete intake structure adjacent to the Kelley Creek weir with a trash rack, fish screen, and closure gate; (7) an approximately 0.1-acre impoundment created by the Kelley Creek weir; (8) a 800-foot-long, 3-foot-diameter steel penstock from the Kelley Creek intake structure; (9) a 9,900-foot-long, 4-foot-diameter steel penstock from the connection of the Martin and Kelley Creek penstocks to the powerhouse; (10) a 60-foot-long, 40-foot-wide reinforced concrete powerhouse containing one vertical impulse turbine with a capacity of 6.3 megawatts (MW); (11) a 40-foot-long, concrete and rip rap-lined tailrace channel to return flows from the powerhouse to Martin Creek; (12) a 7.2/115 kilovolt (kV) three stage step up transformer; (13) an approximately 7.3-mile-long, 115 kV transmission line which will tie into an undetermined interconnection; and (14) appurtenant facilities. The estimated annual generation of the Martin Creek project would be 25.0 gigawatt-hours.

*Applicant Contact:* Ramya Swaminthan, Clean River Power 14, LLC, 33 Commercial St., Gloucester, MA 01930; phone: (978) 283–2822.

*FERC Contact:* Ryan Hansen, (202) 502–8074.

*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. 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–13865–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29441 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13868–000]**

### Qualified Hydro 33, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2010.

On October 15, 2010, Qualified Hydro 33, 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 Crooked Creek Dam Hydroelectric Project to be located on Crooked Creek near Ford City, in Armstrong County, Pennsylvania. 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 will consist of the following: (1) One vertical Kaplan turbine-generator with a capacity of 2 megawatts; (2) a 100-foot-long steel liner and a bifurcated penstock leading to the powerhouse; (3) a 40-foot by 50-foot concrete powerhouse; (4) a new 2 MVA substation adjacent to the powerhouse; (5) a 2,750-foot-long transmission line; and (6) appurtenant facilities. The estimated annual generation of the Crooked Creek Dam Hydroelectric Project would be 10,000 megawatt-hours.

*Applicant Contact:* Ramya Swaminathan, Qualified Hydro 33, LLC, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 283–2822.

*FERC Contact:* Allyson Conner, (202) 502–6082.

*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;* call toll-free at (866) 208–3676; or for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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–13868–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29444 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL ENERGY REGULATORY COMMISSION

**Project No. 13874–000**

### Clean River Power 15, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2010.

On October 22, 2010, Clean River Power 15, 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 Wailua River Hydroelectric Project (Wailua project) to be located in 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 will consist of the following: (1) A 503-foot-long, 23-foot-high earth-filled, roller-compacted-concrete dam creating a 35-acre reservoir with a storage capacity of approximately 430 acre-feet; (2) a 40-foot-wide, 20-foot-high intake structure constructed on the left side of the dam, with a trash rack, fish screens, and a closure gate; (3) a 4,800-foot-long, 7-foot-diameter steel penstock; (4) a 60-foot-long, 50-foot-wide powerhouse containing one 1.8-megawatt (MW) and one 4.8–MW Francis-type turbine; (5) a 50-foot-long, concrete and rip rap-lined tailrace channel to return flows from the powerhouse to the Wailua River; (6) a switchyard containing a three-phase step-up transformer; (7) an approximately 1.92-mile-long, 25-kilovolt transmission line extending from the switchyard to the Lydgate substation; and (8) appurtenant facilities. The estimated annual generation of the Wailua project would be 20.7 gigawatt-hours.

*Applicant Contact:* Ramya Swaminathan, Clean River Power 15, LLC, 33 Commercial Street, Gloucester, MA 01930; 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. 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–13874–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–29445 Filed 11–22–10; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–RCRA–2010–0512, FRL- 9230–5]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Land Disposal Restrictions (Renewal), EPA ICR Number 1442.21, OMB Control Number 2050–0085

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 23, 2010.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2010–0512, to (1) EPA, either online using www.regulations.gov (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; e-mail address: *vyas.peggy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2010 (75 FR 39248), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No EPA–HQ–RCRA–2010–0512, which is available for online viewing at www.regulations.gov, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* Land Disposal Restrictions (Renewal).

*ICR numbers:* EPA ICR No. 1422.21, OMB Control No. 2050–0085.

*ICR Status:* This ICR is scheduled to expire on November 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the Code of Federal Regulations (CFR) Title 40, Part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

This ICR incorporates the ICR for the LDR No-Migration Variances (OMB Control Number 2050–0062).

*Burden Statement:* The annual reporting and recordkeeping burden for this ICR is approximately 6.21 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are private sector and State, Local, or Tribal governments.

*Estimated Number of Respondents:* 194,560.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 1,208,382.

*Estimated Total Annual Cost:* $162,092,988, includes $64,195,885 annualized labor costs and $97,897,103 annualized capital or O&M costs.

*Changes in the Estimates:* There is an increase of 42,045 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the addition of the LDR "No-Migration" Variance universe and revised estimates for the time required to respond.

Dated: November 17, 2010.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2010–29491 Filed 11–22–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9230–1]**

## Clean Water Act Section 303(d): Availability of List Decisions Correction

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

**ACTION:** Correction: Notice of Availability.

**SUMMARY:** This action corrects a **Federal Register** notice that published on November 9, 2010 at 75 FR 68783 announcing the availability of EPA decisions identifying water quality limited segments and associated pollutants in California to be listed pursuant to Clean Water Act section 303(d)(2), and requests public comment. This announcement corrects the previously published decision date and public comment deadline. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On November 12, 2010 EPA approved California's 2008–2010 submitted 303(d) list of impaired waters and associated pollutants and disapproved California's decisions not to list several water quality limited segments as impaired and additional associated pollutants for several others. EPA identified these additional water bodies and pollutants for inclusion on the State's 2008–2010 section 303(d) list. The waterbodies and associated pollutants are identified in Table 3 of the decision document available at the Web site link provided below.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to California's 2008–2010 section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments received, and may revise its decision if appropriate. EPA solicits public comment only on the additional waters and associated pollutants for inclusion on California's 2008–2010 Section 303(d) list.

**DATES:** Comments must be submitted to EPA on or before December 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** Comments on the proposed decisions should be sent to Valentina Cabrera Stagno or Dave Guiliano, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3434 or (415) 947–4133, facsimile (415) 947–3537, e-mail *cabrera-stagno.valentina@epa.gov* or *guiliano.dave@epa.gov.* Oral comments will not be considered. Material concerning California's 303(d) list which explain the rationale for EPA's decisions are available on EPA Region IX's Web site at *http://www.epa.gov/region9/water/tmdl/california.html* or by writing or calling Valentina Cabrera Stagno or Dave Guiliano. Underlying documentation comprising the record for these decisions is available for public inspection at the above address.

Dated: November 12, 2010.

**Alexis Strauss,**

*Director, Water Division, Region IX.*

[FR Doc. 2010–29486 Filed 11–22–10; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK OF THE U.S.

**[Public Notice 2010–0031]**

## Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Submission for OMB Review and Comments Request.

*Form Title:* Report of Premiums Payable for Financial Institutions Only (EIB 92–30).

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Report of Premiums Payable for Financial Institutions Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

The Export-Import Bank has made changes to incorporate additional flexibility in identifying eligible U.S. content, as well as adding an additional report (the Content Report) for use only in those cases where the company chooses to make use of some aspects of the additional flexibility. Customers who do not meet the eligibility requirements for the additional flexibility or who chose only to make use of the flexibility in the percentage of U.S. content do not need to complete the Content Report. In addition to the changes to reflect the additional content flexibility, we also deleted the option of "Ex-Im Bank Sole Risk" as an obligor type; added the option "CAD or SDDP" to the terms; deleted the "Sight Payments (non-letter of credit) from the terms, and further broke out the frequency of repayment terms to include: 1–30 Days, 31–60 Days, 61–90 Days, and 91–120 Days.

**DATES:** Comments should be received on or before December 23, 2010 to be assured of consideration.

**ADDRESS:** Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 attn: OMB 3048–0021.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 92–30. Report of Premiums Payable for Financial Institutions Only.

*OMB Number:* 3048–0021.

*Type of Review:* Regular.

*Need and Use:* The information collected enables Ex-Im Bank to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.

*Affected Public:* This form affects entities involved in the export of U.S goods and services.

*Annual Number of Respondents:* 150.

*Estimated Time per Respondent:* 20 minutes.

*Government Annual Burden Hours:* 600 hours.

*Frequency of Reporting or Use:* Monthly.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2010–29466 Filed 11–22–10; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK OF THE U.S.

**[Public Notice 2010–0056]**

### Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Submission for OMB Review and Comments Request.

*Form Title:* Report of Premiums Payable for Exporters Only (EIB 92–29).

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Report of Premiums Payable for Exporters Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

The Export-Import Bank has made changes to incorporate additional flexibility in identifying eligible U.S. content, as well as adding an additional report (the Content Report) for use only in those cases where the company chooses to make use of some aspects of the additional flexibility. Customers who do not meet the eligibility requirements for the additional flexibility or who chose only to make use of the flexibility in the percentage of U.S. content do not need to complete the Content Report. In addition to the changes to reflect the additional content flexibility, we also deleted the option of "Ex-Im Bank Sole Risk" as an obligor type; added the option "CAD or SDDP" to the terms; deleted the "Sight Payments (non-letter of credit) from the terms, and further broke out the frequency of repayment terms to include: 1–30 Days, 31–60 Days, 61–90 Days, and 91–120 Days.

**DATES:** Comments should be received on or before December 23, 2010 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 attn: OMB 3048–0017.

**SUPPLEMENTARY INFORMATION:** *Titles and Form Number:* EIB 92–29. Report of Premiums Payable for Exporters Only.

*OMB Number:* 3048–0017.

*Type of Review:* Regular.

*Need and Use:* The information collected enables Ex-Im Bank to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.

*Affected Public:* This form affects entities involved in the export of U.S goods and services.

*Annual Number of Respondents:* 1,900.

*Estimated Time per Respondent:* 15 minutes.

*Government Annual Burden Hours:* 5,700 hours.

*Frequency of Reporting or Use:* Monthly.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2010–29467 Filed 11–22–10; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 16, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 24, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1104.

*Title:* Section 73.682(d), DTV Transmission and Program System and Information Protocol ("PSIP") Standards.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not for-profit institutions.

*Number of Respondents and Responses:* 1,812 respondents and 1,812 respondents.

*Estimated Hours per Response:* 0.50 hours.

*Frequency of Response:* Third Party Disclosure requirement; Weekly reporting requirement.

*Total Annual Burden:* 47,112 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits—the statutory authority for this collection is contained in Sections 309 and 337 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* Confidentiality is not required with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Section 73.682(d) of the Commission's rules incorporates by reference the Advanced Television Systems Committee, Inc. ("ATSC") Program System and Information Protocol ("PSIP") standard "A/65C." PSIP data is transmitted along with a TV broadcast station's digital signal and

provides viewers (via their DTV receivers) with information about the station and what is being broadcast, such as program information. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers (or viewers) of digital television ("DTV").

ATSC PSIP standard A/65C requires broadcasters to provide detailed programming information when transmitting their broadcast signal. This standard enhances consumers' viewing experience by providing detailed information about digital channels and programs, such as how to find a program's closed captions, multiple streams and V-chip information. This standard requires broadcasters to populate the Event Information Tables ("EITs") (or program guide) with accurate information about each event (or program) and to update the EIT if more accurate information becomes available. The previous ATSC PSIP standard A/65–B did not require broadcasters to provide such detailed programming information but only general information.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2010–29501 Filed 11–22–10; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 17, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 24, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1116.

*Title:* Submarine Cable Reporting.

*Form Nos.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 25 respondents; 50 responses.

*Estimated Time per Response:* 550 hours.

*Frequency of Response:* On occasion and annual reporting requirements.

*Obligation to Respond:* Voluntary.

*Total Annual Burden:* 27,500 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not routinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and the traffic that flows across the system.

The Commission is requesting that current submarine cable landing licensees voluntarily provide information regarding the system status and service restoration activities for the submarine cable systems and cable landing stations and information about the physical location, assets, and restoration plans for the submarine cable systems. There are currently 50 authorized submarine cable systems, many having multiple entities on the cable landing license. (There are four pending cable landing license applications, and we anticipate conditioning grant of those licenses on compliance with this information request.) The Commission expects to request this information from approximately 25 different entities because, in many cases, the same entity is a licensee for more than one submarine cable system. We planned on contacting the cable landing licensees as soon as we received emergency OMB approval for this information request, and will request that the licensees respond, at least on a preliminary basis, by May 1, 2008. This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purpose of providing situational awareness of submarine cable system performance as well as a greater understanding of potential physical threats to the submarine cable systems. The Commission has been working with the Assistant Director for National Security and Emergency Preparedness, at the Office of Science and Technology Policy (OSTP) on this collection on behalf of other Executive Branch agencies, at the direction of the President.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2010–29502 Filed 11–22–10; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 17, 2010

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before January 24, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0357.

*Title:* Section 63.701, Request for Designation as a Recognized Private Operating Agency (RPOA).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 10 respondents; 10 responses.

*Estimated Time per Response:* 5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 USC 154(j), 201, 214 and 403.

*Total Annual Burden:* 35 hours.

*Annual Cost Burden:* $13,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension after the 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission requests this information in order to make recommendations to the U.S. Department of State for granting recognized private operating agency (RPOA) status to requesting entities. The Commission does not require entities to request RPOA status. Rather, this is a voluntary application process for use by companies that believe that obtaining RPOA status will be beneficial in persuading foreign governments to allow them to conduct business abroad. RPOA status also permits companies to join the International Telecommunication Union's (ITU's) Telecommunications Sector, which is the standards-setting body of the ITU.

The information furnished in RPOA requests is collected pursuant to 47 CFR 63.701 of the Commission's rules. Entities submit these applications on a voluntary basis. The collection of information is a one-time collection for each respondent. Without this information collection, the Commission's policies and objectives for assisting unregulated providers of enhanced services to enter the market for international enhanced services would be thwarted.

*OMB Control No.:* 3060–0454.

*Title:* Regulation of International Accounting Rates.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 5 respondents; 41 responses.

*Estimated Time per Response:* 1–5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 303(r) and 309.

*Total Annual Burden:* 205 hours.

*Annual Cost Burden:* $2,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The information is used by Commission staff in carrying out its duties under the Communications Act of 1934, as amended. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. Additionally, the information collections are necessary to analyze market trends to determine whether amendment of the Commission's existing rules or proposals of new rules are necessary to promote effective competition and prevent anti-competitive behavior between American and foreign carriers. If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934, as amended. Furthermore, the Commission would lack sufficient information to determine whether new or modified rules are necessary to combat anti-competitive behavior between American and foreign carriers.

*OMB Control No.:* 3060–0962.

*Title:* Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-Band, and the Allocation of Additional Spectrum for Broadcast Satellite Use.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 5 respondents; 590 responses.

*Estimated Time per Response:* 1–4 hours.

*Frequency of Response:* On occasion and annual reporting requirements; third party disclosure requirement; and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 301, 303, 308, 309 and 310.

*Total Annual Burden:* 590 hours.

*Annual Cost Burden:* $60,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The collection of this information is necessary for the Commission to determine whether licensees are complying with the Commission's rules applicable to satellite earth stations and to deploy new satellite systems. If the collection were not conducted, the Commission would not be able to verify whether NGSO/FSS satellite earth stations in the Ka-band were operating in accordance with Commission rules. Additionally, spectrum would not be used most efficiently and would, therefore, result in hindering the provision of new or enhanced telecommunications services to the public.

*OMB Control No.:* 3060–1013.

*Title:* Mitigation of Orbital Debris.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 53 respondents; 53 responses.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* Annual reporting requirement and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 301, 303, 308, 309 and 310.

*Total Annual Burden:* 159 hours.

*Annual Cost Burden:* $74,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Disclosure of debris mitigation plans as part of requests for FCC authorization will help preserve the United States' continued affordable access to space, the continued provision of reliable U.S. space-based services—including communications and remote sensing satellite services for the U.S. commercial, government, and homeland security purposes—as well as the continued safety of persons and property in space and on the surface of the Earth. Disclosure of debris mitigation plans will allow the Commission and potentially affected third parties to evaluate satellite operators' debris mitigation plans prior to the issuance of a FCC approval for communications activities in space. Disclosure may also aid in the wider dissemination of information concerning debris mitigation techniques and may provide a base-line of information that will aid in analyzing and refining those techniques. Without disclosure of orbital debris mitigation plans as part of applications for FCC authority, the Commission would be denied any opportunity to ascertain whether satellite operators are in fact considering and adopting reasonable debris mitigation practices, which could result in an increase in orbital debris and a decrease in the utility of space for communications and other uses. Furthermore, the effects of collisions involving orbital debris can be catastrophic and may cause significant damage to functional spacecraft or to persons or property on the surface of the Earth, if the debris re-enters the Earth's atmosphere in an uncontrolled manner.

*OMB Control No.:* 3060–1028.

*Title:* International Signaling Point Code (ISPC).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 20 respondents; 20 responses.

*Estimated Time per Response:* .166 hours (10 minutes).

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 214, 219–220, 303(r), and 403.

*Total Annual Burden:* 7 hours.

*Annual Cost Burden:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

An International Signaling Point Code (ISPC) is a unique, seven-digit code synonymously used to identify the signaling network of each international carrier. The ISPC has a unique format that is used at the international level for signaling message routing and identification of signaling points. The Commission receives ISPC applications from international carriers on the electronic, Internet-based International Bureau Filing System (IBFS). After receipt of the ISPC application, the Commission assigns the ISPC code to each applicant (international carrier) free of charge on a first-come, first-served basis. The collection of this information is required to assign a unique identification code to each international carrier and to facilitate communication among international carriers by their use of the ISPC code on the shared signaling network. The Commission informs the International Telecommunications Union (ITU) of its assignment of ISPCs to international carriers on an ongoing basis.

*OMB Control No.:* 3060–1029.

*Title:* Data Network Identification Code (DNIC).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 5 respondents; 5 responses.

*Estimated Time per Response:* .25 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collections is contained in 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 214, 219, 220, 303(r), 309 and 403.

*Total Annual Burden:* 1 hour.

*Annual Cost Burden:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

A Data Network Identification Code (DNIC) is a unique, four-digit number designed to provide discrete identification of individual public data networks. The DNIC is intended to identify and permit automated switching of data traffic to particular networks. The FCC grants the DNICs to operators of public data networks on an international protocol. The operators of public data networks file an application for a DNIC on the Internet-based, International Bureau Filing System (IBFS). The DNIC is obtained free of charge on a one-time only basis unless there is a change in ownership or the owner chooses to relinquish the code to the FCC. The Commission's lack of an assignment of DNICs to operators of public data networks would result in technical problems that prevent the identification and automated switching of data traffic to particular networks.

*OMB Control No.:* 3060–0751.

*Title:* Contracts and Concessions—47 CFR 43.51.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents/Responses:* 10 respondents; 10 responses.

*Estimated Time per Response:* 8 hours.

*Frequency of Response:* Annual reporting requirement; on occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 211, 219 and 220.

*Total Annual Burden:* 80 hours.

*Annual Cost Burden:* None.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission is proposing that the title of the information collection be changed from "Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network" to "Contracts and Concessions—47 CFR 43.51" in order to more accurately describe the purpose and content of the information collection under OMB Control No. 3060–0751.

The Commission has determined that the authorized resale of international private lines interconnected to the U.S. public switched network would tend to divert international message telephone service (IMTS) traffic from the settlements process and increase the U.S. net settlements deficit. The information will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on the Commission's international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor the unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

*OMB Control No.:* 3060–0768.

*Title:* 28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Services and for the Fixed Satellite Service.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents/Responses:* 15 respondents; 60 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirement; third-party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303(r) and 309(j).

*Total Annual Burden:* 90 hours.

*Annual Cost Burden:* $24,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* Applicants and licensees are required to provide the requested information to the Commission and other third parties whenever they seek authority to provide service in the 28 GHz band. If this information is compiled less frequently or not filed in conjunction with the Commission's rules, applicants and licensees will not obtain the authorization necessary to provide telecommunications services. Furthermore, the Commission would not be able to carry out its mandate as required by statute.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2010–29499 Filed 11–22–10; 8:45 am]

BILLING CODE 6712–01–P

## 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 September 13, 2010 (75 FR 55578), the FDIC solicited public comment for a 60-day period on renewal of the following collection: Application Pursuant to Section 19 of the Federal Deposit Insurance Act (OMB No. 3064–0018). 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 December 23, 2010.

**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. 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 collection of information:*

*Title:* Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

*OMB Number:* 3064–0018.

*Form Number:* FDIC 6710/07.

*Frequency of Response:* On occasion.

*Affected Public:* Insured financial institutions and individual applicants.

*Estimated Number of Respondents:* 24.

*Estimated Time per Response:* 16 hours.

*Total Annual Burden:* 384 hours.

*General Description of Collection:* Section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829, requires the FDIC's consent prior to any participation in the affairs of an insured depository institution by a person who has been convicted of crimes involving dishonesty or breach of trust. To obtain that consent, an insured depository institution must submit an application to the FDIC for approval on Form FDIC 6710/07.

**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 17th day of November 2010.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2010–29400 Filed 11–22–10; 8:45 am]

BILLING CODE 6741–01–P

## 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 of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it is submitting to the Office of Management and Budget (OMB) a request for OMB review and approval of revisions to the survey collection instrument for its second National Survey of Unbanked and Underbanked Households ("Household Survey"), currently approved under OMB Control No. 3064–0167, scheduled to be conducted in partnership with the U.S. Census Bureau as a supplement to its June 2011 Current Population Survey ("CPS"). The collection is a key component of the FDIC's efforts to comply with a Congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 ("Reform Act") (Pub. L. 109–173), which calls for the FDIC to conduct ongoing surveys "on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system." Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including: (1) "What cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts"; and (2) "what is a fair estimate of the size and worth of the 'unbanked' market in the United States." The household survey is designed to address these factors and provide a factual basis on the proportions of unbanked households. Such a factual basis is necessary to adequately assess banks' efforts to serve these households as required by the statutory mandate.

To satisfy the Congressional mandate, the FDIC designed two complementary surveys: A survey of FDIC-insured depository institutions and a survey of households. The first survey of FDIC-insured depository institutions, aimed at collecting data on their efforts to serve underbanked, as well as unbanked, populations (underbanked populations include individuals who have an account with an insured depository but also rely on non-bank alternative financial service providers for transaction services or high cost credit products), was conducted in mid-2007, with the results released in February 2008. The first survey of unbanked and underbanked households was conducted in January 2009 as a CPS supplement and the results were released to the public in December 2009. The household survey sought to estimate the proportions of unbanked and underbanked households in the U.S. and to identify the factors that inhibit the participation of these households in the mainstream banking system. The results of these ongoing surveys will help policymakers and bankers understand the issues and challenges underserved households perceive when deciding how and where to conduct financial transactions.

**DATES:** Comments must be submitted on or before December 23, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments on the collection of information entitled: National Unbanked and Underbanked Household Survey. Comments should refer to the name of the collection and may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, Room F–1064, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the 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.

A copy of the comments should 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, Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Interested members of the public may obtain a copy of the revised survey instrument and related instructions by clicking on the link for the *National Unbanked and Underbanked Household*

*Survey* on the following Web page: *http://www.fdic.gov/regulations/laws/federal/index.html.* Interested members of the public may also obtain additional information about the collection, including a paper copy of the proposed collection and related instructions, without charge, by contacting Leneta Gregorie at the address identified above, or by calling (202) 898–3719.

**SUPPLEMENTARY INFORMATION:** Proposal to seek OMB approval for the following new collection of information:

*Title:* National Unbanked and Underbanked Household Survey.

*OMB Number:* New collection.

*Frequency of Response:* Once.

*Affected Public:* U.S. Households.

*Estimated Number of Respondents:* 46,500.

*Average time per response:* 10 minutes (0.167 hours) per respondent.

*Estimated Total Annual Burden:* 0.167 hours × 46,500 respondents = 7,766 hours.

**General Description of Collection**

A mandate in section 7 of the Reform Act requires the FDIC to conduct ongoing surveys on efforts by banks to bring unbanked and underbanked individuals and families into the conventional finance system. Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including the size of the unbanked market in the United States and the cultural, language and identification issues as well as transaction costs that appear to most prevent unbanked individuals from establishing conventional accounts. To obtain this information, the FDIC partnered with the U.S. Census Bureau, which administered the Household Survey supplement ("FDIC Supplement") to about 86 percent of the households that participated in the January 2009 CPS. The FDIC supplement has yielded significant data on the extent and demographic characteristics of the population that is unbanked or underbanked, the use by this population of alternative financial services ("AFS"), and the reasons why some households do not make greater use of traditional banking services. The Household Survey was the first survey of its kind to be conducted at the national level. An executive summary of the results of the Household Survey, the full report, and the survey instrument can be accessed through the following link: *http://www.economicinclusion.gov/about_survey.html.*

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conduct of its second Household Survey as a supplement to the June 2011 CPS. However, prior to finalizing the survey instrument, the FDIC sought public comment on whether changes to the existing instrument were desirable and, if so, to what extent.

**Comment Discussion**

On April 19, 2010 (75 FR 20357), the FDIC issued a request for comment on possible revisions to the proposed National Survey of Unbanked and Underbanked Households. One comment was received from a nonprofit organization. The commenter offered a number of suggestions based on its own study of banked and unbanked groups in eight low-income neighborhoods in the City of Los Angeles. The suggestions fell into one of two categories: Suggestions on ways to enhance the quality, utility, and clarity of the information to be collected and suggestions on 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.

Included among ways to enhance the quality, utility, and clarity of the information were suggestions that the FDIC estimate the number of wage earners in a given household by asking how many householders earn income and how many of those earners have either a checking or savings account. The FDIC agrees that the survey would yield more useful data by inclusion of a question designed to obtain information on the banking status of each member of the household. Therefore, the revised FDIC supplement will gather information from all members of the household (16 years of age or older) about whether they have a checking or savings account, which will provide a basis for estimating the number of unbanked individuals. In addition, the CPS contains a vast amount of information for individual household members, including information about their employment status, number of jobs held, hours worked, and industry/occupation, which can be cross-referenced with the individual's banking status.

The commenter also suggested that the FDIC document the transaction medium by which household income is received (*e.g.,* cash, check, ACH, direct deposit, stored value card, etc.), savings behavior, and usage of AFS, with specific questions offered for gathering information on each topic. With regard to documenting form of income, the FDIC understands that there may be a high correlation between banking status and the form in which income is received and agrees that it would be useful to document the correlation at a national level. The FDIC further understands that there may be a correlation between banking status and savings behavior and agrees that it would be useful to document any such correlation at a national level. However, given constraints on the length of the FDIC supplement, the FDIC's primary focus is on gathering information about banking status and use of AFS products, consistent with its statutory mandate. Therefore, the FDIC is unable at this time to include general questions about the form in which income is received, use of direct deposit, and household financial behavior. However, the CPS does provide detailed information about labor force participation, including wage and salary income that could be combined with the FDIC supplement results to provide some of the recommended information. With respect to the commenter's suggestion that the FDIC modify AFS usage questions, the revised survey does include questions designed to gather information about the use of specific AFS products, both within the previous 12 months and the previous 30 days. In addition, respondents will be asked if they have every used certain AFS credit products, i.e., payday loans, pawn shop loans, refund anticipation loans, and rent-to-own agreements, and, if yes, whether they have used it during the previous 12 months.

Another suggestion to enhance the quality, utility, and clarity of the information to be collected was for the FDIC to document the lost opportunity of the unbanked by asking about the frequency and size of remittance transfers and whether respondents have recently filed income taxes, or requested the earned income tax credit. The revised survey instrument does include questions about household use of remittances, including the frequency with which nonbank remittance services are used and why. This information along with data on household use of other specific AFS products will measure services obtained from nonbank financial services providers. However, due to time and size constraints on the survey, the survey will not include questions on the size of remittance transfers, income tax filings, or requests for the earned income tax credit.

The commenter also suggested that the FDIC measure the subsets of the unbanked by asking questions designed to determine whether they were never banked, abandoned banking, or were expelled from banking. The FDIC

supplement does include questions about the previous banking status of unbanked households and why the previously banked became unbanked. One possible response is that the bank closed the account. Other responses include dissatisfaction with bank fees or services. The FDIC report on the 2009 Household Survey includes estimates of the number and share of unbanked households that were previously banked; how recently they were banked; and the reasons why they no longer have bank accounts.

The commenter's final recommendation for enhancing the quality, utility, and clarity of the information collection was that the FDIC measure the extent to which overdraft fees are a barrier to stable banking relationships by asking about the amount of overdraft fees incurred by the respondent in the preceding year and whether the respondent would like to be warned of potential overdrafts before they occur. The FDIC understands that overdraft fees may be viewed as a barrier to stable banking relationships, but constraints on the length of the survey preclude the addition of general questions on household bank overdraft activity, overdraft/NSF fees incurred by households, and the information provided to households by banks about overdraft policies and fees. Nevertheless, the FDIC supplement does include "high account fees" as a possible reason for not having a checking or savings account. In addition, the revised survey instrument will specifically ask households that have had accounts closed by their bank, whether the closure was due to the number of overdrafts or bounced checks.

With respect to ways to minimize burden, the commenter offered two suggestions: that the FDIC document technology and language divides by asking respondents about their comfort reading and writing in English, access to and comfort using computers, and cell phone capabilities to access e-mail, Internet, and other data online, and that the FDIC adjust its methodology and/or results to reflect the difficulty of counting the unbanked and underbanked using the current methodology. Regarding the suggestion to document technology and language divides, the FDIC agrees that it is important to be mindful of any language barriers and limitations on access to technology when developing policy interventions for certain populations. The CPS does include information about whether English is the primary language spoken at home, but it is not feasible to include in the FDIC supplement more general questions about household use of computers or cell phones or access to the Internet, given current constraints on the length of the survey. Regarding the suggestion to adjust methodology and/or results to account for those who are hard to count, the FDIC is confident in the reliability of its state-level estimates of the unbanked and underbanked for all states. The CPS sample is a scientifically designed sample of approximately 72,000 physical housing units from 824 sample areas that is designed to accurately measure demographic and labor force characteristics of the U.S. non-institutionalized civilian population that is 16 years old or older. The CPS samples housing units from lists of addresses obtained from the decennial census that are updated continuously for housing units built after the Census. Furthermore, the response rate for basic CPS is very high (about 92 percent). As an add-on to the CPS, the FDIC supplement incorporates the methodology used to gather monthly employment data for the U.S. population. In addition, the public release of the Household Survey data permits users to make statistical adjustments based on additional information available for a particular locality.

## Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate 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; and (d) ways to minimize the burden of the information collections 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 17th day of November, 2010.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2010–29417 Filed 11–22–10; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL RESERVE SYSTEM

## Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY:** *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Acting Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

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.

*Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:*

*Report title:* Domestic Finance Company Report of Consolidated Assets and Liabilities.

*Agency form number:* FR 2248.

*OMB control number:* 7100–0005.

*DATES: Effective Date:* December 31, 2010.

*Frequency:* Monthly, Quarterly, and Semi-annually.

*Reporters:* Domestic finance companies and mortgage companies.

*Estimated annual reporting hours:* 350 hours.

*Estimated average hours per response:* Monthly, 20 minutes; Quarterly, 30 minutes; Semi-annually, 10 minutes.

*Number of respondents:* 70.

*General description of report:* This information collection is authorized pursuant the Federal Reserve Act (12 U.S.C. 225(a)). Obligation to respond to this information collection is voluntary. Individual respondent data are

confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552).

*Abstract:* The FR 2248 is collected monthly as of the last calendar day of the month from a stratified sample of finance companies. Each monthly report collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), additional asset and liability items are collected to provide a full balance sheet. A supplemental section collects data on securitized assets. The data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), in the quarterly statistical release Flow of Funds Accounts of the United States (Z.1), and in the *Federal Reserve Bulletin* (Tables 1.51, 1.52, and 1.55).

*Current Actions:* On September 13, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 55579) requesting public comment for 60 days on the extension, with revision, of the Domestic Finance Company Report of Consolidated Assets and Liabilities. The comment period for this notice expired on November 12, 2010. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

*Final approval under OMB delegated authority of the implementation of the following survey:*

*Report title:* Survey of Finance Companies.

*Agency form number:* FR 3033s.

*OMB control number:* 7100–0277.

*Dates: Effective Date:* December 31, 2010.

*Frequency:* One-time.

*Reporters:* Finance companies and mortgage companies.

*Estimated annual reporting hours:* 2,700 hours.

*Estimated average hours per response:* 1.5 hours.

*Number of respondents:* 1,800.

*General description of report:* This information collection is authorized pursuant the Federal Reserve Act (12 U.S.C. 225a, 263, and 355–59).

Obligation to respond to this information collection is voluntary. Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552).

*Abstract:* This information collection is a two-stage survey of finance and mortgage companies. The first stage is a simple questionnaire (FR 3033p) that is sent to all known domestic finance and mortgage companies and that asks for information about each company's total net assets, areas of specialization, and other characteristics. From the questionnaire respondents, the Federal Reserve draws a stratified random sample of finance and mortgage companies for the second stage, the survey itself (FR 3033s). The survey requests detailed information from both sides of the respondents' balance sheets. The Federal Reserve Board initiates data collection and analysis, and staff at the Federal Reserve Banks follow up on data quality issues, collect data from late FR 3033s, and resolve other outstanding questions.

*Current Actions:* On September 13, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 55579) requesting public comment for 60 days on the implementation of the Survey of Finance Companies. The comment period for this notice expired on November 12, 2010. The Federal Reserve did not receive any comments. The survey will be conducted as proposed.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2010–29454 Filed 11–22–10; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Warburg Pincus Private Equity X, L.P.; Warburg Pincus X Partners, L.P.; Warburg Pincus X L.P.; Warburg Pincus & Co.; Warburg Pincus Partners, LLC Warburg Pincus X, LLC and Warburg Pincus LLC, all of New York, New York; to acquire voting shares of National Penn Bancshares, Inc., and thereby indirectly acquire voting shares of National Penn Bank, both of Boyertown, Pennsylvania, and The Christiana Bank and Trust Company, Greenville, Delaware.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. The House Family Control Group (which consists of Verlene H. House Revocable Trust, Verlene H. House as trustee; White River Bituminous, Inc.; Edward House; Howard House; Dianne Lamberth; Marcus Lamberth; Lauren Lamberth Patterson, all of Batesville, Arkansas; and Lance Lamberth, San Francisco, California), Batesville, Arkansas, to acquire voting shares of First Community Bancshares, Inc., and thereby indirectly acquire voting shares of First Community Bank of Batesville, both of Batesville, Arkansas.

Board of Governors of the Federal Reserve System, November 18, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–29490 Filed 11–22–10; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 2010.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. *Brookline Bancorp, Inc.,* Brookline, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First Ipswich Bancorp, and thereby acquire First National Bank of Ipswich, both of Ipswich, Massachusetts.

In connection with this application, Applicant also has applied to retain voting shares of Brookline Bank, Brookline, Massachusetts and thereby continue to operate a savings association, and Eastern Funding, LLC, New York, New York, which will continue to operate an equipment finance company, pursuant to sections 225.28(b)(1), (b)(3), and (b)(4)(ii), of Regulation Y.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *River Holding Company,* Stoddard, Wisconsin; to acquire 51 percent of the voting shares of Community Business Bancshares, Inc., and thereby indirectly acquire voting shares of Community Business Bank, both of Sauk City, Wisconsin.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Commercial Bancshares, Inc.,* El Campo, Texas; to become a bank holding company by acquiring 60 percent of the voting shares of El Campo Bancshares, Inc., and thereby indirectly acquire voting shares of Commercial State Bank, both of El Campo, Texas.

Board of Governors of the Federal Reserve System, November 18, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–29489 Filed 11–22–10; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 101 0142]**

## Universal Health Services, Inc. and Psychiatric Solutions, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 15, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Universal Health Services, File No. 101 0142" to facilitate the organization of comments. Please note that your comment—including your name and your State—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. * * *" as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following Web link: *https://ftcpublic.commentworks.com/ftc/psychsolutions* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link: *https://ftcpublic.commentworks.com/ftc/psychsolutions.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the "Universal Health Services, File No. 101 0142" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Field (202–326–2868), FTC Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 15, 2010), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

## Analysis of Agreement Containing Consent Order To Aid Public Comment

### I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Alan B. Miller and Universal Health Services, Inc. (collectively, "UHS") and Psychiatric Solutions, Inc. ("PSI"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from UHS's acquisition of PSI. Under the terms of the proposed Consent Agreement, UHS is required to divest four psychiatric facilities and eleven affiliated clinics operating in three local acute inpatient psychiatric care markets to acquirers who receive the approval of the Commission. The proposed Consent Agreement also requires UHS to divest all related assets and real property necessary to ensure that the buyer(s) of the divested facilities will be able to quickly and fully replicate the competition that would have otherwise been eliminated by the acquisition. Finally, UHS and PSI have agreed to an Order to Hold Separate and Maintain Assets ("Hold Separate Order") that requires UHS to maintain and hold separate the facilities to be divested pending their final divestiture pursuant to the Consent Agreement.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify the Consent Agreement, or make it final.

On May 16, 2010, UHS and PSI entered into a merger agreement under which UHS proposes to acquire all of the outstanding voting securities of PSI for approximately $2.0 billion in cash, and to assume approximately $1.1 billion of PSI debt. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by removing an actual, direct, and substantial competitor from three local markets for acute inpatient psychiatric care. The proposed Consent Agreement would remedy the alleged violations by requiring complete divestitures in each of the three markets. These divestitures will replace the competition that otherwise would be lost in these markets as a result of the proposed acquisition.

*The Parties*

UHS, headquartered in King of Prussia, Pennsylvania, owns or operates 25 general acute care hospitals and 102 behavioral health facilities located in 32 States, Washington, DC, and Puerto Rico. It is one of the nation's largest hospital management companies, with 2009 revenues totaling approximately $5.2 billion. In 2009, UHS's 102 behavioral health facilities generated approximately $1.3 billion in revenue (25% of total revenues) from nearly 8,000 licensed beds and over 2 million patient days.

PSI, headquartered in Franklin, Tennessee, operates 94 inpatient behavioral health facilities in 32 States, Puerto Rico, and the U.S. Virgin Islands. The 11,000 licensed beds at these facilities accounted for 2.8 million patient days in 2009. The company also manages the behavioral health programs for 109 general acute care hospitals owned by third parties. PSI's revenue for the twelve months ending December 31, 2009 was approximately $1.8 billion. Behavioral health facilities and residential treatment centers generated 93% of 2009 revenues and the contract management business accounted for the remaining 7%.

*Acute Inpatient Psychiatric Services*

UHS's proposed acquisition of PSI poses substantial antitrust concerns in the relevant product market of acute inpatient psychiatric services. Acute inpatient psychiatric services are those provided for the diagnosis, treatment, and care of patients deemed to be a threat to themselves or others or unable to perform basic life functions, due to an acute psychiatric condition.

The three acute inpatient psychiatric services markets are local in nature. Analysis of patient flow data and evidence gathered from market participants indicate that patients and their families prefer to find care close to home in order to facilitate visits or participation in family therapy. Also, emergency responders typically transport patients in acute psychiatric distress to the nearest emergency room for treatment or placement. The three acute inpatient psychiatric services markets affected by the proposed acquisition are: the State of Delaware; the Las Vegas, Nevada metropolitan statistical area; and the Commonwealth of Puerto Rico.

The proposed acquisition would dramatically increase market concentration in each of the relevant acute inpatient psychiatric markets. The markets already range from moderately to highly concentrated prior to the acquisition. In each market, the proposed acquisition would significantly increase market concentration and eliminate substantial, direct competition between two significant acute inpatient psychiatric care providers. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, an acquisition is presumed to enhance market power or facilitate its exercise if it increases the Herfindahl-Hirschman Index (AHHI@) by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The proposed acquisition far exceeds these thresholds: the post-acquisition HHIs range from 3916 to 4942, and HHI levels would increase by 1428 to 2610 points above pre-acquisition levels. The proposed acquisition also would result in UHS controlling approximately 60 percent or

more of the acute inpatient psychiatric beds in each of the affected markets.

The presumption of anticompetitive harm created by the steep increases in market concentration is further supported by evidence of the intense rivalry between UHS- and PSI-owned facilities that would be eliminated by the proposed acquisition. In each of the local markets, consumers have benefitted from the head-to-head competition in the form of lower health care costs, higher quality of care, and improved service offerings. Left unremedied, the proposed acquisition likely would cause anticompetitive harm by enabling UHS to profit by unilaterally raising the reimbursement rates negotiated with commercial health plans. These costs are ultimately passed on to consumers in the form of higher premiums, co-pays, and other out-of-pocket costs. The loss of competition also reduces UHS's incentive to improve quality and provide better service.

New entry is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. Among other entry barriers, regulatory requirements pose substantial barriers to entrants attempting to establish new psychiatric facilities or to expand their offerings in the relevant markets. In particular, Delaware and Puerto Rico require Certificates of Need in order to enter or significantly expand the number of beds provided in the market. The availability of suitable land, local zoning regulations, and Medicare and Medicaid certifications also impact significantly the ability of firms to enter or expand. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur in a timely manner in these markets.

*The Proposed Consent Agreement*

The proposed Consent Agreement wholly remedies the anticompetitive effects of the acquisition by requiring the divestiture of all of the PSI or UHS assets to a Commission-approved buyer (or buyers) within six months of the date the Consent Agreement becomes final in Delaware and Las Vegas, and within nine months in Puerto Rico. Specifically, the proposed Consent Agreement requires the divestiture of four facilities that provide acute inpatient psychiatric care, as well as related outpatient clinics, contracts, commercial trade names, and real property, in the three geographic markets. *See* Appendix A for a complete list of the divestiture assets. Each psychiatric facility and its associated clinics to be divested in Delaware and Puerto Rico is a stand-alone business, and includes all of the assets necessary for a Commission-approved buyer to independently and effectively operate each facility. The two facilities in Las Vegas are closely related and complementary businesses and were jointly managed within PSI; as such, the two facilities together constitute a stand-alone business, and include all of the assets necessary for a Commission-approved buyer to independently and effectively operate the business.

The proposed Consent Agreement contains several provisions designed to ensure that the divestitures are successful. First, the Commission will evaluate the suitability of possible purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is replicated by the required divestitures. If UHS fails to divest the assets within the required time period to a Commission-approved buyer, the Consent Agreement permits the Commission to appoint a trustee to divest the assets. Second, UHS is required to provide transitional services to the Commission-approved buyer. These services will facilitate a smooth transition of the assets to the acquirer, and ensure continued and uninterrupted operation of the assets during the transition. Third, the Consent Agreement requires UHS to remove any contractual impediments that may deter the current managers of the facilities to be divested from accepting offers of employment from any Commission-approved acquirer and to obtain all consents necessary to transfer the required assets. Finally, to ensure that the Commission will have an opportunity to review any future attempt by UHS to acquire any acute inpatient psychiatric services provider in any of the three geographic markets at issue, the proposed Consent Agreement contains a ten-year prior notice provision.

The Hold Separate Order requires the parties to maintain the viability of the divestiture assets as competitive operations until each facility is transferred to a Commission-approved buyer. Specifically, the parties must maintain the confidentiality of sensitive business information, and take all actions necessary to prevent the destruction or wasting of the divestiture assets. After UHS acquires PSI, the Hold Separate Order requires that UHS separately hold and maintain the divestiture assets and appoint a Hold Separate Manager to operate these assets pending their divestiture.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2010–29511 Filed 11–22–10; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Renewal of Charter for the Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. App), the U.S. Department of Health and Human Services is hereby announcing renewal of the charter for the Secretary's Advisory Committee on Human Research Protections (SACHRP).

**FOR FURTHER INFORMATION CONTACT:** Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; Telephone: (240) 453–6900; Fax: (240) 453–6909; e-mail address: *julia.gorey@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** SACHRP was established in October 2002. The Committee was established to enhance and expand the focus of the former National Human Research Protections Advisory Committee (NHRPAC), which was terminated in August 2002. SACHRP provides expert advice and recommendations to the Secretary, through the Assistant Secretary for Health, on the conduct of research involving human subjects with particular emphasis on special populations, such as neonates and children, prisoners, and the decisionally impaired; pregnant women, embryos, and fetuses; individuals and populations in international studies; populations in which there are individually identifiable samples, data, or information; and investigator conflicts of interest.

Since SACHRP was established, renewal of the Committee charter has been carried out at the appropriate intervals as stipulated by FACA. The previous Committee charter was scheduled to expire on October 1, 2010. On October 1, 2010, the Secretary of

Health and Human Services approved for the Committee charter to be renewed. The new charter was effected and filed with the appropriate Congressional offices and Library of Congress on October 1, 2010. Renewal of the SACHRP charter provides authorization for the Committee to operate until October 1, 2012.

A copy of the Committee charter is available on the SACHRP Web site at *http://www.hhs.gov/ohrp/sachrp/charter.htm.* A copy of the Committee charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://fido.gov/facadatabase.*

Dated: November 16, 2010.

**Jerry Menikoff,**

*Director, Office for Human Research Protections, and Executive Secretary, Secretary's Advisory Committee on Human Research Protections.*

[FR Doc. 2010–29517 Filed 11–22–10; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Renewal of Charter for the Advisory Committee on Blood Safety and Availability

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. App), the U.S. Department of Health and Human Services is hereby announcing renewal of the charter for the Advisory Committee on Blood Safety and Availability (ACBSA).

**FOR FURTHER INFORMATION CONTACT:** Jerry Holmberg, PhD; Senior Advisor for Blood Policy and Executive Secretary, Advisory Committee on Blood Safety and Availability; Department of Health and Human Services; 1101 Wootton Parkway; Tower Building, Suite 250; Rockville, MD 20852; Telephone: (240) 453–8803; Fax: (240) 453–8456; E-mail address: *acbsa@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** ACBSA was established in 1996. The Committee provides advice and guidance to the Secretary, through the Assistant Secretary for Health, on a range of blood safety issues that encompass broad public health and societal implications that cannot be resolved through analysis of scientific data alone. The range of issues on which the Committee is tasked to provide advice and guidance includes, but is not limited to: (1) Definition of public health parameters around safety and availability of the blood and blood products; (2) broad public health, ethical, and legal issues related to transfusion and transplantation safety; and (3) implications for safety and availability of various economic factors affecting product cost and supply.

Since the ACBSA was established, renewal of the Committee charter has been carried out at the appropriate intervals as stipulated by FACA. The previous Committee charter was scheduled to expire on October 9, 2010. On October 8, 2010, the Secretary of Health and Human Services approved for the Committee charter to be renewed. The new charter was effected and filed with the appropriate Congressional offices and Library of Congress on October 9, 2010. Renewal of the ACBSA charter provides authorization for the Committee to operate until October 9, 2012.

A copy of the Committee charter is available on the ACBSA Web site at *http://www.hhs.gov/ash/bloodsafety/.* A copy of the Committee charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://fido.gov/facadatabase.*

Dated: November 17, 2010.

**Jerry A. Holmberg,**

*Senior Advisor for Blood Policy, Executive Secretary, Advisory Committee on Blood Safety and Availability.*

[FR Doc. 2010–29518 Filed 11–22–10; 8:45 am]

**BILLING CODE 4150–41–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0422]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information From United States Firms and Processors That Export to the European Community

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by December 23, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0320. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Information From United States Firms and Processors That Export to the European Community (OMB Control Number 0910–0320)—Revision

The European Community (EC) is a group of 27 European countries that have agreed to harmonize their commodity requirements to facilitate commerce among member States. EC legislation for intra-EC trade has been extended to trade with non-EC countries, including the United States. For certain food products, including those listed in this document, EC legislation requires assurances from the responsible authority of the country of origin that the processor of the food is in compliance with applicable regulatory requirements. The European Commission, the executive branch of the EC, requires countries trading with any of the EC member countries to provide lists of firms and processors approved to export certain animal-derived commodities to the EC. As stated in the notice published in the **Federal Register** of April 4, 1996 (61 FR 15077), FDA established a list of U.S. firms and processors that intended to export shell eggs, dairy products, and game meat and game meat products to the EC.

Although the 1996 **Federal Register** notice did not include on the list firms and processors exporting raw, bulk collagen, and gelatin intended for

human consumption, EC directives require that shipments of raw, bulk collagen, and gelatin products be accompanied by certification stating that the product, derived from ruminant bones, bovine hides, and pigskins, has been produced in compliance with EC Council Directive 2003/863/EC. The directive contains the requirements for sourcing, manufacture, transport, and storage of raw materials and manufacture of finished products. Chapter III, Article 23, of the directive requires lists identifying non-EC firms and processors that meet EC requirements and have the appropriate animal and public health certificates. Therefore, FDA is revising this information collection in order to facilitate exports of raw, bulk collagen, and gelatin originating from the United States into the EC. The description of the data elements to be collected from firms and processors of raw, bulk collagen, and gelatin products follows. The estimated burden hours associated with this information collection remain 37 total hours. FDA requests the following information from each firm or processor seeking to be included on the lists for shell eggs, dairy products, game meat, game meat products, and animal casings:

- Business name and address;
- Name and telephone number of person designated as business contact;
- Lists of products presently being shipped to the EC and those intended to be shipped in the next 6 months;
- Name and address of manufacturing plants for each product; and
- Names and affiliations of any Federal, State, or local governmental agencies that inspect the plant, government-assigned plant identifier such as plant number, and last date of inspection.

FDA uses the information to maintain lists of firms and processors that have demonstrated current compliance with U.S. requirements and provides the lists to the EC quarterly. Inclusion on the list is voluntary. EC member countries refer to the lists at ports of entry to verify that products offered for importation to the EC from the United States are from firms and processors that meet U.S. regulatory requirements. Products processed by firms and processors not on the lists are subject to detention and possible refusal at the port.

FDA requests the following information from each firm or processor seeking to be included on the lists for raw, bulk collagen, and gelatin:

- Business name and address;
- Name, telephone number, and email address of contact person;
- List of products presently shipped to the EC and those intended to be shipped within the next 2 years;
- Name and address of the manufacturing and processing plant for each product;
- Names and affiliations of any Federal, State, and local governmental agencies that inspect the plant, government assigned plant identifier, such as plant number and last date of inspection; and
- A copy of the most recent (within 1 year of the date of application) inspection report issued by a State, local or Federal public health regulatory agency and a copy of a recent laboratory analysis as required by the EC of the finished product including: Total aerobic bacteria, coliforms (30 °C), coliforms (44.5 °C), anaerobic sulphite-reducing bacteria (no gas production), *Clostridium perfringens, Staphylococcus aureus, Salmonella,* Arsenic, Lead, Cadmium, Mercury, Chromium, Copper, Zinc, Moisture (105 °C), Ash (550 °C), $SO_2$, and $H_2O_2$.

FDA will use the information to maintain a list of approved firms and processors that will be posted on FDA's Web site. FDA intends to place on the list only firms and processors that are not the subject of an unresolved regulatory enforcement action. If a listed firm or processor subsequently becomes the subject of a regulatory enforcement action or an unresolved warning letter, FDA will view such a circumstance as evidence that the firm or processor is no longer in compliance with applicable U.S. laws and regulations. Should this occur, FDA will take steps to remove that firm or processor from the list and send a revised list to the EC authorities, usually within 48 to 72 hours after the relevant FDA action. If a firm or processor has been delisted as a result of a regulatory enforcement action or unresolved warning letter, the firm or processor will have to reapply for inclusion on the list once the regulatory action has been resolved.

FDA intends to update the list of firms and processors eligible to export raw, bulk collagen, and gelatin to the EC quarterly. Firms and processors placed on the approved exporters list are subject to audit by FDA and EC officials. Complete requests for inclusion must be submitted to FDA every 12 months to remain on the list. Inclusion on the list is voluntary. However, raw, bulk collagen, and gelatin products from firms or processors not on the approved exporters list for these products will not receive an export certificate, and these products may be detained at EC ports of entry.

*Description of Respondents:* The respondents to this collection of information include U.S. producers of shell eggs, dairy products, game meat, game meat products, animal casings, gelatin, and collagen.

In the **Federal Register** of August 18, 2010 (75 FR 51077), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Products | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Shell Eggs | 10 | 1 | 10 | 0.25 | 3 |
| Dairy | 120 | 1 | 120 | 0.25 | 30 |
| Game Meat and Game Meat Products | 5 | 1 | 5 | 0.25 | 1 |
| Animal Casings | 5 | 1 | 5 | 0.25 | 1 |
| Gelatin | 3 | 1 | 3 | 0.25 | 1 |
| Collagen | 3 | 1 | 3 | 0.25 | 1 |
| Total | | | | | 37 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimates of the number of respondents and total annual responses on the submissions that the Agency has received in the past 3 years for each product type. To calculate the estimate for the hours per response values, we assumed that the information requested is readily available to the submitter. We expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for submission. We believe that this effort should take no longer than 15 minutes (0.25 hour) per response. FDA estimates that it will receive 1 submission from 10 shell egg producers annually, for a total of 10 annual responses. Each submission is estimated to take 0.25 hour per response for a total of 2.5 hours, rounded to 3. FDA estimates that it will receive 1 submission from 120 dairy product producers annually, for a total of 120 annual responses. Each submission is estimated to take 0.25 hour per response for a total of 30 hours. FDA estimates that it will receive one submission from five game meat and game meat product producers annually, for a total of five annual responses. Each submission is estimated to take 0.25 hour per response for a total of 1.25 hours, rounded to 1 hour. FDA estimates that it will receive one submission from five animal casings producers annually, for a total of five annual responses. Each submission is estimated to take 0.25 hour per response for a total of 1.25 hours, rounded to 1 hour. FDA estimates that it will receive one submission from three gelatin producers annually, for a total of three annual responses. Each submission is estimated to take 0.25 hour per response for a total of 0.75 hour, rounded to 1 hour. FDA estimates that it will receive one submission from three collagen producers annually, for a total of three annual responses. Each submission is estimated to take 0.25 hour per response for a total of 0.75 hour, rounded to 1 hour. Therefore, the proposed annual burden for this information collection is 37 hours.

Dated: November 18, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–29483 Filed 11–22–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0554]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Reports of Corrections and Removals

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for reports of corrections and removal.

**DATES:** Submit either electronic or written comments on the collection of information by January 24, 2011.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, e-mail: *Daniel.Gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Reports of Corrections and Removals—21 CFR Part 806 (OMB Control Number 0910–0359)—Extension**

The collection of information required under the reports of corrections and removals, part 806 (21 CFR part 806), implements section 519(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i(g)), as amended by the Food and Drug Administration Modernization Act (FDAMA) of 1997 (21 U.S.C. 301) (Pub. L. 105–115). Each device manufacturer or importer under § 806.10 shall submit a written report to FDA of any action initiated to correct or remove a device to reduce a risk to health posed by the device, or to remedy a violation of the FD&C Act caused by the device that may present a risk to health, within 10 working days of initiating such correction or removal. Each device manufacturer or importer of a device who initiates a correction or removal of a device that is not required to be reported to FDA under § 806.20 shall keep a record of such correction or removal.

The information collected in the reports of corrections and removals will be used by FDA to identify marketed devices that have serious problems and to ensure that defective devices are removed from the market. This will assure that FDA has current and complete information regarding these corrections and removals and to determine whether recall action is adequate.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR section | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 806.10 | 666 | 1 | 666 | 10 | 6,660 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED AVERAGE ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | Number of recordkeepers | Annual frequency per recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 806.20 | 90 | 1 | 90 | 10 | 900 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are manufacturers and importers of medical devices. FDA reviewed reports of device corrections and removals submitted to the Agency for the previous 3 years as part of responding to the current request for approval of the information collection requirements for §§ 806.10 and 806.20. This information was obtained through the Agency's voluntary recall provisions (*i.e.*, 21 CFR part 7). The specific information requested was the total number of class I, II, and III recalls for the last 3 years. This information was obtained from the Agency's Recall Enterprise System—a database of all recalls submitted to the Agency.

This information is relevant since a § 806.10 report is required for all class I and II recalls. Although class III recalls are not required to be submitted to FDA (by § 806.10) a record must be kept in the firm's § 806.20 file. Therefore, the number of class I and II recalls can be used to estimate the maximum number of reports that are required to be submitted under § 806.10. Also, the recordkeeping burden can be estimated based upon the number of class III recalls, which are not required to be reported but must be retained in a § 806.20 file.

FDA has determined that estimates of the reporting burden for § 806.10 should be revised to reflect a projected 7.3 percent increase (from the last PRA numbers) in reports submitted to FDA as class I and II. FDA also estimates the recordkeeping burden in § 806.20 should be revised to reflect a reduction of 6.8 percent (from the last PRA numbers) in records filed and maintained under this section. The estimates of time needed to collect part 806 information have not changed.

Dated: November 16, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–29520 Filed 11–22–10; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan.

*OMB No.:* 0970–0075.

*Description:* States, including the District of Columbia, Tribes, Tribal Organizations and Territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every three years. Abbreviated applications may be submitted in alternate years. There have been no changes in the Model Plan since the approval of the addition of the LIHEAP Program Integrity Assessment Supplement by the Office of Management and Budget earlier this year.

*Respondents:* State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| LIHEAP Program Integrity Assessment and Plan | 216 | 1 | 1 | 216 |
| Detailed Model Plan | 72 | 1 | 1 | 72 |
| Abbreviated Model Plan | 144 | 1 | .33 | 47.5 |
| Estimated Total Annual Burden Hours | | | | 335.5 |

*Additional Information*

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment*

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: November 18, 2010.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2010–29479 Filed 11–22–10; 8:45 am]

**BILLING CODE 4184–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Notice of Intent To Provide Supplemental Funding

**ACTION:** Notice of intent to provide supplemental funding to the existing cooperative agreement (90AM3204) with the Administration on Aging and a request for a supplemental application.

**SUMMARY:** The Administration on Aging is announcing the availability of supplemental grant funds for the support of the Senior Medicare Program (SMP). The goal of this supplemental is a program expansion for one award to include direct Medicare fraud prevention intervention activities in high risk areas.

*Funding Opportunity Title/Program Name:* National Hispanic SMP (NHSMP).

*Announcement Type:* Proposed program expansion.

*Funding Opportunity Number:* Program Announcement No. HHS–2011–AoA–MP–1102.

*Statutory Authority:* HIPAA of 1996 (Pub. L. 104–191).

*Catalog of Federal Domestic Assistance (CFDA) Number:* 93.048 Discretionary Projects.

**DATES:** *Key Dates:* The deadline date for comments under this Program Announcement is December 23, 2010. Other Important dates:

1. The supplemental application due date is November 29, 2010.
2. The anticipated start date is December 2010.
3. The opening date begins on the first day of publication of this notice.
4. The expiration date is December 5, 2010.

**I. Funding Opportunity Description**

Since September 2008 NHCOA has operated the NHSMP providing technical assistance to all SMP projects nation-wide pertaining to Hispanic community issues. The goal of the SMP program is to prevent or reduce the billions of dollars loss annually due to Medicare/Medicaid fraud, error and abuse. The Centers for Medicare & Medicaid Services data has revealed that Medicare fraud is rampant in the Hispanic community. Hispanic older adults are especially vulnerable to Medicare fraud due to social isolation from the general population due to a combination of linguistic and cultural factors. This goal of this program expansion is to target direct intervention activities in South Florida, especially Miami and Dade counties. Intervention activities must be relevant to the unique characteristics of the older Hispanic community designed to increase awareness of the SMP program and fraud prevention.

**II. Award Information**

A. *Purpose of the Award:* Health Care Fraud Prevention Program Expansion.

B. *Amount of the Award:* $335,000.

C. *Project Period:* December 1, 2010–May 31, 2011.

**III. Eligible Applicant**

The National Hispanic Council on Aging.

**IV. Evaluation Criteria**

*A. Purpose and Need for Assistance—Weight: 20 Points*

Does the proposed project clearly and adequately describe the targeted population and document the need for intervention?

*B. Approach, Work Plan and Activities—Weight: 30 Points*

Does the proposal reflect a coherent and feasible approach for successfully addressing the identified problems? (10)

Is the project work plan clear and comprehensive? (10)

Does the applicant demonstrate experience in working with targeted population? (10)

*C. Project Outcomes, Evaluation and Dissemination—Weight: 20 Points*

Are the expected expansion benefits/results clear and realistic? (10)

Does the project expansion contain an evaluation component? (5)

Will results be disseminated to AoA and other interested parties? (5)

*D. Level of Effort—Weight: 30 Points*

Does key staff have the background, experience to carry out their designated roles? (10)

Are budget line items clearly delineated and consistent with work plan objectives? (10)

Has the applicant demonstrated the organization's capacity to implement the work plan? (10)

**V. Application and Submission Requirements**

A. SF 424—Application for Federal Assistance.

B. SF 424A—Budget Information.

C. Separate Budget Narrative/Justification.

D. SF 424B—Assurances. Note: Be sure to complete this form according to instructions and have it signed and date by the authorized representative (see item 18d on the SF 424).

E. Lobbying Certification.

F. Program narrative no more than five pages including the following items:

- Summary/Abstract summary page
- Expansion Proposal
- Anticipated outcome(s)

G. Work Plan.

H. The application should be submitted through grants.gov using the funding opportunity #HHS–2011–AoA–MP–1102.

**VI. Application Review Information**

Three Federal Reviewers external to the Office of Elder Rights will score the application.

**VII. Agency Contact**

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office of Elder Rights, Washington, DC 20201, telephone: Barbara Dieker, (202) 357–0139; e-mail *Barbara.Dieker@aoa.hhs.gov.*

Dated: November 17, 2010.

**Kathy Greenlee,**

*Assistant Secretary for Aging.*

[FR Doc. 2010–29478 Filed 11–22–10; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 Center on Minority Health and Health Disparities Special Emphasis Panel (R01).

*Date:* December 15–16, 2010.

*Time:* 7:45 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

*Contact Person:* Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892. (301) 451–9536. *mlaudesharp@mail.nih.gov.*

Dated: November 17, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–29526 Filed 11–22–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NICHD.

*Date:* December 3, 2010.

*Open:* 8 a.m. to 11:20 a.m.

*Agenda:* A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

*Place:* National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

*Closed:* 11:20 a.m. to 4 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

*Contact Person:* Constantine A. Stratakis, MD, Acting Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, 301–496–2133, *stratakc@cc1.nichd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page *http://www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 17, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–29527 Filed 11–22–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID SCIENCE EDUCATION AWARDS (R25).

*Date:* December 14, 2010.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

*Contact Person:* Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–594–1009. *fdesilva@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Clinical Trial Planning & Implementation Grants (R34) (R01) (U01).

*Date:* December 16–17, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities,

National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–2550. *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 17, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–29525 Filed 11–22–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Institutional National Research Service Awards.

*Date:* December 15, 2010.

*Time:* 1 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817. (Virtual Meeting).

*Contact Person:* Roy L White, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892–7924. 301–435–0310. *whiterl@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Conference Grants.

*Date:* December 16–17, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* William J Johnson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. 301–435–0725. *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 17, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–29524 Filed 11–22–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0001]**

### Oncologic Drugs Advisory Committee; Amendment of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 19, 2010 (75 FR 64314). The amendment is being made to reflect changes in the *Date and Time, Agenda,* and *Procedure* portions of the document. We also are postponing a session regarding biologics license application (BLA) 125377, with the proposed trade name Yervoy (ipilimumab), manufactured by Bristol-Myers Squibb Co. The proposed indication (use) for this product is for the treatment of advanced melanoma in patients who have received prior therapy. This portion of the meeting has been postponed due to the need to complete the review of additional data submitted by the applicant. Future meeting dates may be announced in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Nicole Vesely, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *Nicole.vesely@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138, 301–443–0572 in the Washington, DC area, code 301–451–2542. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 19, 2010 (75 FR 64314), FDA announced that a meeting of the Oncologic Drugs Advisory Committee would be held on December 2, 2010. On page 64314, in the first column, the *Date and Time* portion of the document is changed to read as follows:

*Date and Time:* The meeting will be held on December 2, 2010, from 8 a.m. to 12:30 p.m.

On page 64314, in the second column, the *Agenda* portion of the document is changed to read as follows:

*Agenda:* On December 2, 2010, the committee will discuss new drug application (NDA) 022–405, with the proposed trade name Zictifa (vandetanib) Tablets, manufactured by iPR Pharmaceuticals, Inc., represented by AstraZeneca Pharmaceuticals LP (authorized U.S. agent). The proposed indication (use) for this product is for the treatment of patients with unresectable (non-operable) locally advanced or metastatic medullary thyroid cancer.

On page 64314, in the second column, the third sentence in the *Procedure* portion of the document is changed to read as follows:

*Procedure:* Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: November 17, 2010.

**Joanne Less,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2010–29522 Filed 11–22–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood 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 Sleep Disorders Research Advisory Board.

The meeting will be open to the public. Individuals who plan to attend and need special assistance should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sleep Disorders Research Advisory Board.

*Date:* January 4, 2011.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To discuss sleep research plan development. Public meeting observers should call 1–888–791–5525 to access the teleconference and the observer passcode is 3737665. Public meeting observers should send comments or questions for this meeting to the National Center on Sleep Disorders Research by e-mail *mt2d@nih.gov* or fax 301–480–3557.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Suite 10170, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Michael J. Twery, PhD, Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952. 301–435–0199. *twerym@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 17, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–29523 Filed 11–22–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–130, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–130, Petition for Alien Relative; OMB Control No. 1615–0012.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 2010, at 75 FR 52540, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 23, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0012 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection*: Extension of a currently approved information collection.

(2) *Title of the Form/Collection*: Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection*: Form I–130; U.S. Citizenship and Immigration Services (USCIS).

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary: Individuals or Households.* This form allows citizens or lawful permanent residents of the United States to petition on behalf of certain alien relatives who wish to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 690,520 responses at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 1,035,780 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: November 18, 2010.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2010–29521 Filed 11–22–10; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form N–470, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form N–470, Application to Preserve Residence for Naturalization; OMB Control No. 1615–0056.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 18, 2010, at 75 FR 51096, allowing for a 60-day public

comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 23, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0056 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection*: Extension of a currently approved information collection.

(2) *Title of the Form/Collection*: Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection*: Form N–470; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary*: *Individuals or Households.* The information furnished on Form N–470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 621 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 362 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: November 18, 2010.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2010–29519 Filed 11–22–10; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Customs Declaration (Form 6059B)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; Extension of an existing information collection: 1651–0009.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Customs Declaration (Form 6059B). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 57480) on September 21, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before December 23, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

*Title:* Customs Declaration.

*OMB Number:* 1651–0009.

*Form Number:* 6059B.

*Abstract:* CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to CBP in accordance with 19 U.S.C. 66, section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498). CBP Form 6059B requires basic information to facilitate the

clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties or taxes are due. A sample of CBP Form 6059B can be found at: *http://www.cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml.*

*Current Actions:* This submission is being made to extend the expiration date with no change to the burden hours or to CBP Form 6059B.

*Type of Review:* Extension (without change).

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 105,606,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 105,606,000.

*Estimated Time per Response:* 4 minutes.

*Estimated Total Annual Burden Hours:* 7,075,602.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: November 18, 2010.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2010–29472 Filed 11–22–10; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1948–DR; Docket ID FEMA–2010–0002]**

### Virgin Islands; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Territory of the U.S. Virgin Islands (FEMA–1948–DR), dated November 5, 2010, and related determinations.

**DATES:** *Effective Date:* November 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 5, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Territory of the U.S. Virgin Islands resulting from severe storms, flooding, mudslides, and landslides associated with Tropical Storm Otto during the period of October 1–8, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Territory of the U.S. Virgin Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Territory of the U.S. Virgin Islands. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following islands of the Territory of the U.S. Virgin Islands have been designated as adversely affected by this major disaster:

The islands of St. Croix, St. John, and St. Thomas, including Water Island for Public Assistance.

All islands in the Territory of the U.S. Virgin Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–29420 Filed 11–22–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1947–DR; Docket ID FEMA–2010–0002]**

### South Dakota; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1947–DR), dated November 2, 2010, and related determinations.

**DATES:** *Effective Date:* November 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 2, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms and flooding during the period of September 22–23, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark A. Neveau, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Brookings, Lake, Moody, and Union Counties, and the Flandreau Santee Sioux Tribe for Public Assistance.

All counties and Tribes within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–29421 Filed 11–22–10; 8:45 am]

**BILLING CODE 9111–23–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 to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, December 10, 2010, from 8 a.m. to 5 p.m. and will meet in formal session on Saturday, December 11, 2010, from 8 a.m. to 5 p.m. at the Riverside Marriott, 3400 Market Street, Riverside, CA 92501.

Agenda topics will include updates by Council members and reports from the BLM District Manager and five field office managers. Final agenda items, including details of the field tour, will be posted on the BLM California state Web site at *http://www.blm.gov/ca/st/en/info/rac/dac.html*.

**SUPPLEMENTARY INFORMATION:** All Desert District Advisory Council 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: November 8, 2010.

**Teresa A. Raml,**

*District Manager.*

[FR Doc. 2010–29462 Filed 11–22–10; 8:45 am]

**BILLING CODE 4310–40–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–10–031]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** November 30, 2010 at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1058 (Review) (Wooden Bedroom Furniture from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 14, 2010.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 19, 2010.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2010–29665 Filed 11–19–10; 4:15 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (NIJ) Docket No. 1536]**

### NIJ Certification Programs Workshop

**AGENCY:** National Institute of Justice.

**ACTION:** Notice of Meeting of the NIJ Certification Programs Workshop.

**SUMMARY:** The National Institute of Justice (NIJ) is hosting a Certification Programs Workshop to introduce NIJ standards for law enforcement, corrections, and public safety equipment to organizations interested in testing, accreditation, and certification of such equipment to NIJ standards. The specific standards to be discussed address the following equipment:

- Bomb Suits.
- CBRN Protective Ensembles.
- Holsters.
- Metal Detectors.
- Offender Tracking Systems.
- Restraints.
- Vehicular Digital Multimedia Evidence Recording Systems.

Manufacturers of these types of equipment and certification bodies are invited to participate in this workshop. All participants are strongly encouraged to come prepared to ask questions and to voice suggestions and concerns.

The workshop will be held on Wednesday, December 8, 2010 from 8 a.m. to 5 p.m. at the Hotel Monaco, 700 F Street, NW., Washington, DC 20004. The meeting room is the Paris Ballroom. Space is limited at this workshop, and as a result, only 70 participants will be allowed to register. We request that each participating organization limit their representatives to no more than two. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements.

Please visit the Web site below for additional information and to submit your registration request: *https://www.seeuthere.com/event/m1312d11–4OFJ4NPANEZX1.*

**FOR FURTHER INFORMATION CONTACT:** Casandra Robinson, by telephone at 202–305–2596 [**Note:** this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

Dated: November 17, 2010.

**John H. Laub,**

*Director, National Institute of Justice.*

[FR Doc. 2010–29464 Filed 11–22–10; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rigging Equipment for Material Handling

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) hereby announces the submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Rigging Equipment for Material Handling (29 CFR 1926.251)," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

**DATES:** Submit comments on or before December 23, 2010.

**ADDRESSES:** A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The collection of information provisions of the rigging equipment for material handling standard specify affixing identification tags or marking on rigging equipment, developing and maintaining inspection records, and retaining proof-testing certificates. These information collections are subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0233. The current OMB approval is scheduled to expire on November 30, 2010. For additional information, see the related notice published in the **Federal Register** on August 24, 2010 (75 FR 52033).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference OMB Control Number 1218–0233. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Type of Review:* Extension without change of currently approved collection.

*Title of Collection:* Rigging Equipment for Material Handling (29 CFR 1926.251).

*OMB Control Number:* 1218–0233.

*Affected Public:* Business or other for-profits.

*Total Estimated Number of Respondents:* 277,428.

*Total Estimated Number of Responses:* 277,428.

*Total Estimated Annual Burden Hours:* 51,815.

*Total Estimated Annual Costs Burden:* $0.

Dated: November 15, 2010.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2010–29446 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,145]**

### The Jewelry Stream, Los Angeles, CA; Notice of Affirmation Determination Regarding Application for Reconsideration

By application dated October 1, 2010, a California state workforce official requested administrative reconsideration of the Department of Labor's termination of investigation applicable to workers and former workers of M&L Manufacturing, Inc. and The Jewelry Stream, Los Angeles, California. The termination notice was signed on August 20, 2010, and was published in the **Federal Register** on September 3, 2010 (75 FR 54187).

The termination of investigation was based on information obtained during the initial investigation that the firm identified in the Trade Adjustment Assistance (TAA) petition—M&L Manufacturing, Inc. and The Jewelry Stream, Los Angeles, California—is not one firm but are separate, unaffiliated companies. Therefore, the Department determined that the petition is invalid.

In the request for reconsideration, the state workforce official stated that the individual on whose behalf the TTA petition was filed believed that the aforementioned companies are one firm. In support of the request for reconsideration, the state workforce official supplied new and additional information provided by the individual who sought assistance from the state

workforce official ("I started to work for M&L Manufacturing, Inc. on August of 1990, but for some reason and without notification I started to receive my checks in 2005 under the name of The Jewelry Stream * * * I was under the impression that I had worked for the same company from 1990 to 2008."

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers (the newly clarified worker group, The Jewelry Stream, Los Angeles, California) meet the eligibility requirements of the Trade Act of 1974, as amended.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29428 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,549]**

### Algonac Cast Products, Inc., Algonac, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 25, 2010, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Algonac Cast Products, Inc., Algonac, Michigan (subject firm). The determination was issued on September 24, 2010. The Department's Notice of Determination was published in the **Federal Register** on October 8, 2010 (75 FR 62427). The workers are engaged in activities related to the production of marine hardware (*i.e.* rudders, struts, stuffing boxes, rudder arm, rudder support, rudder clevis, etc.) and are not separately identifiable by article produced.

The negative determination was based on the Department's findings that the subject firm did not import or shift their production of marine hardware to a foreign country during the relevant period; that the customers did not increase their reliance on imported marine hardware while concurrently decreasing their purchases from the subject firm; that worker separations or threats of separation were not related to an increase in imports of marine hardware; and that the workers did not produce an article that was incorporated in the production of an article by a firm whose workers were certified eligible to apply for TAA.

The request for reconsideration alleged that a lost bid with Sea Ray Boats Corporation contributed importantly to worker separations at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29434 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

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## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Division of Longshore and Harbor Workers' Compensation Proposed Extension of Existing Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: **Pre-Hearing Statement (LS–18).** A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before January 24, 2011.

**ADDRESSES:** Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, e-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

**SUPPLEMENTARY INFORMATION:**

I. *Background:* The Office of Workers' Compensation Programs, (OWCP) administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

Title 20, CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. This Section provides that before a case is transferred to the Office of Administrative Law Judges the district director shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form. Each party shall, within 21 days after receipt of each form, complete it and return it to the district director. Upon receipt of the forms, the district director, after checking them for completeness and after any further conferences that, in his/her opinion, are warranted, shall transmit them to the Office of the Chief Administrative Law Judge with all available evidence which the parties intend to submit at the hearing. This information collection is currently approved for use through March 31, 2011.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to refer cases for formal hearings.

*Agency:* Office of Workers' Compensation Programs.

*Type of Review:* Extension.

*Title:* Pre-Hearing Statement.

*OMB Number:* 1240–0036.

*Agency Number:* LS–18.

*Affected Public:* Insurance carriers and self-insurers.

*Total Respondents:* 5200.

*Total Annual Responses:* 5200.

*Estimated Total Burden Hours:* 884.

*Estimated Time Per Response:* 10 minutes.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $2,444.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 18, 2010.

**Vincent Alvarez,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2010–29512 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–74,466 Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, Including Leased Workers From QFLEX, North America Logistics, and UPS Headquartered in Palo Alto, California, Teleworkers Across California and Workers On-Site In Roseville, California;

TA–W–74,466A Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across Arizona;

TA–W–74,466B, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across Florida;

TA–W–74,466C, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across Massachusetts And Workers On-Site In Andover, Massachusetts;

TA–W–74,466D, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Minnetonka, Minnesota;

TA–W–74,466E, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across New Hampshire;

TA–W–74,466F, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across New York;

TA–W–74,466G, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Charlotte, North Carolina;

TA–W–74,466H, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across Ohio;

TA–W–74,466I, Hewlett Packard Company Enterprise Business Division Technical Services America Global Parts Supply Chain Group Including Leased Workers From QFLEX, North America Logistics, and UPS Teleworkers Across Texas and Workers On-Site In Houston, Texas.

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 2010, applicable to workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo Alto, California. The notice was published in the Federal Register on September 10, 2010 (75 FR 57982).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in design services and sales compensation operations for Hewlett Packard Company.

New findings show that worker separations occurred during the relevant time period at several other Hewlett Packard, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including: Teleworkers across California and workers on-site in Roseville, California; teleworkers across Arizona; teleworkers across Florida; teleworkers across Massachusetts and workers on-site in Andover, Massachusetts; workers on-site in Minnetonka, Minnesota; teleworkers across New Hampshire; teleworkers across New York; workers on-site in Charlotte, North Carolina; teleworkers across Ohio; and teleworkers across Texas and workers on-site in Houston, Texas.

Accordingly, the Department is amending the certification to include teleworkers across California and workers on-site in Roseville, California (TA–W–74,466); teleworkers across Arizona (TA–W–74,466A); teleworkers across Florida (TA–W–74,466B); teleworkers across Massachusetts and workers on-site in Andover, Massachusetts (TA–W–74,466C); workers on-site in Minnetonka, Minnesota (TA–W–74,466D); teleworkers across New Hampshire (TA–W–74,466E); teleworkers across New York (TA–W–74,466F); workers on-site in Charlotte, North Carolina (TA–W–74,466G); teleworkers across Ohio (TA–W–74,466H); and teleworkers across Texas and workers on-site in Houston, Texas (TA–W–74,466I).

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by Hewlett Packard's decision to shift business services to foreign countries.

The amended notice applicable to TA–W–74,466 is hereby issued as follows:

**Conclusion**

After careful review of the facts obtained in the investigation, I determine that workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo

Alto, California, including teleworkers across California and workers on-site in Roseville, California (TA–W–74,466); teleworkers across Arizona (TA–W–74,466A); teleworkers across Florida (TA–W–74,466B); teleworkers across Massachusetts and workers on-site in Andover, Massachusetts (TA–W–74,466C); workers on-site in Minnetonka, Minnesota (TA–W–74,466D); teleworkers across New Hampshire (TA–W–74,466E); teleworkers across New York (TA–W–74,466F); workers on-site in Charlotte, North Carolina (TA–W–74,466G); teleworkers across Ohio (TA–W–74,466H); and teleworkers across Texas and workers on-site in Houston, Texas (TA–W–74,466I), who are engaged in employment related to design services and sales compensation operations, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo Alto, California, including teleworkers across California and workers on-site in Roseville, California; teleworkers across Arizona; teleworkers across Florida; teleworkers across Massachusetts and workers on-site in Andover, Massachusetts; workers on-site in Minnetonka, Minnesota; teleworkers across New Hampshire; teleworkers across New York; workers on-site in Charlotte, North Carolina; teleworkers across Ohio; and teleworkers across Texas and workers on-site in Houston, Texas, who became totally or partially separated from employment on or after June 22, 2009, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 12th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29433 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,910; TA–W–73,910A; TA–W–73,910B]**

### Cranberry Lumber Company Including Workers of the Following Operating Entities: Butternut One, Ltd., Cranberry Resources, LLC., and Cranberry Hardwoods, Inc. Incuding On-Site Leased Workers From Stafftrak Beckley, WV, Cranberry Lumber Company Including Workers of Greenbrier Forest Products, Inc. Smoot, WV, Cranberry Lumber Company Newport, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 2010, applicable to workers of Cranberry Hardwoods, Inc., including on-site leased workers from Stafftrak, Beckley, West Virginia. The Department's Notice was published in the **Federal Register** on August 13, 2010 (75 FR 49531). The workers are engaged in employment related to the production of green and kiln dried lumber. The workers are not separately identifiable by product line.

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information reveals that the name of the subject firm should read Cranberry Lumber Company. Further, additional information reveals that the subject firm operates in conjunction with other entities to produce green and kiln dried lumber: Butternut One, Ltd., Cranberry Resources, LLC, and Cranberry Hardwoods, Inc., in Beckley, West Virginia; Greenbrier Forest Products in Smoot, West Virginia; and Cranberry Lumber Company in Newport, Ohio.

Accordingly, the Department is amending this certification to correct the name of the subject firm to read Cranberry Lumber Company and to include the afore-mentioned additional workers.

The amended notice applicable to TA–W–73,910 is hereby issued as follows:

All workers of Cranberry Lumber Company, including workers from the following entities: Butternut One, Ltd., Cranberry Resources, LLC, and Cranberry Hardwoods, Inc., including on-site leased workers from Stafftrak, Beckley, West Virginia (TA–W–73,910), all workers of Cranberry Lumber Company, including workers of Greenbrier Forest Products, Inc., Smoot, West Virginia (TA–W–73,910A), and all workers of Cranberry Lumber Company, Newport, Ohio (TA–W–73,910), who became totally or partially separated from employment on or after April 14, 2009, through July 30, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29431 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,775]**

### Warner Brothers Entertainment, Inc., Warner Brothers Theatrical Enterprises, Including Workers of the Following Operating Entities: Burbank Television Enterprises LLC, Warner Brothers Consumer Products, Inc., Warner Brothers International Television Distribution, Inc., Warner Brothers Distributing, Inc., Warner Brothers Home Entertainment, Inc., Warner Brothers Studio Enterprises, Inc., Warner Brothers Pictures, Warner Brothers Pictures International, Warner Brothers Studio Facilities, and Warner Brothers Entertainment Company, Burbank, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 24, 2009, applicable to workers of Warner Brothers Entertainment, Inc., Warner Brothers Theatrical Enterprises, Burbank, California. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59254).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The company reports that workers from the above-mentioned operating entities provided a variety of technology, administrative, finance, accounting, and order-to-cash

processing services supporting the parent facility, Warner Brothers Entertainment, Inc., Burbank, California. Worker separations have occurred at these entities and are expected to continue through 2011.

Based on these findings, the Department is amending this certification to including workers from the above mentioned operating entities in support of Warner Brothers Entertainment, Inc., Burbank, California.

The intent of the Department's certification is to include all workers of Warner Brothers Entertainment, Inc. who were adversely affected by the acquisition of services from India, China and Poland.

The amended notice applicable to TA–W–71,775 is hereby issued as follows:

All workers of Warner Brothers Entertainment, Inc., Warner Brother Theatrical Enterprises, including workers from the following entities: Burbank Television Enterprises LLC, Warner Brothers Consumer Products, Inc., Warner Brothers International Television Distribution, Inc., Warner Brothers Distributing, Inc., Warner Brothers Home Entertainment, Inc., Warner Brothers Studio Enterprises, Inc., Warner Brothers Pictures, Warner Brothers Pictures International, Warner Brothers Studio Facilities, and Warner Brothers Entertainment Company, Burbank, California, who became totally or partially separated from employment on or after July 20, 2008, through September 24, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29427 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *November 8, 2010 through November 12, 2010.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a

domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register;** and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 73,353 | Federal-Mogul Products, Inc., Federal-Mogul Corporation, Leased Workers from Kelly Services. | Smithville, TN | January 13, 2009. |
| 73,900 | First American Title Insurance Company, Workers Wages Reported Under National Default Title Services; Leased Workers. | Santa Ana, CA | April 9, 2009. |
| 73,900A | First American Title Insurance Company, Workers Wages Reported Under National Default Title Services; Leased Workers. | Waterloo, IA | April 9, 2009. |
| 74,203 | Titan Tire Corporation, Division of Titan International, Inc. | Bryan, OH | May 20, 2009. |
| 74,278 | St. Joseph Industries, Inc., Automotive Department | Battle Creek, MI | June 10, 2009. |
| 74,537 | Polyair Corporation, Leased from Callos Companies and Snelling Staffing | Youngstown, OH | August 13, 2009. |
| 74,573 | Kok's Woodgoods, Inc., Tenon Limited; Leased Workers from Adecco | Zeeland, MI | August 26, 2009. |
| 74,648 | Bosch Packaging Technology, Inc. (PAUD), PA–PM Division; Applied Engineering and Corporate Services. | New Richmond, WI | September 16, 2009. |
| 74,786 | Alexvale Furniture Company, Upholstery Division; Kincaid Furniture Company; La-z-Boy Chair Company. | Taylorsville, NC | September 6, 2010. |
| 74,786A | Leased Workers from Onin Temporary Staffing Solutions, On-Site at Alexvale Furniture Company; Upholstery Division; etc.. | Taylorsville, NC | October 26, 2009. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,000 | International Business Machines (IBM), Global Business Services, Global Supply, Registration Database. | Endicott, NY | October 7, 2008. |
| 74,484 | New York Wire Co., Walterboro Fiberglass Products, Leased Workers from Staff Mark & SC Voc. Rehab. | Walterboro, SC | August 2, 2009. |
| 74,575 | International Business Machines (IBM), Global Sales Operations Organization; One Teleworker, etc. | Charleston, WV | August 25, 2009. |
| 74,575A | International Business Machines (IBM), Global Sales Operations Organization; One Teleworker, etc. | Dallas, TX | August 25, 2009. |
| 74,575B | International Business Machines (IBM), Global Sales Operations Organization; Two Teleworkers, etc. | Atlanta, GA | August 25, 2009. |
| 74,575C | International Business Machines (IBM), Global Sales Operations Organization; One Teleworker, etc. | Phoenix, AZ | August 25, 2009. |
| 74,647 | Regent Group, Inc., Encore Marketing; Express Employment, Blue Ridge | Blue Ridge Summit, PA. | September 16, 2009. |
| 74,671 | Hewlett Packard, Global Parts Supply Chain, Teleworkers, etc | Houston, TX | September 23, 2009. |
| 74,673 | Los Angeles Daily News Publishing Company, Pre-Press Department | San Bernardino, CA. | September 22, 2009. |
| 74,678 | Primus International, Inc., Aurburn Division; Leased Workers from Aerotek | Algona, WA | September 27, 2009. |
| 74,685 | Coats American, Inc., Leased Workers from Allen & Assoc of America | Charlotte, NC | September 28, 2009. |
| 74,768 | Fortune Fashions Industries, LLC, Leased Workers from Temp Depot | Vernon, CA | October 12, 2009. |
| 74,793 | Nicholson File Company, Apex Tool Group, LLC | Cullman, AL | October 27, 2009. |
| 74,807 | UView Ultraviolet Systems, Inc., Some Wages Reported Under Motorvac Technologies, Inc. | Santa Ana, CA | October 27, 2009. |
| 74,815 | Areva NP, Inc., Fuel Business, Newport News Industry and System One Services. | Lynchburg, VA | October 25, 2009. |
| 74,818 | Tubular Metal Systems, LLC, Global Automotive Systems, LLC | Pinconning, MI | October 25, 2009. |

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 73,480 | Stant USA Corp., Formerly Known as Stant Manufacturing, Inc | Connersville, IN | January 21, 2009. |
| 74,356 | Industrial Technologies Corporation | Missoula, MT | July 2, 2009. |
| 74,468 | Cameron International, Division of Process and Compression Systems, Leased Workers EGW Personnel. | Buffalo, NY | July 5, 2009. |
| 74,627 | World Wide Technology, Leased Workers from Prologistics | Greensboro, NC | September 13, 2009. |
| 74,693 | UFE, Inc., Leased Workers Job Connection and DM Dickason | El Paso, TX | September 20, 2009. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 73,018 | Smurfit-Stone Container Corporation, Container Division | Mansfield, OH | |
| 73,624 | YRC, Inc., YRC Worldwide, Inc. | Columbus, OH | |
| 73,714 | Interscope Manufacturing, Inc. | Middletown, OH | |
| 73,925 | Bunge Milling, Inc., Bunge North America, Inc., Leased Workers from Initial Security and Eurofin. | Danville, IL | |
| 74,689 | Amdocs, Inc., Global Support Services, Advertising and Media AT&T Division. | New Haven, CT | |
| 74,692 | Bank of America, Centralized Sales Payment Office | Charlotte, NC | |
| 74,721 | Dillard's, Inc., Information Technology Division | Little Rock, AR | |
| 74,767 | Wausau Daily Herald, Advertising Production Division, Gannett Co., Inc | Wausau, WI | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 USC 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,639 | Intellectual Ventures | Bellevue, WA | |

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR. 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,194 | After Six | Athens, GA | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,346 | Warner Brothers Entertainment Company | Burbank, CA | |
| 74,791 | Butternut One Ltd., Cranberry Hardwoods, Inc | Beckley, WV | |
| 74,792 | Greenbrier Forest Products, Inc., Cranberry Hardwoods, Inc | Smoot, WV | |
| 74,805 | Cranberry Resources, LLC, Cranberry Hardwoods, Inc | Beckley, WV | |
| 74,806 | Cranberry Hardwoods, Inc | Beckley, WV | |
| 74,826 | Cranberry Lumber Company | Newport, OH | |

I hereby certify that the aforementioned determinations were issued during the period of *November 8, 2010 through November 12, 2010.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: November 16, 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–29426 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 3, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 3, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 12th of November 2010.

**Michael Jaffe,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

## APPENDIX

[TAA petitions instituted between 11/1/10 and 11/5/10]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 74796 | Eagle Cap Campers, Inc. (State/One-Stop) | La Grande, OR | 11/01/10 | 10/29/10 |
| 74797 | Martin Mills, Inc. (Company) | Jeanerette, LA | 11/01/10 | 10/27/10 |
| 74798 | Hewlett-Packard Company (State/One-Stop) | Farmington Hills, MI | 11/01/10 | 10/08/10 |
| 74799 | Brake Parts, Inc. (Company) | Litchfield, IL | 11/01/10 | 10/27/10 |
| 74800 | Toyo Seal America Corporation (Workers) | Mooresville, NC | 11/01/10 | 10/27/10 |
| 74801 | Analog Devices (State/One-Stop) | Wilmington, MA | 11/01/10 | 10/18/10 |
| 74802 | ET Publishing, Inc. (Workers) | Miami, FL | 11/01/10 | 10/18/10 |
| 74803 | Clinicient (State/One-Stop) | Portland, OR | 11/01/10 | 10/26/10 |
| 74804 | Metropolitan Urological Specialist (Workers) | Florrisant, MO | 11/01/10 | 10/23/10 |
| 74805 | Cranberry Resources, LLC (Company) | Beckley, WV | 11/01/10 | 10/25/10 |
| 74806 | Cranberry Hardwoods, Inc. (Company) | Beckley, WV | 11/01/10 | 10/25/10 |
| 74807 | UView Ultraviolet Systems, Inc. (Workers) | Santa Ana, CA | 11/01/10 | 10/27/10 |
| 74808 | Ossur Americas, Inc. (Company) | Paulsboro, NJ | 11/02/10 | 10/29/10 |
| 74809 | Diversey (Workers) | Santa Cruz, CA | 11/03/10 | 10/20/10 |
| 74810 | Symantec (Company) | Austin, TX | 11/03/10 | 11/01/10 |
| 74811 | Media Mail Packaging and Fulfillment Services, Inc. (Company). | Algood, TN | 11/03/10 | 11/01/10 |
| 74812 | Heraeus Noblelight de Puerto Rico, Inc. (Company) | Cayey, PR | 11/03/10 | 10/28/10 |
| 74813 | Eastman Kodak Company (GCG) (State/One-Stop) | Spencerport, NY | 11/03/10 | 10/29/10 |
| 74814 | Elopak, Inc. (Company) | New Hudson, MI | 11/03/10 | 10/18/10 |
| 74815 | Areva (Company) | Lynchburg, VA | 11/03/10 | 10/25/10 |
| 74816 | JP Morgan Chase (State/One-Stop) | Cincinnati, OH | 11/03/10 | 10/29/10 |
| 74817 | Kidde-Fenwal (State/One-Stop) | Ashland, MA | 11/03/10 | 11/01/10 |
| 74818 | Tubular Metal Systems (Company) | Pinconning, MI | 11/03/10 | 10/25/10 |
| 74819 | Analog Devices (State/One-Stop) | Norwood, MA | 11/03/10 | 11/01/10 |
| 74820 | Clearwater Paper (Workers) | Spokane, WA | 11/03/10 | 10/28/10 |
| 74821 | Hewlett Packard Enterprise Services (Workers) | Tulsa, OK | 11/03/10 | 11/01/10 |
| 74822 | Bank of America (State/One-Stop) | Los Angeles, CA | 11/03/10 | 10/28/10 |
| 74823 | Hartford Financial Service Group, Inc. (Company) | Windsor, CT | 11/03/10 | 11/01/10 |
| 74824 | Electrolux International Company (Company) | Pittsburgh, PA | 11/03/10 | 10/29/10 |
| 74825 | Mountain City Lumber Company (Company) | Mountain City, TN | 11/05/10 | 10/25/10 |
| 74826 | Cranberry Lumber Company (Company) | Newport, OH | 11/05/10 | 10/25/10 |
| 74827 | Orthodyne Electronics (Company) | Irvine, CA | 11/05/10 | 11/01/10 |
| 74828 | Midwest Transatlantic Lines, Inc. (Company) | Berea, OH | 11/05/10 | 11/02/10 |
| 74829 | Chamberlain Access Solutions (Workers) | Tucson, AZ | 11/05/10 | 10/28/10 |
| 74830 | Eaton Corporation (Company) | Clayton, NC | 11/05/10 | 11/02/10 |

APPENDIX—Continued

[TAA petitions instituted between 11/1/10 and 11/5/10]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 74831 | CompuCom Systems (Workers) | Menlo Park, CA | 11/05/10 | 11/02/10 |
| 74832 | SK Hand Tools Corporation (Union) | Defiance, OH | 11/05/10 | 11/02/10 |
| 74833 | Franklin Electric Company, Inc. (Company) | Oklahoma City, OK | 11/05/10 | 11/03/10 |
| 74834 | Fleck (State/One-Stop) | Brookfield, WI | 11/05/10 | 11/02/10 |
| 74835 | Euchre Mountain Logging, Inc. (Company) | Condon, MT | 11/05/10 | 10/17/10 |
| 74836 | Journal Community Publishing (Workers) | Waupaca, WI | 11/05/10 | 10/30/10 |

[FR Doc. 2010–29425 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,963]**

### Dentek.Com, Inc. D/B/A Nsequence Center for Advanced Dentistry Reno, NV; Notice of Negative Determination on Reconsideration

By application dated July 16, 2010, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The determination was signed on August 13, 2010. The Department's Notice will soon be published in the **Federal Register**. Workers at the subject firm are engaged in employment related to the production of dental prosthetics (such as crowns and the bridges).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination applicable to workers and former workers at Dentek.com, Inc., d/b/a nSequence Center for Advanced Dentistry, Reno, Nevada (the subject firm) was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country production of dental prosthetics, or articles like or directly competitive with those produced by the workers, or acquire these articles from a foreign country; that the workers' separation, or threat of separation, was not related to any increase in imports of dental prosthetics, or like or directly competitive articles; and that the workers did not produce an article or supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the aforementioned article or service.

During the reconsideration investigation, the Department obtained new information from the subject firm regarding imports and its operations and reviewed publically available information regarding the subject firm and its operations, as well as additional information provided by the petitioner.

In a subsequent letter to the Department, the petitioner states that, in 2008, "the decision was made to begin in earnest to out-source all of the crown and the bridge except for the extreme rush cases" and, as a result of the action, "all of the staff was released." The petitioner also alleges that vendors such as the subject firm send orders "directly to China."

Information obtained during the reconsideration investigation confirmed that the subject firm did not shift production of dental prosthetics, or like or directly competitive articles, to a foreign country, and that, during the relevant period, the subject firm did not increase its imports of dental prosthetics, or like or directly competitive articles.

A customer survey was not conducted during the reconsideration investigation because the customers of the subject firm are individual dental health care professionals and not firms. Further, the prosthetics are custom-made for the patients of the customers.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–29432 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,695]**

### Woodland Mills Corporation Mill Spring, NC; Notice of Revised Determination on Reconsideration

By application dated July 22, 2010 petitioners requested administrative reconsideration of the Department's negative determination regarding the eligibility of workers and former workers of Woodland Mills Corporation, Mill Spring, North Carolina, to apply for Trade Adjustment Assistance. On August 4, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. The Department's Notice was published in the **Federal Register** on August 13, 2010 (75 FR 49524). Workers at the subject firm are engaged in employment related to the production of cotton yarn.

The information collected during the reconsideration investigation revealed

that, during the period of investigation, imports of articles directly incorporating cotton yarn produced outside the United States that are like or directly competitive with imports of articles incorporating cotton yarn produced by Woodland Mills Corporation, Mill Spring, North Carolina Woodland Mills Corporation, Mill Spring, North Carolina had increased, and the increased imports contributed importantly to worker separations and declines in sales and production at the afore-mentioned firm.

**Conclusion**

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of Woodland Mills Corporation, Mill Spring, North Carolina, who are engaged in employment related to the production of cotton yarn, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Woodland Mills Corporation, Mill Spring, North Carolina, who became totally or partially separated from employment on or after March 10, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29430 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,281]**

### Shorewood Packaging, a Subsidiary of International Paper Company, Including On-Site Leased Workers From Ameristaff Staffing, Danville, VA; Notice of Revised Determination on Reconsideration

By application dated September 7, 2010 the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on August 19, 2010 and the Notice of Determination was published in the **Federal Register** on September 3, 2010 (75 FR 54187). The workers produce cigarette cartons.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift to/acquire from a foreign country the production of articles like or directly competitive with cigarette cartons; that neither the subject firm nor its major declining customers increased imports of articles like or directly competitive with cigarette cartons; that the subject workers are not adversely affected secondary workers; and the International Trade Commission did not identify the subject firm by name as an injured member of a domestic industry in an investigation pursuant to the Tariff Act of 1930.

During the reconsideration investigation, the Department reviewed additional information provided by the petitioner and previously-submitted information, as well as additional information obtained from other sources.

During the reconsideration investigation, the Department confirmed that the subject firm supplied folding cartons used primarily in the tobacco market and confirmed the subject firm's customer base. During the reconsideration investigation, the Department received new information regarding the relationship between the subject firm and a major declining customer and the operations of the customer, with regards to cigarette cartons.

Based on the new information, the Department determines that the subject firm is a supplier to a firm that employs a worker group currently eligible to apply for TAA; the supply of the component part is related to the finished article that is the basis for the TAA certification; and the firm accounts for at least twenty percent of the production or sales of the subject firm.

**Conclusion**

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of Shorewood Packaging, a subsidiary of International Paper Company, Danville, Virginia, meet the worker group certification criteria under Section 222(c) of the Act, 19 U.S.C. 2272(c). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Shorewood Packaging, a subsidiary of International Paper Company, including on-site leased workers from Ameristaff Staffing, Danville, Virginia, who became totally or partially separated from employment on or after January 12, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29435 Filed 11–22–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,210; TA–W–73,210A]**

### Metlife Technology, Operations, and Information Technology Groups Including On-Site Leased Workers From Adecco, Cognizant, IBM, Infosys, Kana, Patni, Siemens, Tapfin, Veritas Moosic, PA, Metlife Technology, Operations, and Information Technology Groups Including On-Site Leased Workers From At&T Solutions, Chimes, Cognizant, Patni, Siemens, Xerox Clarks Summit, PA; Notice of Revised Determination on Reconsideration

By application dated August 2, 2010 petitioners requested administrative reconsideration of the Department's negative determination regarding the eligibility of workers and former workers of MetLife, Technology, Operations, and Information Technology Groups, Moosic, Pennsylvania (TA–W–73,210) and MetLife, Technology, Operations, and Information Technology Groups, Clarks Summit, Pennsylvania (TA–W–73,210A), to apply for Trade Adjustment Assistance (TAA). On August 13, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. The Department's Notice will soon be published in the **Federal Register**.

Workers at the subject facilities are engaged in employment related to the supply of software testing and quality assurance services, and are not separately identifiable by service supplied.

Based on the information obtained during the reconsideration investigation, the Department determines that the subject firm shifted to a foreign country a significant proportion of the services like or directly competitive with those provided by the Technology, Operations, and Information Technology Groups at the Moosic, Pennsylvania facility, including on-site leased workers (TA–W–73,210) and the Clarks Summit, Pennsylvania facility, including on-site leased workers (TA–W–73,210A), and that the shift to India contributed importantly to worker separations at the Technology, Operations, and Information Technology Groups at the aforementioned facilities.

**Conclusion**

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of MetLife, Technology, Operations, and Information Technology Groups, Moosic, Pennsylvania, including on-site leased workers (TA–W–73,210) and MetLife, Technology, Operations, and Information Technology Groups, Clarks Summit, Pennsylvania, including on-site leased workers (TA–W–73,210A), who are engaged in employment related to the supply of software testing and quality assurance services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of MetLife, Technology, Operations, and Information Technology Groups, including on-site leased workers from Adecco, Cognizant, IBM, InfoSys, Kana, Patni, Siemens, Tapfin, and Veritas, Moosic, Pennsylvania (TA–W–73,210) and MetLife, Technology, Operations, and Information Technology Groups, including on-site leased workers from AT&T Solutions, Chimes, Cognizant, Patni, Siemens, and Xerox, Clarks Summit, Pennsylvania (TA–W–73,210A), who became totally or partially separated from employment on or after January 4, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 10th day of November, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–29429 Filed 11–22–10; 8:45 am]

BILLING CODE 4510–FN–P

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 10–15]**

### Notice of the December 15, 2010 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

**AGENCY:** Millennium Challenge Corporation.

**TIME AND DATE:** 10 a.m. to 12 p.m., Wednesday, December 15, 2010.

**PLACE:** Department of State, 2201 C Street, NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Information on the meeting may be obtained from Melvin Williams, Jr., Vice President, General Counsel and Corporate Secretary via e-mail at *Corporatesecretary@mcc.gov* or by telephone at (202) 521–3600.

**STATUS:** Meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to consider the selection of countries that will be eligible for FY 2011 Millennium Challenge Account ("MCA") assistance under Section 607 of the Millennium Challenge Act of 2003 (the "Act"), codified at 22 U.S.C. 7706; discussion of the Malawi Compact; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: November 19, 2010.

**Melvin F. Williams, Jr.,**

*VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.*

[FR Doc. 2010–29648 Filed 11–19–10; 4:15 pm]

BILLING CODE 9211–03–P

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans, 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 a meeting for the transaction of National Science Board business and other matters specified, as follows:

**DATES:** November 30, 2010.

**TIME AND SUBJECT MATTER OPEN:** 1 p.m. to 2:45 p.m.

- Approval of Minutes.
- Committee Chairman's Remarks
- *Discussion Item: Policy Options for NSB Threshold Modification.*
- *Discussion Item:* Recompetition Policy Implementation.
- *NSB Information Item:* Decadal Survey and Large Synoptic Survey Telescope (LSST).
- *NSB Information Item:* ALMA Operations.
- *NSB Information Item:* DataNet.

**TIME AND SUBJECT MATTER CLOSED:** 3 p.m. to 5:15 p.m.

- Committee Chairman's Remarks.
- Approval of Closed Session Minutes.
- *NSB Information Item:* Update on HPC Award.
- *NSB Action Item:* Logistic Contract.
- DUSEL.

**STATUS:** Open and Closed.

**LOCATION:** The open and closed session of this meeting will be in room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. All visitors interested in attending the Open Session must contact the Board Office at least 24 hours prior to the meeting to arrange for a visitor's badge and to obtain the room number. Call 703–292–7000 or send an e-mail message to *nationalsciencebrd@nsf.gov* with your name and organizational affiliation to request the room number and your badge, which will be ready for pick-up at the visitor's desk the day of the meeting. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive your visitor's badge on the day of the teleconference.

**UPDATES AND POINT OF CONTACT:** Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Elizabeth Strickland, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

**Daniel A. Lauretano,**

*Counsel to the National Science Board.*

[FR Doc. 2010–29586 Filed 11–19–10; 4:15 pm]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings

The National Science Board, 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 National Science Board business and other matters specified, as follows:

**AGENCY HOLDING MEETING:** National Science Board.

**DATE AND TIME:** Wednesday, December 1, 2010, at 8 a.m.; and Thursday, December 2, 2010 at 8 a.m.

**PLACE:** National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. *Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail NationalScienceBrd@nsf.gov and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.*

**STATUS:** Some portions open, some portions closed.

**Open Sessions**

*August 25, 2010*

8 a.m.–8:05 a.m.
8:05 a.m.–9:50 a.m.
9:50 a.m.–11 a.m.
11 a.m.–12 p.m.
1 p.m.–1:15 p.m.
1:15 p.m.–2 p.m.

*August 26, 2010*

8 a.m.–8:30 a.m.
8:30 a.m.–10 a.m.
10 a.m.–10:15 a.m.
1 p.m.–3 p.m.

**Closed Sessions**

*August 25, 2010*

2 p.m.–3 p.m.
5 p.m.–5:15 p.m.

*August 26, 2010*

10:15 a.m.–10:30 a.m.
10:30 a.m.–11 a.m.
11 a.m.–12 p.m.

*Updates:* Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

**AGENCY CONTACT:** Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

**PUBLIC AFFAIRS CONTACT:** Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

**MATTERS TO BE DISCUSSED:**

**Wednesday, December 1, 2010**

*Chairman's Introduction*

Open Session: 8 a.m.–8:05 a.m., Room 1235

*Committee on Science and Engineering Indicators (SEI)*

Open Session: 8:05 a.m.–9:50 a.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Discussion of key dates and activities for production of *Science and Engineering Indicators 2012 Digest.*
- Discussion and Approval of *Science and Engineering Indicators 2012* Narrative Chapter Outlines.
- Selection of Lead Chapter Reviewers.
- Electronic Distribution of Initial Chapter Drafts for Board Review.
- Update on Graphic Design Review of State Chapter.
- Update on SBE Expert Workshops on Measuring Public Scientific Knowledge and Understanding.
- SRS Data Development Activities.
- Chairman's Summary.

*Committee on Education and Human Resources (CEH)*

Open Session: 9:50 a.m.–11 a.m., Room 1235

- Approval of Minutes.
- PCAST Report: Prepare and Inspire: K–12 Education in Science, Technology, Engineering, and Math (STEM) for America's Future.
  - Speaker: Dr. James Gates, Jr., PCAST Member.
  - Discussant: Dr. Joan Ferrini-Mundy, Acting Assistant Director HER.
- Update on NSF's Response to the STEM Innovators Report and Other Recent STEM Education Policy Recommendations.
  - Speaker: Dr. Joan Ferrini-Mundy, Acting Assistant Director HER.

*CPP Subcommittee on Polar Issues (SOPI)*

Open Session: 11 a.m.–12 p.m., Room 1235

- Chairman's Remarks.
- OPP Director's Remarks.
- U.S. Antarctic Program Review & Timetable.
- Update on Arctic Ice Cover.
- Update on the Polar Research Vessel.

*CPP Task Force on Unsolicited Mid-Scale Research (MS)*

Open Session: 1 p.m.–1:15 p.m., Room 1235

- Approval of Minutes.
- Discussion of focus groups.
- Other information gathering and next steps related to unsolicited mid-scale research.

*Task Force on Merit Review (MR)*

Open Session: 1:15 p.m.–2 p.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Status Update on Data-Gathering Activities.
- Initiate Discussion of Community Workshop.

Committee on Programs and Plans (CPP)

Closed Session 2 p.m.–3 p.m., Room 1235

- Committee Chairman's Remarks.
- *NSB Action Items:* Science of Learning Centers: Extension of Funding for Two Centers.
  - Learning in Informal and Formal Environments (LIFE) Center.
  - Center of Excellence for Learning in Education, Science and Technology (CELEST).

*Committee on Audit and Oversight (A&O)*

Open Session 3 p.m.–5 p.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Human Resources Update (Dr. Marrett).
- Inspector General's Update (Ms. Lerner).
- FY2010 Financial Statement Audit/FISMA—(Auditors).
- Collaborative Audit Resolution.
- FY2011 OIG Audit Plan.
- OIG Semi-annual Report (Ms. Lerner and Dr. Frye).
- Chief Financial Officer's Update (Ms. Rubenstein).
- Chief Information Officer's Report (Ms. Norris).
- Review of NSB Policy on Award Thresholds Requiring NSB Approval Committee.
- Chairman's Closing Remarks.

*Committee on Audit and Oversight (A&O)*

Closed Session 5 p.m.–5:15 p.m., Room 1235

- Committee Chair's Opening Remarks.
- Procurement Activities.

**Thursday, December 2, 2010**

*CSB Subcommittee on Facilities*

Open Session: 8 a.m.–8:30 a.m., Room 1235

- Chairman's Remarks.
- Review of the NSF Principles Document.

- Discuss Draft Interim Report.
- Discuss Next Steps for Moving Forward to the May 2011 Meeting.

*CSB Task Force on Data Policies*

Open Session: 8:30 a.m.–10 a.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Presentations on Open Access.
- Discussion of March 27–29, 2010 Workshop.
- Closing Remarks.

*Committee on Strategy and Budget (CSB)*

Open Session: 10 a.m.–10:15 a.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Update on FY 2011 Appropriations Process.
- NSB Budget Update.
- NSF Strategic Plan Update.
- Closing Remarks.

*Committee on Strategy and Budget (CSB)*

Closed Session: 10:15 a.m.–10:30 a.m., Room 1235

- Update on NSF FY 2012 Budget Development.

*Plenary Executive*

Closed Session: 10:30 a.m.–11 a.m., Room 1235

- Approval of Plenary Executive Closed Minutes, September 2010.
- Candidate Sites for Board Retreat and Meeting of September 2011.
- Discussion and Selection of Honorary Awards.

*Plenary*

Closed Session: 11 a.m.–12 p.m., Room 1235

- Approval of Minutes.
- Awards and Agreements (Resolutions)
  - Logistics Contract and Renewal of two Science of Learning Centers.
- Closed Committee Reports.

*Plenary*

Open Session: 1 p.m.–3 p.m., Room 1235

- Presentation by 60th Anniversary Speaker, Dr. Emily Brodsky.
- Presentation on *NSF Open Government,* Dr. José Munoz.
- Presentation on *NSF.*
- *Response to Oil Spill Research,* Dr. Timothy Killeen.
- Presentation on *Update on Science, Engineering, and Education for Sustainability (SEES),* Dr. Timothy Killeen.
- Approval of Minutes.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.

Adjourn 3 p.m.

**Daniel A. Lauretano,**

*Counsel to the National Science Board.*

[FR Doc. 2010–29629 Filed 11–19–10; 4:15 pm]

BILLING CODE 7555–01–P

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, December 7, 2010.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The ONE item is open to the public.

**Matter To Be Considered**

8066A Aircraft Accident Report—Crash During Takeoff of Firefighting Helicopter, U.S. Forest Service, Sikorsky S–61N, N612AZ, Weaverville, California, August 5, 2008.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set-up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, December 3, 2010.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

**FOR MORE INFORMATION CONTACT:** Candi Bing, (202) 314–6403.

Dated: Friday, November 19, 2010.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2010–29655 Filed 11–19–10; 4:15 pm]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No.: 52–042; NRC–2010–0165]**

### Exelon Nuclear Texas Holdings, LLC, Early Site Permit Application for the Victoria County Station Site, Notice of Hearing, Opportunity To Petition for Leave To Intervene, and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

**AGENCY:** Nuclear Regulatory Commission (NRC or the Commission).

**ACTION:** Notice of hearing and opportunity to petition for leave to intervene.

**DATES:** Petitions for leave to intervene must be filed by January 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Janelle B. Jessie, Project Manager, BWR Projects Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–6775; e-mail: *Janelle.Jessie@nrc.gov.*

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

*NRC Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application letter dated March 25, 2010, is available electronically under ADAMS Accession Number ML101030742. The application is also electronically available for public viewing at *http://www.nrc.gov/reactors/new-reactors/esp/victoria.html.* The application is also available to local residents at the Victoria Public Library, Victoria County, Texas.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10 of the *Code of*

*Federal Regulations* (10 CFR) part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," notice is hereby given that a hearing will be held, at a time and place to be set in the future, by the NRC or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated March 25, 2010, filed by Exelon Nuclear Texas Holdings, LLC, pursuant to Subpart A of 10 CFR part 52, for an early site permit (ESP). The application, which was supplemented by the applicant by letters dated May 4, May 6, May 13, May 20, June 15, June 24, and June 28, 2010, requests approval of an ESP for the Victoria County Station Site to be located in Victoria County, Texas. Notice of NRC's receipt of the application was published in the **Federal Register** on April 28, 2010 (75 FR 22434). The application was accepted for docketing on June 7, 2010 (75 FR 33653). The docket number established for this application is 52–042.

The Victoria County Station early site permit application uses technical information from various certified and proposed designs to develop a plant parameter envelope for facility characterization necessary to assess the suitability of the site for any future construction and operation of a nuclear power plant.

The hearing will be conducted by a Board that will be designated by the Chief Judge of the Atomic Safety and Licensing Board Panel, or will be conducted by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, "Referral to the ACRS," and the ACRS will report on those portions of the application that concern safety. The NRC staff will also complete an environmental review of the application and will document its findings in an environmental impact statement in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR part 51.

## II. Petitions for Leave To Intervene

Requirements for petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions." Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC PDR, located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). NRC regulations are also accessible electronically from the NRC Electronic Reading Room on the NRC Web site at *http://www.nrc.gov*.

Any person whose interest may be affected by this proceeding and who desires to participate as a party to this proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a combined license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

Those permitted to intervene become parties to the contested proceeding, subject to any limitations in the order granting leave to intervene. The party's participation will be governed by applicable NRC regulations, policies, and procedures, and may include the opportunity to present the party's legal and technical views, introduce evidence, and propose questions to be asked of witnesses. The Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than January 24, 2011. Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Board or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should be submitted to the Commission by January 24, 2011. The petition must be filed in accordance with the filing instructions in Section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above may also seek to participate in a hearing as a nonparty in accordance with 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. The Board will determine when it will accept limited appearance statements, and advise the public of such opportunities.

**III. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner should contact the Office of the Secretary by e-mail at *Hearing.Docket@nrc.gov,* or by telephone at 301 415–1677, to request: (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, Board, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

As noted in Section II above, petitions for leave to intervene must be filed no later than January 24, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff that are listed below. Counsel for the applicant is J. Bradley Fewell, 630–657–3769, *Bradley.Fewell@exeloncorp.com* and Steven P. Frantz, 202–739–5460, *sfrantz@morganlewis.com.* Counsel for the NRC staff in this proceeding is Anthony Wilson, 301–415–3699, *Anthony.Wilson@nrc.gov.*

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1) of this Order;

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions," for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR Part 2, Subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC Office of Administration at 301–492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 301–415–7232 or 301–492–7311, or by e-mail to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $200.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the "need to know," are still applicable.

**Note:** Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0001. These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC "E Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or "need to know" the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 16th day of November 2010.

For the Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

## Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

| Day | Event/Activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to sensitive unclassified non-safeguards information (SUNSI) and/or safeguards information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for the fingerprint/background check. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply). |
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) "need to know" for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of "need to know" for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections. |
| 25 | If NRC staff finds no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds need for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| 190 | (Receipt +180) If NRC staff finds standing, "need to know" for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information. |
| 205 | Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv). |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervener reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2010–29481 Filed 11–22–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2010–0002]**

## Sunshine Act Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of November 22, 29, December 6, 13, 20, 27, 2010.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

### Week of November 22, 2010

There are no meetings scheduled for the week of November 22, 2010.

### Week of November 29, 2010—Tentative

*Tuesday, November 30, 2010*

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

### Week of December 6, 2010—Tentative

There are no meetings scheduled for the week of December 6, 2010.

### Week of December 13, 2010—Tentative

*Thursday, December 16, 2010*

2 p.m. Briefing on Construction Reactor Oversight Program (cROP) (Public Meeting).

(Contact: Aida Rivera-Varona, 301–415–4001).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

### Week of December 20, 2010—Tentative

*Tuesday, December 21, 2010*

9:30 a.m. Briefing on the Threat Environment Assessment (Closed—Ex. 1).

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

### Week of December 27, 2010—Tentative

There are no meetings scheduled for the week of December 27, 2010.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet

at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov. mailto:dlc@nrc.gov.mailto:aks@nrc.gov* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: November 18, 2010.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2010–29604 Filed 11–19–10; 4:15 pm]

**BILLING CODE 7590–01–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act—Public Hearing November 24, 2010

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 75, Number 210, Page 67145) on November 1, 2010. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 PM, November 24, 2010 in conjunction with OPIC's December 9, 2010 Board of Directors meeting has been cancelled.

**CONTACT PERSON FOR INFORMATION:** Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

November 19, 2010.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 2010–29580 Filed 11–19–10; 11:15 am]

**BILLING CODE 3210–01–P**

## POSTAL REGULATORY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, December 1, 2010, at 11 a.m.

**PLACE:** Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open parts of the meeting will be audiocast. The audiocast can be accessed via the Commission's Web site at *http://www.prc.gov.*

**MATTERS TO BE CONSIDERED:** The agenda for the Commission's December meeting includes the items identified below.

**PORTIONS OPEN TO THE PUBLIC:**

1. Election of Vice Chairman.
2. Review of postal-related congressional activity.
3. Report on international activities.
4. Review of active cases.
5. Report on recent activities of the Joint Periodicals Task Force and status of the report to the Congress pursuant to Section 708 of the PAEA.
6. Report on the status of the Annual Report.

**PORTIONS CLOSED TO THE PUBLIC:**

7. Discussion of pending litigation.
8. Discussion of confidential personnel issues.
9. Discussion of contracts involving confidential commercial information.

**CONTACT PERSON FOR MORE INFORMATION:** Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, at *stephen.sharfman@prc.gov* or 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

Dated: November 19, 2010.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2010–29664 Filed 11–19–10; 4:15 pm]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, November 22, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, exemption 5 U.S.C. 552b(c)(10) and 17 CFR 200.402(a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, November 22, 2010 will be:

Consideration of amicus participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting item.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 18, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–29595 Filed 11–19–10; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63320; File No. SR–DTC–2010–15]**

### Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend Rules Relating to the Requirement To Maintain a Balance Certificate in the Fast Automated Securities Transfer Program

November 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] notice is hereby given that on November 5, 2010, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared primarily by DTC.[3] 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 purpose of this proposed rule change is to amend DTC's rules relating to its Fast Automated Securities Transfer ("FAST") program to eliminate the requirement for certain transfer agents to custody a balance certificate.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Under DTC's FAST program, DTC leaves securities in the form of balance certificates in the custody of the transfer agent participating in FAST ("FAST transfer agents").[5] The balance certificates are registered in the name of DTC's nominee, Cede & Co. and evidence the record ownership by Cede & Co. of each issue for which the FAST transfer agent acts as transfer agent. The balance certificate agreement is executed by each FAST transfer agent and DTC and sets forth the rights and obligations of FAST transfer agents and DTC. As additional securities are deposited or withdrawn from DTC, the FAST transfer agent adjusts the denomination of the balance certificate as appropriate and electronically confirms theses changes with DTC.

Recently, FAST transfer agents have requested that DTC remove the requirement for FAST transfer agents to custody a balance certificate because the transfer agent electronically confirms the balance with DTC on a daily basis. As a result, DTC is proposing to remove the requirement that FAST transfer agents maintain a balance certificate for certain issuers that are participating in the direct registration system ("DRS").[6]

An issuer that participates in DRS has agreed to allow investors to hold their securities position in book-entry form on the records of the issuer's transfer agent instead of in certificated form. With DRS, shares can be electronically transferred between a DRS Limited Participant (*i.e.,* a transfer agent participating in DRS) and DTC participants (*i.e.,* broker-dealers or banks). DRS provides investors with an alternate approach to holding their securities either in certificated form or in "street" name.[7] As additional securities are deposited or withdrawn from DTC, the DRS Limited Participant adjusts the denomination of the balance certificate as appropriate and electronically confirms these changes with DTC.

Since issuers that participate in DRS have acknowledged that the use of electronic registration of securities is a valid method to evidence ownership of their issued securities and since electronic registration should reduce the costs and risks associated with the creation, storage, and replacement of balance certificates, DTC proposes to remove the requirement that FAST transfer agents maintain a balance certificate for those exchange listed issues that are DRS eligible and participating in DRS. However, DTC also proposes to continue to reserve its rights to draw down from the FAST balance and to receive in lieu of a DRS or electronic position a certificate to be registered in DTC's nominee name of Cede & Co. and to reflect any number of shares up to and including the total amount of shares outstanding due DTC from those FAST transfer agents.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, ("Act") and the rules and regulations thereunder applicable to DTC because it should allow DTC to better safeguard the securities which are in DTC's custody or control or for which it is responsible by reducing the inherent risks associated with the transfer and maintenance of physical certificates.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC 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. DTC will notify the Commission of any written comments received by DTC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within forty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[3] The text of the proposed rule change is attached as Exhibit 5 to DTC's filing, which is available at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010–15.pdf.*

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] FAST reduces the movement of certificates between DTC and the transfer agent, thereby reducing the costs and risks associated with the creation, movement, and storing of certificates. For a description of DTC's current rules relating to FAST, see Securities Exchange Act Release Nos. 34–13342 (March 8, 1977) (File No. SR–DTC–76–3); 34–14997 (July 26, 1978) (File No. SR–DTC–78–11); 34–21401 (October 16, 1984) (File No. SR–DTC–84–8); 34–31941 (March 3, 1993) (SR–DTC–92–15); and 34–46956 (December 2, 2002) (File No. SR–DTC–2002–15). In addition, DTC has filed a proposed rule change with the SEC to update the requirements relating to its FAST and DRS programs (*See* Securities Exchange Act Release No. 34–57362 (February 20, 2008) (File No. SR–DTC–2006–16).

[6] DRS allows registered owners to hold their assets on the records of the transfer agent in book-entry form rather than in certificated form. Securities on deposit at DTC are considered "DRS eligible" if the issuer's by-laws permit the issuance of book entry shares and the CUSIP number has been designated as FAST eligible by DTC. "Participating in DRS" means that the issuer and its transfer agent have complied with DTC's requirements to participate in the DRS program and actually allow investors to hold shares in DRS.

[7] Street name generally describes securities held in the name of a broker-dealer or another nominee, such as a clearing agency, instead of the broker-dealer's customer.

Number SR–DTC–2010–15 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submission should refer to File Number SR–DTC–2010–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010–11.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–DTC–2010–15 and should be submitted on or before December 14, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–29401 Filed 11–22–10; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63324; File No. SR–ISE–2010–103]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees

November 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its fees for its real-time depth of market data offering. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

ISE currently creates market data that consists of options quotes and orders and all trades that are executed on the Exchange. ISE also produces a Best Bid/Offer, or BBO, with the aggregate size from all outstanding quotes and orders at the top price level, or the "top of book." This "core"[3] data is formatted according to Options Price Reporting Authority ("OPRA") specification and sent to OPRA for redistribution to the public.

Pursuant to Securities and Exchange Commission ("SEC") approval, the Exchange also offers a "non-core" data feed on a subscription basis called the ISE Depth of Market Data Feed ("Depth Feed"). The Depth Feed offering aggregates all quotes and orders at the top five price levels on the Exchange, on both the bid and offer side of the market. The Depth Feed offering consists of non-marketable orders and quotes that a prospective buyer or seller has chosen to display. Depth Feed, which is distributed in real time, provides subscribers with a consolidated view of tradable prices beyond the BBO. Depth Feed also shows additional liquidity and enhances transparency for ISE traded options that are not currently available through the OPRA feed. The offering is available to members and non-members, and to both professional and non-professional subscribers.

The Exchange currently charges distributors[4] of Depth Feed $5,000 per month. In addition, the Exchange charges the distributor a monthly fee per controlled device[5] of (i) $50 per controlled device for Professionals at a distributor where the data is for internal use only, (ii) $50 per controlled device for Professionals who receive the data from a distributor where the data is further redistributed externally, and (iii) $5 per controlled device for Non-Professionals who receive the date from a distributor. The Exchange also has a fee cap currently in place where for any one month the combined maximum amount of fees payable by a distributor is as follows: (i) $7,500 for Professionals at a distributor where the data is for internal use only, (ii) $12,500 for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Core" data refers to the best-priced quotations and comprehensive last sale reports of all markets that the Commission requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans. "Non-core" data refers to products other than the consolidated products that markets offer collectively under joint industry plans.

[4] A "distributor" of a Depth Feed is defined on the ISE Schedule of Fees as any firm that receives the Depth of Market data feed directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

[5] A "controlled device" is defined on the ISE Schedule of Fees as any device that a distributor of the Depth of Market data feed permits to access the information in the Depth of Market Raw Data Feed.

Professionals where the data is further redistributed externally in a controlled device, and (iii) $10,000 for Non-Professionals who receive the data in a controlled device from a distributor. Additionally, in an effort to accommodate a distributor's development effort to integrate the Depth Feed offering, the Exchange charges distributors a flat fee of $1,000 for the first month after connectivity has been established between ISE and the distributor; the Exchange also waives all user fees during this one month period.

In differentiating between Professional and Non-Professional subscribers, the Exchange proposes to apply the same criteria for qualification as a Non-Professional subscriber as the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation System Plan Participants use. Accordingly, a "Non-Professional Subscriber" is an authorized end-user of Depth of Market data who is a natural person and who is neither: (a) Registered or qualified with the Securities and Exchange Commission (the "Commission"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt. A "Professional Subscriber" is an authorized end-user of Depth of Market data that has not qualified as a Non-Professional Subscriber.

The purpose of this filing is to lower the fee cap currently in place for Professionals who redistribute the data externally in a controlled device. Based on conversations ISE has had with prospective subscribers, the Exchange believes lowering the fee cap for this offering will lead to increased subscriptions. ISE therefore proposes to lower the cap for these professional subscribers from $12,500 to $10,000 per month. The Exchange is not proposing to make any other changes to the Depth Feed offering.

2. Statutory Basis

ISE believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of ISE data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on heir own internal analysis of the need for such data.[8]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barak Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved."

ISE believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a "due, fee or other charge imposed by the self-regulatory organization," the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. ISE believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or nonmembers, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (DC Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' "[9]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ISE 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoaltion court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive.

For the reasons discussed above, ISE believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, ISE believes that a record may readily be established to demonstrate the competitive nature of the market in question.

As recently noted by a number of exchanges,[10] there is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'."[11] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's

[9] *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

[10] *See* Securities Exchange Act Release Nos. 63084 (October 13, 2010), 75 FR 64379 (October 19, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise an Optional Depth Data Enterprise License Fee for Broker-Dealer Distribution of Depth-of-Book Data) (SR–NASDAQ–2010–125); and 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Feeds) (SR–PHLX–2010–121).

[11] *NetCoalition*, at 24.

joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including numerous self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

Competition among platforms has driven ISE continually to improve its platform data offerings and to cater to customers' data needs. For example, ISE has developed and maintained multiple delivery mechanisms that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. ISE offers front end applications such as its PrecISE Trade application which helps customers utilize data. ISE offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. ISE also offers an enterprise license option to help reduce the administrative burden and costs to firms that purchase market data. Despite these enhancements and a dramatic increase in message traffic, ISE's fees for market data have, for the most part, remained flat or, as is the case with this proposal, decreased.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

*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 No. SR–ISE–2010–103 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–2010–103. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the 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 available publicly. All submissions should refer to File Number SR–ISE–2010–103 and should be submitted by December 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–29402 Filed 11–22–10; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63325; File No. SR–FINRA–2010–039]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook

November 17, 2010.

### I. Introduction

On July 30, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability) in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook").[3] The Commission published the proposed rule change in the Federal Register.[4]

The Commission received 22 comments in response to the proposed rule change.[5] On September 21, 2010, FINRA responded to the comments [6] and filed Amendment No. 1 to the proposed rule change.[7] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as amended, on an accelerated basis.

### II. Description of the Proposed Rule Change

As part of the process of developing the Consolidated FINRA Rulebook, FINRA proposed FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability). The "know your customer" and suitability obligations are critical to ensuring investor protection and fair dealing with customers. FINRA's proposed rule change was designed to retain the core features of these obligations (set forth in NYSE Rule 405(1) and NASD Rule 2310), while modifying both rules to strengthen and clarify them.

The proposed rule change built on a similar proposed rule change on which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 ("Rulebook Consolidation Process"). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[4] *See* Exchange Act Release No. 62718 (August 13, 2010), 75 FR 51310 (August 19, 2010). This release was later amended to correct footnote cross-references. Exchange Act Release No. 62718A (August 20, 2010), 75 FR 52562 (August 26, 2010). The Commission also published the corrected notice on its Web site.

[5] *See* Letters from Steven B. Caruso, Maddox Hargett & Caruso, P.C. (Sept. 8, 2010) ("Caruso Letter"); Barry D. Estell, Attorney (Sept. 9, 2010) ("Estell Letter"); Barbara Black, Charles Hartsock Professor of Law and Director, Corporate Law Center, University of Cincinnati College of Law, and Jill I. Gross, Professor of Law and Director of Legal Skills and Director, Pace Investor Rights Clinic, Pace University School of Law (Sept. 9, 2010) ("Black-Gross Letter"); David P Neuman, Stoltmann Law Offices, PC (Sept. 9, 2010) ("Neuman Letter"); Richard M. Layne (Sept. 9, 2010) ("Layne Letter"); William A. Jacobson, Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic (Sept. 9, 2010) ("Jacobson Letter"); Scott R. Shewan, President, Public Investors Arbitration Bar Association (Sept. 9, 2010) ("PIABA Letter"); Pamela Lewis Marlborough, Associate General Counsel, Advocacy & Oversight, TIAA–CREF (Sept. 9, 2010) ("TIAA–CREF Letter"); Gary A. Sanders, Vice President, Securities and State Government Relations, National Association of Insurance and Financial Advisors (Sept. 9, 2010) ("NAIFA Letter"); Stephen Krosschell, Goodman Nekvasil, P.A. (Sept. 9, 2010) ("Krosschell Letter"); Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers (Sept. 9, 2010) ("CAI Letter"); Lisa Catalano, Director, St. John's University School of Law Securities Arbitration Clinic, (Sept. 9, 2010) ("Catalano Letter"); G. Mark Brewer, Esquire (Sept. 9, 2010) ("Brewer Letter"); Bari Havlik, SVP and Chief Compliance Officer, Charles Schwab & Co. Inc. (Sept. 9, 2010) ("Schwab Letter"); Peter J. Mougey, Levin, Papantonio, Thomas, Mitchell, Echsner, Rafferty, Proctor, P.A. (Sept. 9, 2010) ("Mougey Letter"); Al Van Kampen, Esquire (Sept. 10, 2010) ("Van Kampen Letter"); James T. McHale, Managing Director and Associate General Counsel, SIFMA (Sept. 14, 2010) ("SIFMA Letter"); John S. Markle, Deputy General Counsel, TD Ameritrade (Sept. 15, 2010) ("TD Ameritrade Letter"); Scott C. Ilgenfritz, Johnson, Pope, Bokor, Ruppel & Burns, LLP (Sept. 24, 2010) ("Ilgenfritz Letter"); Dale E. Brown, President and CEO, Financial Services Institute, Inc. (Sept. 27, 2010) ("FSI Letter"); Timothy R. Wing, President and CEO, CME Stock/Option Consulting Services, Inc. (Sept. 28, 2010) ("CME/OCS Letter").

[6] *See* Letter from James Wrona, Associate Vice President and Associate General Counsel, FINRA to Elizabeth M. Murphy, Secretary, Commission, dated October 21, 2010 ("FINRA Response").

[7] *See* Amendment No. 1 to FINRA–2010–039, dated October 21, 2010 ("Amendment No. 1"). The text of Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p122318.pdf,* at the principal office of FINRA, and on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/finra.shtml*).

FINRA requested comment in FINRA *Regulatory Notice* 09–25 (May 2009). The proposed rule change FINRA filed with the Commission included both a comprehensive response to the comments FINRA received in response to *Regulatory Notice* 09–25 and modifications to address those comments.

*A. Proposed FINRA Rule 2090*

The proposed "Know Your Customer" obligation in FINRA Rule 2090 encompasses the main ethical standard of NYSE Rule 405(1). As proposed, the rule would require broker-dealers to use "reasonable diligence," with regard to the opening and maintenance of every account, in order to know and retain the essential facts concerning every customer.[8] The obligation would arise at the beginning of the customer/broker relationship, independent of whether the broker has made a recommendation, and continue throughout the term of that relationship. The proposed supplementary material would define "essential facts" as those "required to (a) Effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules." [9]

The proposal would not incorporate the requirement in NYSE Rule 405(1) to learn the essential facts relative to "every order." FINRA proposed to exclude the "every order" language because of the application of existing order-handling rules.[10] In addition, the reasonable-basis obligation under FINRA's suitability rule requires broker-dealers and their associated persons to use reasonable diligence to understand the securities and strategies they recommend.

FINRA also proposed to delete NYSE Rule 405(2) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretation 405/01 through/04 because they generally are duplicative of other rules, regulations, or laws. For instance, NYSE Rule 405(2) requires firms to supervise all accounts handled by registered representatives. That provision is redundant because NASD Rule 3010 requires firms to supervise their registered representatives.[11]

NYSE Rule 405(3) generally requires persons designated by the member to be informed of the essential facts relative to the customer and to the nature of the proposed account prior to approving the opening of the account. However, FINRA believes that a number of other FINRA rules do, and proposed FINRA rules would, create substantially similar obligations. For example, proposed FINRA Rule 2090 would require members to know the essential facts as to each customer, and NASD Rule 3110(c)(1)(C) requires the signature of the member, partner, officer or manager who accepts the account.[12]

FINRA Rule 3310, which requires a firm to have procedures reasonably designed to achieve compliance with the Bank Secrecy Act ("BSA") and the implementing regulations, also affect a firm's account-opening obligations. One BSA regulation requires a firm to verify the identity of a customer opening a new account.[13] Another BSA regulation requires a firm to engage in due diligence sufficient to enable the firm to evaluate the risk of each customer and to determine if transactions by the customer could be suspicious such that the firm would need to file a suspicious activity report.[14]

Moreover, before certain customers can purchase certain types of investment products (such as options, futures or penny stocks) or engage in certain strategies (such as day trading), the firm must explicitly approve their accounts for such activity.[15]

FINRA also believes that NYSE Supplementary Material 405.10 is redundant of other FINRA proposed and existing requirements, and that the cross references provided in NYSE Supplementary Material 405.20 and .30 are no longer necessary. NYSE Supplementary Material 405.10 generally discusses the requirements that firms know their customers and understand the authority of third parties to act on behalf of customers that are legal entities. As discussed above, proposed FINRA Rule 2090 and proposed FINRA Supplementary Material 2090.01 would require firms to know the essential facts concerning every customer. Moreover, NASD Rule 3110(c) (Customer Account Information), requires firms to maintain a record identifying the person(s) authorized to transact business on behalf of a customer that is a legal entity.[16] NYSE Supplementary Material 405.20 and .30 provide cross references to NYSE Rule 382 (Carrying Agreements) and NYSE Rule 414 (Index and Currency Warrants), respectively, which are no longer necessary or appropriate for inclusion in proposed FINRA Rule 2090.

FINRA believes that the associated NYSE Rule Interpretations also are redundant. NYSE Rule Interpretations 405/01 (Credit Reference—Business Background) and/02 (Approval of New Accounts/Branch Offices) recommend that the credit references and business backgrounds of a new account be cleared by a person other than the registered representative opening the account and require a designated person to approve a new account. These obligations are substantially similar to the requirements in NASD Rule 3110(c)(1)(C) and FINRA Rule 3310, discussed above.

NYSE Rule Interpretation 405/03 (Fictitious Orders) provides that firm "personnel opening accounts and/or accepting orders for new or existing accounts should make every effort to verify the legitimacy of the account and the validity of every order." The interpretation contemplates knowing the customer behind the order as part of the process of ensuring that the order is bona fide. Proposed FINRA Rule 2090 and FINRA Rule 3310 together would similarly require firms to know their customers.

To the extent NYSE Rule Interpretation 405/03 seeks to guard against the use of fictitious trades as a means of manipulating markets, existing FINRA rules address currently these activities. FINRA Rule 5210 (Publication

[8] *See* Proposed FINRA Rule 2090.

[9] *See* Proposed FINRA Rule 2090.01. FINRA proposed to change the explanation of "essential facts" in response to comments.

[10] *See, e.g.,* SEC Regulation NMS (National Market System), 17 CFR 242.600–242.612; FINRA Rule 7400 Series (Order Audit Trail System); NASD Rule 2320 (Best Execution and Interpositioning); NASD Rule 2400 Series (Commissions, Mark-Ups and Charges); NASD IM–2110–2 (Trading Ahead of Customer Limit Order); and IM–2110–3 (Front Running Policy). *See also,* FINRA *Regulatory Notice* 08–80 (December 2008) (proposed FINRA Rule 5310); FINRA *Regulatory Notice* 08–83 (December 2008) (proposed FINRA Rule 5270); and Exchange Act Release No. 61168 (December 15, 2009) (proposed FINRA Rule 5320).

[11] FINRA is proposing to adopt NASD Rule 3010 as FINRA Rule 3110, subject to certain amendments. *See* FINRA *Regulatory Notice* 08–24 (May 2008).

[12] FINRA is proposing to adopt NASD Rule 3110(c)(1)(C) as FINRA Rule 4512(a)(1)(D), subject to certain amendments. *See* Exchange Act Release No. 63181 (October 26, 2010), 75 FR 67155 (November 1, 2010). Proposed FINRA Rule 4512(a)(1)(D) would clarify that members maintain the signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts.

[13] *See* 31 CFR 103.122.

[14] *See* 31 CFR 103.19.

[15] *See, e.g.,* Exchange Act Rule 15g–1 through 15g–9 (Penny Stock Rules); FINRA Rule 2360 (Options); FINRA Rule 2370 (Security Futures); FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts).

[16] FINRA is proposing to adopt NASD Rule 3110(c) as FINRA Rule 4512 (Customer Account Information), subject to certain amendments. *See* Exchange Act Release No. 63181 (October 26, 2010), 75 FR 67155 (November 1, 2010).

of Transactions and Quotations) prohibits members from publishing or circulating or causing to publish or circulate, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of, or purports to quote the bid or asked price for, any security unless the member believes that the transaction or quotation was bona fide. FINRA Rule 5220 (Offers at Stated Prices) prohibits members from making an offer to buy from or sell to any person any security at a stated price unless the member is prepared to purchase or sell at that price and under the conditions stated at the time of the offer to buy or sell. Moreover, the use of fictitious transactions by a member or associated person to manipulate the market would also violate FINRA's rules regarding just and equitable principles of trade (FINRA Rule 2010) and fraud (FINRA Rule 2020).[17]

NYSE Rule Interpretation 405/04 (Accounts in which Member Organizations have an Interest) discusses requirements regarding transactions initiated "on the Floor" for an account in which a member organization has an interest. The interpretation is directed to the NYSE marketplace. Section 11(a) of the Exchange Act and the rules thereunder also address trading by members of exchanges, brokers and dealers.

For the reasons discussed above, FINRA believes NYSE Rule 405(1) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretations 405/01 through/04 are no longer necessary. They will be eliminated from the current FINRA rulebook upon Commission approval and implementation by FINRA of this proposed rule change.

*B. Proposed FINRA Rule 2111*

The proposed suitability obligation in FINRA Rule 2111 would require a broker-dealer or associated person to have "a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer * * *."[18] This assessment would need to be "based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile[,]" which "includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation."[19]

The proposed rule would explicitly cover a recommended investment strategy. Although FINRA generally intends the term "strategy" to be interpreted broadly, the proposed supplementary material would exclude the following communications from the coverage of Rule 2111 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities:

- General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (*e.g.,* equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimates of future retirement income needs, and (v) assessment of a customer's investment profile;
- Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;
- Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD Interpretative Material ("IM") 2210–6 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by NASD IM–2210–6;[20] and
- Interactive investment materials that incorporate the above.[21]

The proposal also would codify interpretations of the three main suitability obligations, listed below:

- Reasonable basis (members must have reasonable grounds to believe, based on reasonable diligence, that a recommendation is suitable for at least *some* investors);
- Customer specific (members must have reasonable grounds to believe a recommendation is suitable for the particular investor at issue); and
- Quantitative (members must have a reasonable basis to believe the number of transactions recommended to a customer within a certain period is not excessive).[22]

In addition, the proposal would modify the institutional-customer exemption by focusing on whether there is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies,[23] and is exercising independent judgment in evaluating recommendations.[24] The proposal would require institutional customers to affirmatively indicate that they are exercising independent judgment,[25] and would harmonize the definition of institutional customer in the suitability rule with the definition of "institutional account" in NASD Rule 3110(c)(4).[26]

[17] *See, e.g., Terrance Yoshikawa,* Exchange Act Release No. 53731 (April 26, 2006), 87 SEC Docket 2924, 2006 SEC LEXIS 948 (upholding finding that president of broker-dealer violated just and equitable principles of trade and anti-fraud provisions by fraudulently entering orders designed to manipulate the price of securities).

[18] *See* Proposed FINRA Rule 2111(a).

[19] *See* Proposed FINRA Rule 2111(a). FINRA modified various aspects of the proposed information-gathering requirements in response to comments.

[20] FINRA is proposing to adopt NASD IM–2210–6 as FINRA Rule 2214 without material change. *See Regulatory Notice* 09–55 (September 2009).

[21] *See* Proposed FINRA Rule 2111.03. FINRA included this exception in response to comments.

[22] *See* Proposed FINRA Rule 2111.03.

[23] *See* Proposed FINRA Rule 2111(b). The requirement in proposed FINRA Rule 2111(b) that the firm or associated person have a reasonable basis to believe that "the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies" comes from NASD IM–2310–3. As FINRA explained in that IM, "[i]n some cases, the member may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk." FINRA further stated that, "[i]f a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a member's customer-specific obligations under the suitability rule would not be diminished by the fact that the member was dealing with an institutional customer." FINRA also stated that "the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent decision."

[24] *See* Proposed FINRA Rule 2111(b).

[25] *Id.* FINRA noted that the institutional-customer exemption applies only if both parts of the two-part test are met: (1) There is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, in general and with regard to particular transactions and investment strategies, *and* (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating recommendations.

[26] *See* Proposed FINRA Rule 2111(b). FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c), without material change. *See*

Continued

Finally, the suitability proposal would eliminate or modify a number of the IMs associated with the existing suitability rule because they are no longer necessary. Some of these IMs would be unnecessary in light of the proposed changes to the scope of the suitability rule (*e.g.,* the proposed rule text would capture "strategies" currently referenced in IM–2310–3),[27] and others would be redundant because they identify conduct explicitly covered by other rules (*e.g.,* inappropriate sale of penny stocks referenced in IM–2310–1 is covered by the Commission's penny stock rules,[28] while fraudulent conduct identified in IM–2310–2 is covered by Exchange Act and FINRA anti-fraud provisions [29]).

Other IM provisions would be incorporated in some form into the proposed rule or the supplementary material to the proposed rule. For example, the exemption in IM–2310–3 dealing with institutional customers has been modified and would be included in the text of proposed FINRA Rule 2111.[30] In addition, the explication of the three main suitability obligations in IM–2310–2 and IM–2310–3 has been consolidated into a single discussion in the proposed rule's supplementary material.[31] Similarly, the proposed rule's supplementary material would include a modified form of the current requirement in IM–2310–2 that a member refrain from recommending purchases beyond a customer's capability.[32] The supplementary material also would incorporate the discussions in IM–2310–2 and IM–2310–3 regarding the significance of the suitability rule in promoting fair dealing with customers and ethical sales practices.[33]

The only type of misconduct identified in the IMs that is neither explicitly covered by other rules nor incorporated in some form into the proposed new suitability rule is unauthorized trading, currently discussed in IM–2310–2. However, it is well settled that unauthorized trading violates just and equitable principles of trade under FINRA Rule 2010 (previously NASD Rule 2110).[34] Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule does not alter the longstanding view that unauthorized trading is serious misconduct and clearly violates FINRA's rules.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The implementation date will be no later than 270 days following publication of the Regulatory Notice announcing Commission approval.

## III. Summary of Comments and FINRA's Response

As stated previously, the Commission received 22 comments in response to the proposed rule change,[35] and FINRA responded to the comments both by letter [36] and by filing an amendment to the proposed rule change to address certain comments.[37] Although commenters raised numerous suitability-related issues that FINRA previously addressed in its original rule filing with the Commission, a few commenters identified new suitability-related concerns regarding the proposed rule change, and some persuaded FINRA to amend the proposal. A discussion of those comments and FINRA's response follows.

### *Request for Indeterminate Delay of the Proposal*

• Comments

Six commenters argued that FINRA's proposed rule changes should not be acted on until after policymakers (*e.g.,* Congress, the Commission, and/or FINRA) determine whether broker-dealers must comply with fiduciary obligations.[38] In particular, these commenters cited the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), which, among other things, requires the SEC to study the standards of care broker-dealers and investment advisers must adhere to when dealing with clients (including a fiduciary duty). These commenters advocated postponing FINRA's proposed rule changes until the parameters of any SEC rulemaking resulting from the study are clear. Other commenters strongly opposed any delay, citing the importance of FINRA's proposal to investor protection.[39]

• FINRA's Response

FINRA stated that its proposal generally maintains the core features of its current "know your customer" and suitability rules. FINRA also indicated that the proposed changes to those rules would provide greater protection to investors and greater certainty to broker-dealers by streamlining various provisions to focus on critical obligations that are not covered by other rules and by codifying in one place significant interpretations of key requirements.

FINRA also expressed the view that nothing in Dodd-Frank argues for the discontinuance of these important sales-practice obligations or the weakening of investor protection generally. FINRA stated that the suitability obligations in proposed Rule 2111 would not be inconsistent with a fiduciary duty if broker-dealers become subject to that duty at some future date.[40] In addition, FINRA noted that the suitability and "know your customer" standards are a material part of a fiduciary duty in the context of advice or recommendations.

In response to similar comments made with respect to FINRA's NTM 09–25, FINRA quoted a Commission release that noted "investment advisers under the Advisers Act" that have fiduciary duties "owe their clients the duty to provide only suitable investment advice * * *. To fulfill this suitability obligation, an investment adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives." [41] FINRA also cited another Commission release that

Exchange Act Release No. 63181 (October 26, 2010), 75 FR 67155 (November 1, 2010).

[27] *See* Proposed Rule 2111(a).

[28] *See* Exchange Act Rule 15g–1 through 15g–9.

[29] *See* Section 10(b) of the Act; FINRA Rule 2020.

[30] *See* Proposed Rule 2111(a).

[31] *See* Proposed Rule 2111.05.

[32] *See* Proposed Rule 2111.06.

[33] *See* Proposed Rule 2111.01.

[34] *See, e.g., Robert L. Gardner,* 52 S.E.C. 343, 344 n.1 (1995), *aff'd,* 89 F.3d 845 (9th Cir. 1996) (table format); *Keith L. DeSanto,* 52 S.E.C. 316, 317 n.1 (1995), *aff'd,* 101 F.3d 108 (2d Cir. 1996) (table format); *Jonathan G. Ornstein,* 51 S.E.C. 135, 137 (1992); *Dep't of Enforcement* v. *Griffith,* No. C01040025, 2006 NASD Discip. LEXIS 30, at *11–12 (NAC Dec. 29, 2006); *Dep't of Enforcement* v. *Puma,* No. C10000122, 2003 NASD Discip. LEXIS 22, at *12 n.6 (NAC Aug. 11, 2003).

[35] *See supra,* note 5.

[36] *See supra,* note 6.

[37] *See supra,* note 7.

[38] *See* TIAA–CREF Letter, CAI Letter, Schwab Letter, SIFMA Letter, TD Ameritrade Letter, and FSI Letter.

[39] *See* Black-Gross Letter.

[40] FINRA notes as well that the suitability rule is only one of many FINRA business-conduct rules with which broker-dealers and their associated persons must comply. Many FINRA rules prohibit, limit, or require disclosure of conflicts of interest. Broker-dealers and their associated persons, for instance, must comply with just and equitable principles of trade, standards for communications with the public, order-handling requirements, fair-pricing standards, and various disclosure obligations regarding research, trading, compensation, margin, and certain sales and distribution activity, among others, in addition to suitability obligations.

[41] 75 FR 51310, at 51314 (Aug. 19, 2010) and 75 FR 52562, 52567 (Aug. 26, 2010) citing SEC Release Nos. IC–22579, IA–1623, S7–24–95, 1997 SEC LEXIS 673, at *26 (Mar. 24, 1997) (Status of Investment Advisory Programs under the Investment Company Act of 1940). *See also Shearson, Hammill & Co.,* 42 S.E.C. 811 (1965) (finding willful violations of Section 206 of the Advisers Act when investment adviser made unsuitable recommendations).

explained that "[i]nvestment advisers are fiduciaries who owe their clients a series of duties, one of which is the duty to provide only suitable investment advice." [42]

As to timing, FINRA maintained that improvements to investor protection and clarification of broker-dealer obligations should not be postponed indefinitely simply because there could potentially be a rule that may address similar issues at a future time. FINRA indicated that delay also would be problematic because it would amount to an open-ended postponement of the important benefits to customers and broker-dealers noted above. As some commenters noted, Dodd-Frank does not require that the Commission engage in rulemaking at the end of its study and, even if the Commission proposes a rule, there is no timetable for doing so.[43]

*Proposed FINRA Rule 2090*

• Comments

One commenter expressed concern regarding FINRA's proposed elimination of Supplementary Material .20 to NYSE Rule 405, which references the applicability of NYSE Rule 382 (Carrying Agreements) and the allocation of responsibility between introducing and carrying firms.[44]

• FINRA's Response

FINRA stated that because NASD Rule 3230 (Clearing Agreements), which generally would be applicable, similarly covers allocation issues between introducing and carrying firms, reference to NYSE Rule 382 is both outdated and unnecessary.

*Proposed FINRA Rule 2111—Consistent Terminology and Expanded Explanation of Key Terms*

• Comments

One commenter suggested that FINRA should maintain a standard approach to the terminology used in the rule.[45] The commenter gave as an example the use of "reasonable basis" in one section and "reasonable grounds" in another. The commenter also noted that the rule uses both "reasonable diligence" and "adequate due diligence." Another commenter asked FINRA to provide greater clarity in Supplementary Material regarding the terms "investment profile" and "reasonable diligence." [46]

• FINRA's Response

In response to this and other comments, FINRA filed Amendment No. 1, which amended the proposal to use more consistent terminology, where possible, and to provide more detailed explanations regarding key terms or responsibilities. As amended, the rule would consistently use the term "reasonable basis" rather than also using "reasonable grounds" and "reasonable expectations," and the term "reasonable diligence" instead of also using "due diligence" and "adequate diligence." [47] In addition, Amendment No. 1 amends the proposal to add expanded discussions regarding a "customer's investment profile" (see discussion below of new Supplementary Material .04—Customer's Investment Profile) and the "reasonable diligence" standards in the context of a customer's investment profile (see below) and reasonable-basis suitability.[48]

*Proposed FINRA Rule 2111—Information Gathering*

• Comments

Some commenters took issue with various aspects of the proposal's information-gathering requirements. Several commenters stated that obtaining each specified category of information is not warranted on every occasion.[49] Some asked that FINRA build flexibility into the rule so that a firm would not have to collect information if it was irrelevant based on the particular facts and circumstances.[50] Alternatively, these commenters requested that FINRA establish an effective date for the new rule that recognizes the difficulty associated with developing, modifying, and implementing forms and systems to request and capture the proposed new categories of information.[51]

One commenter maintained that factors such as a customer's investment experience, time horizon, and risk tolerance should be considered when reviewing a customer's portfolio as a whole, and not individual trades.[52] In this commenter's view, requiring consideration of such factors on a trade-by-trade basis would prevent customers from creating a diverse portfolio made up of securities with different levels of liquidity, risk, and time horizons.

• FINRA's Response

FINRA noted that the factors it added to the rule are subsets of broader categories of information identified in the current suitability rule, and that case law and regulatory notices have long stressed the significance of these factors to a suitability analysis. In response to those comments requesting flexibility regarding the type of information that firms must seek to obtain and comments requesting more guidance on what is required, FINRA proposed in Amendment No. 1 to add Supplementary Material .04 to FINRA Rule 2111.[53] FINRA believes proposed Supplementary Material .04 would provide flexibility regarding the type of information that firms must seek to obtain and analyze in connection with a recommendation under the proposed rule. However, because FINRA believes the factors discussed in Rule 2111(a) generally are relevant (and often crucial) to a suitability analysis, the proposed rule would require firms to document with specificity their reasonable basis for believing that a factor is not relevant in order to be relieved of the obligation

[42] 75 FR 51310, at 51314 (Aug. 19, 2010) and 75 FR 52562, 52567 (Aug. 26, 2010) citing Investment Advisers Act Release No. 1406, 1994 SEC LEXIS 797, at *4 (Mar. 16, 1994) (Suitability of Investment Advice Provided by Investment Advisers).

[43] *See* Black-Gross Letter.

[44] *See* SIFMA Letter.

[45] *See* SIFMA Letter.

[46] *Id.*

[47] *See, e.g.,* Proposed Rule 2090 (replacing the term "due diligence" with "reasonable diligence"); Supplementary Material .04 (Customer's Investment Profile) to Proposed Rule 2111 (using the terms "reasonable basis" and "reasonable diligence"); Supplementary Material .05 (Components of Suitability Obligations) to Proposed Rule 2111 (replacing the term "adequate due diligence" with the term "reasonable diligence" and replacing the term "reasonable grounds" with the term "reasonable basis"); Supplementary Material .06 (Customer's Financial Ability) to Proposed Rule 2111 (replacing the term "reasonable expectation" with the term "reasonable basis").

[48] The Supplementary Material regarding reasonable-basis suitability now contains the following expanded discussion of the term "reasonable diligence": "A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule."

[49] *See* Schwab Letter, CAI Letter, SIFMA Letter, TD Ameritrade Letter, and TIAA–CREF Letter.

[50] *See* CAI Letter, TD Ameritrade Letter, and TIAA–CREF Letter.

[51] *See* Schwab Letter, CAI Letter, SIFMA Letter, TD Ameritrade Letter, and TIAA–CREF Letter.

[52] *See* FSI Letter.

[53] Supplementary Material .04 to Proposed FINRA Rule 2111 would provide, "*.04 Customer's Investment Profile.* A member or associated person shall make a recommendation covered by this Rule only if, among other things, the member or associated person has sufficient information about the customer to have a reasonable basis to believe that the recommendation is suitable for that customer. The factors delineated in Rule 2111(a) regarding a customer's investment profile generally are relevant to a determination regarding whether a recommendation is suitable for a particular customer, although the level of importance of each factor may vary depending on the facts and circumstances of the particular case. A member or associated person shall use reasonable diligence to obtain and analyze all of the factors delineated in Rule 2111(a) unless the member or associated person has a reasonable basis to believe, documented with specificity, that one or more of the factors are not relevant components of a customer's investment profile in light of the facts and circumstances of the particular case."

to seek to obtain information about that factor.[54]

FINRA stated that proposed Supplementary Material .04 also led to the addition of new Supplementary Material .02 to proposed Rule 2111 that reiterates FINRA's longstanding position that firms and their associated persons cannot disclaim any obligations under the suitability rule.[55] Among other things, Supplementary Material .02 would clarify that firms and their associated persons cannot disclaim their obligation to use reasonable diligence to obtain and analyze relevant customer information.

Finally, FINRA indicated that it disagrees with the premise that a recommendation–by-recommendation analysis precludes consideration of a customer's investment portfolio. FINRA contended that although its suitability rule requires a recommendation-by-recommendation analysis, the current and proposed suitability rules explicitly permit the suitability analysis of a particular transaction to be performed within the context of the investor's other security holdings or investments. In fact, they requires that firms make reasonable efforts to gather and analyze information regarding a customer's other securities holdings as part of its suitability review.[56]

*Proposed Rule 2111—Recommendations To Hold Securities*

• Comments

Several commenters urged FINRA to clarify in the rule that the rule covers explicit recommendations to hold a security or securities.[57]

• FINRA's Response

FINRA indicated that it previously had stated that eliminating in the proposed rule the reference to "purchase, sale or exchange" used in the current rule and adding in the proposed rule the term "strategy" meant that the proposed rule would cover explicit recommendations to hold a security or securities.[58] FINRA explained that the rule recognizes that customers may rely on members' and associated persons' investment expertise and knowledge, and it is thus appropriate to hold members and associated persons responsible for the recommendations that they make to customers, regardless of whether those recommendations result in transactions or generate transaction-based compensation.[59]

For purposes of clarity, Amendment No. 1 would amend Supplementary Material .03 to state that investment strategies would include, among other things, an explicit recommendation to hold a security or securities.

*Proposed Rule 2111—Institutional Customers*

• Comments

One commenter requested that FINRA exempt from the "affirmative indication" requirement of proposed Rule 2111(b) those institutional investors that qualify as qualified institutional buyers ("QIBs") for purposes of Rule 144A under the Securities Act of 1933 (the "Securities Act").[60] That commenter argued that "[QIBs] are among the most sophisticated counterparties in the institutional marketplace, and member firms already have well established suitability procedures for these customers that reflect their level of sophistication."

The same commenter also suggested that FINRA expand the coverage of proposed Rule 2111(b) so that, in addition to meeting its customer-specific suitability obligation, a member firm also meets its quantitative suitability obligation if the conditions in Rule 2111(b)(1) and (2) are satisfied.[61] That commenter stated that imposing a quantitative suitability obligation in the institutional delivery-versus-payment/receipt-versus-payment context makes little sense. The commenter also stated that, because business institutions typically have their own internal portfolio managers, handle custody away from the broker-dealer and execute trades with multiple firms, no single broker-dealer would see all of an institution's trades or its entire investment portfolio, and thus no single broker-dealer would be in a position to determine whether the institution's transactions are so excessive or frequent as to constitute churning.

In addition, this commenter requested that FINRA modify the sentence in proposed Supplementary Material .05 providing that "[w]ith respect to having to indicate affirmatively that it is exercising independent judgment in evaluating the member's or associated person's recommendations, an institutional customer may indicate that it is exercising independent judgment on a trade-by-trade basis, on an asset-class-by-asset-class basis, or in terms of all potential transactions for its account."[62] The commenter believed this sentence was confusing and subject to varying interpretations. The commenter stated that it believed that "the intent of Supplementary Material .05 is to clarify that proposed Rule 2111(b)(2) allows member firms to establish and document a clear understanding of the institutional customer's independence at the outset of the relationship—that is, at the time of account opening," and that if the intent were not as it believed, the sentence would "fundamentally alter the operation of the institutional markets and could have a negative impact on execution quality."

• FINRA's Response

FINRA stated, with respect to the comment that FINRA should exempt firms from the requirement to obtain an "affirmative indication" from QIBs, that it does not believe that a monetary threshold, whatever the amount or context, is an adequate substitute for the proposed requirement that the institutional customer affirmatively acknowledge that it is exercising independent judgment as part of the determination that an exemption from customer-specific suitability applies.

[54] FINRA noted that the efforts of a firm that seeks but does not obtain information about a particular factor (as opposed to a situation where the firm does not attempt to obtain the information about a particular factor) would be judged by the "reasonable diligence" standard. FINRA also noted that, when customer information is unavailable despite a firm's reasonable diligence in seeking to obtain the information, the firm must carefully consider whether it has sufficient customer information to properly evaluate the suitability of a recommendation to the customer. However, FINRA noted further that if the firm used reasonable diligence, the absence of some customer information that is not critical to the analysis based on the facts and circumstances of the particular situation generally would not preclude a recommendation from being viewed as suitable as long as the broker had obtained and analyzed other customer information that provided the broker with a reasonable basis to believe that the recommendation was suitable for that customer. FINRA Response, note 19.

[55] *See e.g., Notice to Members* 01–23 (Apr., 2001) ("[A] broker-dealer cannot disclaim away its suitability obligations * * *.") Supplementary Material .02 to Proposed FINRA Rule 2111 reads "*.02 Disclaimers.* A member or associated person cannot disclaim any responsibilities under the suitability rule."

[56] This statement was confirmed in a telephone conversation between James Wrona, Associate Vice President and Associate General Counsel, FINRA, and Bonnie Gauch, Special Counsel, Division of Trading and Markets, Commission, on November 15, 2010.

[57] *See* Brewer Letter, Catalano Letter, Estell Letter, Ilgenfritz Letter, Jacobson Letter, Krosschell Letter, Layne Letter, Mougey Letter, Neuman Letter, PIABA Letter, and Van Kampen Letter.

[58] Exchange Act Release No. 62718 (Aug. 13, 2010), 75 FR 51310, at 51316 (Aug. 19, 2010) and Exchange Act Release No. 62718A (Aug. 20, 2010), 75 FR 52562, at 52568 (Aug. 26, 2010) ("The term "strategy," moreover, would cover explicit recommendations to hold a security or securities.") FINRA further stated that the rule would not cover implicit recommendations to hold a security or securities.

[59] *Id.*

[60] *See* SIFMA Letter. Rule 144A deals with the application of Section 5 of the Securities Act to private resales of securities to institutions. It does not limit the application of the antifraud or other provisions of the federal securities laws.

[61] *See* SIFMA Letter.

[62] *Id.*

With respect to the comment that FINRA should expand proposed Rule 2111(b) to provide that a member firm meets both its customer specific obligation and its quantitative suitability obligation if it satisfies the conditions in Rule 2111(b)(1) and (2), FINRA stated that it is important that a firm not recommend an unsuitable number of transactions in those circumstances where it has control over an account. FINRA emphasized, however, that quantitative suitability generally would apply only with regard to that portion of an institutional customer's portfolio that the firm controls and only with regard to the firm's recommended transactions.

Finally, with respect to the request for clarification of the sentence in Supplementary Material .05, FINRA stated that its intent was to allow an institutional investor to indicate that it is "exercising independent judgment on a trade-by-trade basis, on an asset-class-by-asset-class basis, or in terms of all potential transactions for its account," and that it believes the language of the Supplementary Material is clear. Further, FINRA indicated that if a broker-dealer believes that such action on a trade-by-trade basis would fundamentally change its operations, it can decide as a business matter to service only those institutional investors that are willing to make the affirmative indication in terms of all potential transactions for its account.

## IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comments received, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[63] The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[64] in that it is designed to prevent fraudulent or manipulative acts and practices, promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Specifically, the Commission believes the proposed rule change is consistent with FINRA's obligations under the Exchange Act to prevent fraudulent or manipulative acts and practices, and to promote just and equitable principles of trade, because the proposed rule would incorporate the NASD suitability rule and the NYSE "know your customer" rule into the FINRA consolidated rulebook. The suitability and "know your customer" obligations are critical to ensuring investor protection and fair dealing with customers. The proposed rule changes also would modify those rules to strengthen and clarify them, and incorporate into the rules certain settled interpretive guidance and case law.

Additionally, the Commission believes that FINRA has adequately responded to commenters' concerns both by its letter of October 21, 2010 and its filing of Amendment No. 1. Amendment No. 1 would standardize the terminology used in the proposed rule change, provide additional clarification with respect to certain aspects of the proposed rule change, and provide broker-dealers with appropriate flexibility without impairing the rules' investor protection goals.

## V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[65] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after publication of Amendment No. 1 in the Federal Register. The changes proposed in Amendment No. 1 respond to specific concerns raised by commenters and do not raise any additional issues. In particular, Amendment No. 1 would standardize the terminology used in the proposed rule change, provide additional clarification with respect to certain aspects of the proposed rule change, and provide broker-dealers with appropriate flexibility without impairing the rule's investor protection goals.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No.1, on an accelerated basis.

## VI. 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–2010–039 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–2010–039. 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 available publicly. All submissions should refer to File Number SR–FINRA–2010–039 and should be submitted on or before December 14, 2010.

## VII. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[66] that the proposed rule change (SR–FINRA–2008–039), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–29447 Filed 11–22–10; 8:45 am]

BILLING CODE 8011–01–P

[63] In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 17c(f).

[64] 15 U.S.C. 78*o*–3(b)(6).

[65] 15 U.S.C. 78s(b)(2).

[66] *Id.*

[67] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12389 and #12390]**

### Pennsylvania Disaster # PA–00035

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 11/15/2010.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 09/30/2010.

*Effective Date:* 11/15/2010.

*Physical Loan Application Deadline Date:* 01/14/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/15/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Delaware.

*Contiguous Counties:* Pennsylvania: Chester, Montgomery, Philadelphia. Delaware: New Castle. New Jersey: Gloucester.

*The Interest Rates are:*

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 5.000 |
| Homeowners Without Credit Available Elsewhere | 2.500 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 12389 6 and for economic injury is 12390 0.

The States which received an EIDL Declaration # are Pennsylvania; Delaware; New Jersey.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 15, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–29484 Filed 11–22–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12391 and #12392]**

### North Carolina Disaster #NC–00031

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 11/17/2010.

*Incident:* Severe Storms and Tornado.

*Incident Period:* 10/26/2010.

*Effective Date:* 11/17/2010.

*Physical Loan Application Deadline Date:* 01/18/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/17/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Lincoln.

*Contiguous Counties:* North Carolina: Burke, Catawba, Cleveland, Gaston, Iredell, Mecklenburg.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 4.500 |
| Homeowners Without Credit Available Elsewhere | 2.250 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.250 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000. |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000. |

The number assigned to this disaster for physical damage is 12391 B and for economic injury is 12392 0.

The State which received an EIDL Declaration # is North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 17, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–29488 Filed 11–22–10; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 7226]**

### Determination Under The Supplemental Appropriations Act, 2010 (Pub. L. 111–212) Concerning Assistance for the Government of Haiti

Pursuant to section 1007(b)(1) of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), and Department of State Delegation of Authority Number 245–1, I hereby determine that the Government of Haiti is cooperating with United States reconstruction and reform efforts; and is demonstrating a commitment to accountability by removing corrupt officials, implementing fiscal transparency and other necessary reforms of government institutions, and facilitating active public engagement in governance and oversight of public resources.

This Determination shall be transmitted to the Congress and published in the **Federal Register**.

Dated: November 5, 2010.

**Jacob J. Lew,**

*Deputy Secretary of State for Management and Resources.*

[FR Doc. 2010–29508 Filed 11–22–10; 8:45 am]

**BILLING CODE 4710–29–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 290 (Sub-No. 318X); AB 1059X]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Crawford County, GA; Georgia Midland Railroad, Inc.[1]—Discontinuance of Service Exemption—in Crawford County, GA

Norfolk Southern Railway Company (NSR) and Georgia Midland Railroad, Inc. (GMR) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* for NSR to abandon, and for GMR to discontinue service over, a 5.06-mile portion of rail line (the Perry line), between milepost FV 90.44 and milepost FV 95.50, in Roberta, Crawford County, Ga.[2] The line traverses United States Postal Service Zip Code 31078.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on December 23, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR § 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 3, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 13, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: (1) Daniel G. Kruger, Three Commercial Place, Norfolk, VA 23510, and (2) Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a joint combined environmental and historic report, which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 26, 2010. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by November 23, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 16, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2010–29365 Filed 11–22–10; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Based on information in a letter from one of NSR's attorneys, this is the correct name of the discontinuing railroad—not Georgia Midland Railroad Company, as indicated in the notice.

[2] In *Georgia Midland Railroad, Inc.—Acquisition and Operation Exemption—Ogeechee Railway Company,* FD 34466 (STB served Mar. 12, 2004), GMR was authorized to sublease and operate the Perry line as well as two other lines (the Metter line and the Sylvania line) in Georgia. This proceeding only involves a portion of the Perry line.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the abandonment exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system, as detailed below.

**Docket Number FRA–2010–0159**

*Applicant:* BNSF Railway, Mr. James LeVere, AVP Signals, BNSF Railway Company, 2600 Lou Menk Drive, OOB 3, Fort Worth, Texas 76131.

The BNSF Railway Company (BNSF) seeks relief from the requirements of 49 CFR 235.5 to expedite successful installation of Positive Train Control (PTC) mandated by the Rail Safety Improvement Act of 2008. BNSF will be updating first generation, non-microprocessor based coded track circuitry, eliminating certain searchlight signal mechanisms, relocating signals to more advantageous locations and other desired modifications not previously addressed, which may otherwise require the submission of an application.

In requesting this waiver, BNSF proposes to perform minimal modifications to existing signal systems, while maintaining compliance with part 236 in the same manner and process as provided for under 49 CFR 235.7(c)(24)(vi). Providing identification of the proposed changes to FRA's regional office having jurisdiction in the affected area would expedite desired modification of existing signal systems in preparation for the installation of PTC, while reducing the administrative workload for both FRA and BNSF. Additionally, this relief would reduce the approval delay, while still providing

FRA review and oversight of the proposed changes in the same manner as pole line elimination projects.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA–2010–0159) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on November 17, 2010.

**Michael Logue,**

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 2010–29473 Filed 11–22–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2010–0160]**

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system, as detailed below.

*Applicant:* CSX Transportation, Mr. Joseph Ivanyo, Chief Engineer, Communications and Signals, 500 Water Street, SC J–350, Jacksonville, FL 32202.

The CSX Transportation, Inc. (CSXT) seeks relief from the requirements of 49 CFR Section 235.5 to expedite successful installation of the Positive Train Control (PTC) mandated by the Rail Safety Improvement Act of 2008. CSXT will be updating first generation, non-microprocessor based coded track circuitry, eliminating certain searchlight signal mechanisms, relocating signals to more advantageous locations and other desired modifications not previously addressed, which may otherwise require the submission of an application.

In requesting this waiver, CSXT proposes to perform minimal modifications to existing signal systems, while maintaining compliance with Part 236 in the same manner and process as provided for under 49 CFR 235.7(c)(24)(vi). Providing identification of the proposed changes to FRA's regional office having jurisdiction in the affected area would expedite desired modification of existing signal systems in preparation for the installation of PTC, while reducing the administrative workload for both FRA and CSXT. Additionally, this relief would reduce the approval delay, while still providing FRA review and oversight of the proposed changes in the same manner as pole line elimination projects.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket No. FRA–2010–0160) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on November 17, 2010.

**Michael Logue,**

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 2010–29474 Filed 11–22–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 16, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed

and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

**DATES:** Written comments should be received on or before December 23, 2010 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0172.

*Type of Review:* Revision of a currently approved collection.

*Title:* Depreciation and Amortization (Including Information on Listed Property).

*Form:* 4562.

*Abstract:* Taxpayers use Form 4562 to claim a deduction for depreciation and/or amortization; make a section 179 election to expense depreciable assets, and answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).

*Respondents:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 1,671,337,275 hours.

*OMB Number:* 1545–0086.

*Type of Review:* Revision of a currently approved collection.

*Title:* U.S. Departing Alien Income Tax Return.

*Form:* 1040–C.

*Abstract:* Form 1040–C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected are used to ensure that the departing alien has no outstanding U.S. tax liability.

*Respondents:* Individuals and households.

*Estimated Total Burden Hours:* 13,200 hours.

*OMB Number:* 1545–0245.

*Type of Review:* Extension without change to a currently approved collection.

*Title:* Environmental Taxes.

*Form:* 6627.

*Abstract:* Form 6627 is used to figure the environmental tax on ozone-depleting chemicals (ODCS), imported products that used ODCs as materials in the manufacture or production of the product, and the floor stocks tax ODCs. Sections 4681 and 4682 impose a tax on ODCs and imported products containing ODCs.

*Respondents:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 13,084 hours.

*OMB Number:* 1545–1058.

*Type of Review:* Revision of a currently approved collection.

*Title:* Reporting Agent Authorization and Revenue Procedure 2007–38 [RP–134220–08].

*Form:* 8655.

*Abstract:* Section 5.05 of Revenue Procedure 2007–38 tells the clients of reporting agents how to monitor the tax deposits agents make for them. Section 5.05 obligates reporting agents to remind their clients regularly of this retained tax obligation. The Service may on occasion seek the notices to monitor reporting agent compliance with the notice rules and to document that clients have been informed of the clients' retained tax obligations.

*Respondents:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 792,650 hours.

*OMB Number:* 1545–2059.

*Type of Review:* Extension without change to a currently approved collection.

*Title:* TD 9312 (Temp), Deduction for qualified film and television production costs.

*Abstract:* This document contains temporary regulations relating to deductions for the cost of producing film and television productions under section 181. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005, and affect taxpayers that produce films and television productions within the United States.

*Respondents:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 1,600 hours.

*OMB Number:* 1545–2065.

*Type of Review:* Extension without change to a currently approved collection.

*Title:* Notice of Qualified Equity Investment for New Markets Credit.

*Form:* 8874–A.

*Abstract:* New modernized e-file return for partnerships: Internal Revenue Code Sections 6109 and 6103 code section 45N. Section 45N was added by section 405 of the Tax Relief and Health Care Act of 2006. Form 8874–A provides a means for the qualified mining company to compute and claim the credit.

*Respondents:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 2,715 hours.

*Bureau Clearance Officer:* Allan Hopkins, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–6665.

*OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2010–29493 Filed 11–22–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
November 23, 2010

# Part II

# Department of Agriculture

## Office of Energy Policy and New Uses

## 7 CFR Part 2902

## Designation of Biobased Items for Federal Procurement; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Office of Energy Policy and New Uses**

**7 CFR Part 2902**

**RIN 0503–AA36**

## Designation of Biobased Items for Federal Procurement

**AGENCY:** Departmental Management, USDA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 14 sections that will designate the following items within which biobased products would be afforded Federal procurement preference: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers. USDA is also proposing minimum biobased contents for each of these items.

**DATES:** USDA will accept public comments on this proposed rule until January 24, 2011.

**ADDRESSES:** You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA36. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Direct your comments to Docket ID No. OPPM–2010–0002.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0503–AA36 and "Proposed Designation of Items" on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, *etc.*) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

**SUPPLEMENTARY INFORMATION:**

The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Today's Proposed Rule
IV. Designation of Items, Minimum Biobased Contents, and Time Frame
  A. Background
  B. Items Proposed for Designation
  C. Minimum Biobased Contents
  D. Compliance Date for Procurement Preference and Incorporation Into Specifications
V. Where Can Agencies Get More Information on These USDA-Designated Items?
VI. Regulatory Information
  A. Executive Order 12866: Regulatory Planning and Review
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
  D. Executive Order 13132: Federalism
  E. Unfunded Mandates Reform Act of 1995
  F. Executive Order 12372: Intergovernmental Review of Federal Programs
  G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  H. Paperwork Reduction Act
  I. E-Government Act

### I. Authority

The designation of these items is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

### II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the "preferred procurement program." The definition of "procuring agency" in section 9002 includes both Federal agencies and "a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract." Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

The term "item" is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of crankcase oils or interior paints. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR Part 2902—"Guidelines for Designating Biobased Products for Federal Procurement" (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items

and to recommend, where appropriate, the minimum level of biobased content to be contained in the procured products.

*Subcategorization.* Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different requirements, uses and/or different performance specifications. For example, within the item category "thermal shipping containers," some containers are designed as durable products that can be re-used over long periods of time. Such containers might be used, for example, in the trucking industry when trucks are dedicated to shipping the same types of products on a regular basis. Other thermal shipping containers may be non-durable, or intended for only a one-time use. These containers might be used to ship small quantities of perishable fruits or vegetables to consumers who would then dispose of the container. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the item "thermal shipping containers," USDA has determined it is reasonable to create a "durable thermal shipping container" subcategory and a "non-durable thermal shipping container" subcategory. Where structural integrity may be a key characteristic of a durable thermal shipping container, disposal concerns are a key characteristic of a non-durable thermal shipping container. In sum, USDA looks at the products within each item category to evaluate whether there are subgroups of products within the item that have different characteristics or that meet different performance specifications and, where USDA finds these types of differences, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that thermal shipping containers are required to meet, but it may have information on only one type of container. In such instances, USDA may either designate the item without creating subcategories (*i.e.,* defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed and final rulemaking process.

Within today's proposed rule, USDA is proposing to subcategorize two of the items being proposed for designation. The first item is hair care products and the proposed subcategories are shampoo products and conditioner products. The second item is thermal shipping containers and the proposed subcategories are durable and non-durable thermal shipping containers.

*Minimum Biobased Contents.* The minimum biobased contents being proposed with today's rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples.

In addition to considering the biobased content test data for each item, USDA also considers other factors including product performance information. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. For example, a lubricant product that has a lower biobased content than others within an item but is formulated to perform over a wider temperature range than the other products may be more desirable to Federal agencies. Thus, it would be beneficial to set the minimum biobased content for the item at a level that would include the product with superior performance features.

USDA also considers the overall range of the tested biobased contents within an item, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of six tested products within an item being proposed for designation today are 22, 28, 82, 98, 100, and 100 percent. Because this is a very wide range, and because there is a significant gap in the data between the 28 percent biobased product and the 82 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this item. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 22 or 28 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this item based on the product with a tested biobased content of 82 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item or subcategory will be revised.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products within that designated item are identified and tested. In today's proposed rule, the minimum biobased contents for both subcategories under the thermal shipping containers designated item are based on a single tested product. Given that only three biobased products have been identified in this item, and only one manufacturer of products within each subcategory supplied a sample for testing, USDA believes it is reasonable to set minimum biobased contents for these subcategories based on the single data point for each subcategory.

Where USDA receives additional biobased content test data for products within these proposed items and subcategories during the public comment period, USDA will take that information into consideration when establishing the minimum biobased content when the items and subcategories are designated in the final rulemaking.

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002.* Some of the products that are biobased items designated for preferred procurement under the preferred procurement program may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered materials. In situations where it believes

there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products," or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org.* Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such an item composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because "lubricating oils containing re-refined oil" has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, "lubricating oils containing re-refined oil." If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

This proposed rule designates two items for preferred procurement for which there may be overlap with an EPA-designated recovered content product. The first item is interior paints and coatings, which may overlap with the EPA-designated recovered content products "reprocessed latex paints" and "consolidated latex paints." The second item is slide way lubricants, which, depending on how they are used, may overlap with the EPA-designated recovered content product "re-refined lubricating oils." EPA provides recovered materials content recommendations for this recovered content products in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for this CPG product can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

*Federal Government Purchase of Sustainable Products.* The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are "environmentally preferable." For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the "cradle-to-grave" impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their "cradle-to-grave" impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Fossil carbon is derived from non-renewable sources (typically fossil fuels such as coal and oil), whereas renewable biomass carbon is derived from renewable sources (biomass). Qualifying biobased products offer the user the opportunity to manage the carbon cycle and reduce the introduction of new fossil carbon into the atmosphere.

Manufacturers of qualifying biobased products designated under the preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the ASTM D7075, or the comparable BEES analysis which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available

information on the environmental and human health effects of biopreferred products, when making their purchasing decisions.

*Other Preferred Procurement Programs.* Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*http://www.abilityone.gov*) indicated that four of the items being proposed today (concrete and asphalt cleaners, dishwashing detergent, floor cleaners and protectors, and hair care products) are available through the AbilityOne Program. While there is no specific product within these items identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other items being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

*Outreach.* To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of items. USDA consults with stakeholders to gather information used in determining the order of item designation and in identifying: Manufacturers producing and marketing products that fall within an item proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

*Future Designations.* In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new items for designation for preferred procurement.

In the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA stated that it planned to identify approximately 10 items in each future rulemaking. In an effort to finalize the designation of more items in a shorter time period, USDA now plans to increase the number of items in each rulemaking, whenever possible. Thus, today's proposed rulemaking would designate 14 items for preferred procurement.

USDA has developed a preliminary list of items for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with certainty which items will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those items that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, items with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of items for future designation on the Biopreferred Web site every six months, or more often if significant changes are made to the list.

## III. Summary of Today's Proposed Rule

USDA is proposing to designate the following items and subcategories for preferred procurement: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products, including shampoos and conditioners as subcategories; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories. USDA is also proposing minimum biobased content for each of these items and subcategories (*see* Section IV.C). Lastly, except for thermal shipping containers, USDA is proposing a date by which Federal agencies must incorporate these designated items into their procurement specifications (*see* Section IV.D). USDA is proposing to defer the preference compliance date for biobased thermal shipping containers until two or more manufacturers of these containers have been identified.

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these items is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their names in conjunction with specific product data published in the **Federal Register** when designating items. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers and vendors of products within the designated item to voluntarily make their names and other contact information available for the BioPreferred Web site.

*Warranties.* Some of the items being proposed for designation today may affect original equipment manufacturers' (OEMs) warranties for equipment in which the items are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operator's manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products

are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product and its effect on warranties, the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site. Updates to the BioPreferred Web site will occur whenever new information is submitted.

*Additional Information.* USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the preferred procurement program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through e-mail and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: *http://www.biopreferred.gov.*

*Comments.* USDA invites comment on the proposed designation of these items and subcategories, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. Two of the items being proposed for designation (interior paints and coatings and slide way lubricants) may overlap with products designated under EPA's Comprehensive Procurement Guideline for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting product-specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material as well as non-biobased products.

2. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for any of the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

3. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the BioPreferred Web site. This information will then be available to Federal procuring agencies and will assist them in making informed sustainable procurement decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

4. Several items (*e.g.,* animal repellents, bath products, concrete and asphalt cleaners, dishwashing products, floor cleaners and protectors, oven and grill cleaners, and hair care products) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content that would allow many of the tested products to be eligible for preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these items and whether there are potential subcategories within the items that should be considered.

5. As discussed above, the effect that the use of biobased products may have on original equipment manufacturers' warranties is uncertain. USDA requests comments and supporting information on any aspect of this issue.

6. Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. Because USDA has been unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

All comments should be submitted as directed in the **ADDRESSES** section above.

To assist you in developing your comments, the background information used in proposing these items for designation has been assembled in a technical support document (TSD), "Technical Support for Proposed Rule—Round 7 Designated Items," which is available on the BioPreferred Web site. The TSD can be located by clicking on the Proposed and Final Regulations link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*). At the next screen, click on the Supporting Documentation link under Round 7 Designation under the Proposed Regulations section. This will bring you to the link to the TSD.

## IV. Designation of Items, Minimum Biobased Contents, and Time Frame

### *A. Background*

In order to designate items for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items and (2) the economic and technological feasibility of using the items, including the life-cycle costs of the items.

In considering an item's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a

resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering an item's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess an item's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life-cycle costs of items proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed item. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 7 designated items analyzed using the BEES analytical tool can be found in "Technical Support for Proposed Rule—Round 7 Designated Items," located on the BioPreferred Web site (*http://www.biopreferred.gov*).

In addition to the BEES analytical tool, manufacturers wishing to make similar life-cycle information available may choose to use the ASTM Standard D7075 analysis. The ASTM Standard D7075 product analysis includes information on environmental performance, human health impacts, and economic performance. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the preferred procurement program more efficient.

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to the Defense Standardization Program, including the Defense Logistics Agency (DLA), and to the General Services Administration (GSA)-related standards lists used as guidance when procuring products. These lists can be accessed through the "Selling to the Federal Government" link on the BioPreferred Web site.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform in order for it to be "acceptable" to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (*e.g.,* 95 percent) of the bacteria must be killed through the use of the product.) The primary sources of information on these test methods and performance standards are manufacturers of biobased products within these items. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each item proposed for designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these items.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the BioPreferred Web site.

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the items proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the preferred procurement program. For product samples on which to conduct biobased content tests and BEES analysis, USDA has attempted to obtain samples and BEES input information from at least five different suppliers of products within each item in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who volunteered to invest the resources required to gather and submit the information and samples. The data presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted support designation of the items in today's proposed rule.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some items, there may be numerous products available. For other items, there may be very few products currently available. Given the infancy of the market for some items, it is expected that single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate an item or subcategory for preferred procurement even when there is only a single product with a single supplier, though this will generally occur once other items with high biobased content and two or more producers are first designated. However, USDA has also determined that in such situations it is appropriate to defer the

effective preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

*B. Items Proposed for Designation*

USDA uses a model (as summarized below) to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the BioPreferred Web site at *http://www.biopreferred.gov*.

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and manufacturers. These evaluations begin by looking at the cost, performance, and availability of products within each item. USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular item?
- Are there a number of manufacturers producing biobased products in this item?
- Are there products available in this item?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will an item create a high demand for biobased feed stock?
- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for a group of items, a new rulemaking package is developed to designate the items within that group. USDA points out that the list of items may change, with items being added or dropped, and that the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rule, USDA is proposing to designate the following items and subcategories for the preferred procurement program: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products, including shampoos and conditioners as subcategories; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories. USDA has determined that each of these items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products.
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life-cycle costs.

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products.* In today's proposed rule, two items may overlap with EPA-designated recovered content products. The first item is interior paints and coatings, which may overlap with the EPA-designated recovered content products "Reprocessed Latex Paints" and "Consolidated Latex Paints." The second item is slide way lubricants, which may overlap with the EPA-designated recovered content "Re-refined Lubricating Oils."

For these items, USDA is requesting that information on qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining if an overlap exists between the biobased products and the applicable EPA-designated recovered content products. USDA is requesting this information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the BioPreferred Web site.

*Exemptions.* Products exempt from the biobased procurement preference are military equipment, defined as any product or system designed or procured for combat or combat-related missions, and spacecraft systems and launch support equipment. However, agencies may purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

Although each item in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is cleaning the interior of a non-combat office building on a military base, the floor cleaners and protectors the contractor purchases and uses in the office building should be biobased. The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and the relevant contract, where contractors have any questions on the exemption, they should contact the cognizant contracting officer.

USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products. If manufacturers of biobased products can meet the concerns of these two agencies, USDA is willing to reconsider such exemptions on an item-by-item basis. Any changes to the current exemptions would be announced in a proposed rule amendment with an opportunity for public comment.

Each of the proposed designated items and their subcategories are discussed in the following sections.

1. Animal Repellents (Minimum Biobased Content 79 Percent) [1]

Animal repellents are products used to aid in deterring animals that cause destruction to plants and/or property.

USDA identified 29 manufacturers and suppliers of 109 animal repellents. These 29 manufacturers and suppliers do not necessarily include all manufacturers of animal repellents, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any performance standards, test methods, or applicable industry measures of performance against which these products have been tested. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA contacted procurement officials with various policy-making and procuring agencies in an effort to gather information on the purchases of animal repellents, as well as information on products within the other 13 items proposed for designation today. These agencies included GSA, several offices within the DLA, OFEE, USDA Departmental Administration, the National Park Service, EPA, a Department of Energy laboratory, and OMB. Communications with these Federal officials led to the conclusion that obtaining current item statistics and specific potential markets within the Federal government for biobased products within the 14 proposed designated items is not possible at this time.

Most of the contacted officials reported that procurement data are appropriately reported in higher level groupings of Federal Supply Codes for materials and supplies, which is higher level coding than the proposed designated items. Using terms that best match the items in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed items. The results indicate purchases of products within items in today's proposed rule. The results of this inquiry can be found in the TSD for this proposed rule. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally leads to less accurate data on purchases of specific products.

USDA also investigated the Web site FEDBIZOPPS.gov, a site which lists Federal contract purchase opportunities and awards greater than $25,000. The information provided on this Web site, however, is for broad categories of services and products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of animal repellents purchased by procuring agencies. However, many Federal agencies routinely procure such products for use in animal control and related services involving the use of such products. On this basis, USDA reaches the conclusion that the government has a need for animal repellents and for services that use these products. Designation of animal repellents will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on eight animal repellents. Analyses of the environmental and human health benefits and the life-cycle costs of biobased animal repellents were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

2. Bath Products (Minimum Biobased Content 61 Percent)

Bath products are personal hygiene products, including soaps and other cleansers for the body. These products are generally bar soaps, liquids, or gels that are referred to as body washes, body shampoos, or cleansing lotions.

USDA identified 369 manufacturers and suppliers of 888 bath products. These 369 manufacturers and suppliers do not necessarily include all manufacturers of bath products, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified four test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this item, the four test methods identified by the manufacturers of products within this item are:

*Test Methods:*

- ASTM International D–130 Standard Test Method for corrosiveness to copper from petroleum products by copper strip test;
- ASTM International D–665 Standard Test Method for rust-preventing characteristics of inhibited mineral oil in the presence of water;
- ISO 32 Calibration in analytical chemistry and use of certified reference materials; and
- Vickers I–286–S Tests for pump wear.

USDA attempted to gather data on the potential market for bath products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies routinely procure such products and contract for lodging and health care related services involving the use of such products. On this basis, USDA concludes that the government has a need for bath products and for services that use bath products. Designation of bath products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 101 bath products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased bath products were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

3. Bioremediation Materials (Minimum Biobased Content 86 Percent)

Bioremediation materials are dry or liquid solutions used to clean oil, fuel, and other hazardous spill sites. They do not include sorbent materials, but may include bacteria or other microbes.

USDA identified 31 manufacturers and suppliers of 53 bioremediation materials. The 31 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased bioremediation materials, merely those identified during USDA information

[1] Additional information on the determination of minimum biobased contents is presented in Section IV.C of this preamble.

gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this item, the two test methods identified by the manufacturers of products within this item are:

*Test Methods:*

- American Type Culture Collection Biosafety Level 1 minimal potential for causing diseases in humans, plants, animals and aquatic life; and
- California Air Resources Board Method 310 VOCs.

USDA attempted to gather data on the potential market for bioremediation materials within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies own residential and office buildings and routinely perform, or procure contract services to perform, the types of maintenance activities that would use these products. Thus, they have a need for bioremediation materials and for services that require the use of bioremediation materials. Designation of bioremediation materials will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 11 bioremediation materials. An analysis of the environmental and human health benefits and the life-cycle costs of biobased bioremediation materials was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

4. Compost Activators and Accelerators (Minimum Biobased Content 95 Percent)

Compost activators and accelerators are products designed to be applied to compost piles to aid in speeding up the composting process and to ensure successful compost that is ready for consumer use. They are available in either liquid or powder forms.

USDA identified 19 manufacturers and suppliers of 32 compost activators and accelerators. The 19 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased compost activators and accelerators, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for compost activator and accelerator products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure contract services to perform, the types of composting activities that would use these products. Thus, they have a need for compost activators and accelerators and for services that require the use of compost activators and accelerators. Designation of compost activators and accelerators will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on five compost activators and accelerators. An analysis of the environmental and human health benefits and the life-cycle costs of biobased compost activator and accelerator was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

5. Concrete and Asphalt Cleaners (Minimum Biobased Content 58 Percent)

Concrete and asphalt cleaners are products used in concrete etching as well as to remove petroleum-based soils, lubricants, paints, mastics, organic soils, rust, and dirt from concrete, asphalt, stone and other hard porous surfaces for commercial, industrial, or residential use.

USDA identified 29 manufacturers and suppliers of 34 concrete and asphalt cleaners. The 29 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased concrete and asphalt cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified six test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards and other measures of performance, applicable to products within this item, the six test methods identified by the manufacturers of products within this item are:

*Test Methods:*

- Boeing Spec D6–17487P for aircraft exterior and general cleaning;
- ASTM International D3505 standard test method for density or relative density of pure liquid chemicals;
- ASTM International E70 standard test method for pH of aqueous solutions with the glass electrode;
- Environmental Protection Agency 560/6–82–003 Describes methods for performing testing of chemical substances under the Toxic Substances Control Act;
- Environmental Protection Agency 601 Purgeable Halocarbons; and
- Environmental Protection Agency 602 Purgeable Aromatics.

USDA attempted to gather data on the potential market for concrete and asphalt cleaning products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, concrete and asphalt cleaning. Thus, they have a need for concrete and asphalt cleaners and for services that require the use of concrete and asphalt cleaners. Designation of concrete and asphalt cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on nine concrete and asphalt cleaners. An analysis of the environmental and human health benefits and the life-cycle costs of biobased concrete and asphalt cleaners was performed for one of the products using the BEES analytical tool.

The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

6. Cuts, Burns, and Abrasions Ointments (Minimum Biobased Content 84 Percent)

Cuts, burns, and abrasions ointments are products designed to aid in the healing and sanitizing of scratches, cuts, bruises, abrasions, sun damaged skin, tattoos, rashes and other skin conditions.

USDA identified 42 manufacturers and suppliers of 71 different cuts, burns, and abrasions ointments. These 42 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased cuts, burns, and abrasions ointments, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for cuts, burns, and abrasions ointments within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely procure and use such products in daily operations. In addition, Federal agencies may contract for health care services involving the use of such products. Thus, they have a need for cuts, burns, and abrasions ointments and for services that require the use of cuts, burns, and abrasions ointments. Designation of cuts, burns, and abrasions ointments will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 23 cuts, burns, and abrasions ointments. Analyses of the environmental and human health benefits and the life-cycle costs of biobased cuts, burns, and abrasions ointments were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

7. Dishwashing Products (Minimum Biobased Content 58 Percent)

Dishwashing products are soaps and detergents used for cleaning and clean rinsing of tableware in either hand washing or dishwashing machines.

USDA identified 39 manufacturers and suppliers of 64 different dishwashing products. These 39 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased dishwashing products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified six test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards and other measures of performance, applicable to products within this item, the six test methods identified by the manufacturers of products within this item are:

*Test Methods:*

- Bacteria Inhibitory;
- Chlorine Equal;
- Boeing D6–7127: "Cleaning interiors of commercial transport aircraft";
- Federal Test Method Standard 536A: Soap and soap products (including synthetic detergents) sampling and testing;
- South Coast Air Quality Management District, Clean Air: The South Coast Air Quality Management District hereby certifies the above product as a "Clean Air Solvent"; and
- U.S. Navy, Navsea 6840 U.S. Navy surface ship (non-submarine) authorized chemical cleaning products and dispensing systems.

USDA attempted to gather data on the potential market for dishwashing products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely use dishwashing products in daily operations. In addition, Federal agencies may contract for food preparation and kitchen cleaning services involving the use of such products. Thus, they have a need for dishwashing products and for services that require the use of dishwashing products. Designation of dishwashing products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 28 dishwashing products. An analysis of the environmental and human health benefits and the life-cycle costs of biobased dishwashing products was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

8. Erosion Control Materials (Minimum Biobased Content 77 Percent)

Erosion control materials are woven or non-woven fiber materials manufactured for use on construction, demolition, or other sites to prevent wind or water erosion of loose earth surfaces, and may be combined with seed and/or fertilizer to promote growth.

USDA identified 30 manufacturers and suppliers of 169 erosion control materials. These 30 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased erosion control materials, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 21 test methods (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the 21 test methods identified by manufacturers of products within this item and by others are:

*Test Methods:*

- American Association of State Highway Transportation Officials M288–96 Geotextile Specifications;
- ASTM International D1388 Standard Test Method for Stiffness of Fabrics;
- ASTM International D1777 Standard Test Method for Thickness of Textile Materials;
- ASTM International D2974 Standard Test Method for Moisture, Ash, and Organic Matter of Peat and Other Organic Soils;
- ASTM International D3776 Standard Test Methods for Mass per Unit Area (Weight) of Fabric;

• ASTM International D4354 Standard Test Practice for Sampling of Geosynthetics for Testing;
• ASTM International D4595 Standard Test Method for Tensile Properties of Geotextiles by the Wide-Width Strip Method;
• ASTM International D5035 Standard Test Method for Breaking Force and Elongation of Textile Fabrics (Strip Method);
• ASTM International D5261 Standard Test Method for Measuring Mass per Unit Area of Geotextiles;
• ASTM D586 Standard Test Method for Ash in Pulp, Paper and Paper Products;
• ASTM International D6400 Standard Specification for Compostable Plastics;
• ASTM International D6459 Standard Test Method for Determination of Erosion Control Blanket (ECB) Performance in Protecting Hillslopes from Rainfall-Induced Erosion;
• ASTM International D6460 Standard Test Method for Determination of Rolled Erosion Control Product (RECP) Performance in Protecting Earthen Channels from Stormwater-Induced Erosion;
• ASTM International D6475 Standard Test Method for Measuring Mass per Unit Area of Erosion Control Blankets;
• ASTM International D6524 Standard Test Method for Measuring the Resiliency of Turf Reinforcement Mats (TRMs);
• ASTM International D6525 Standard Test Method for Measuring Nominal Thickness of Permanent Rolled Erosion Control Products;
• ASTM International D6566 Standard Test Method for Measuring Mass per Unit of Area of Turf Reinforcement Mats;
• ASTM International D6567 Standard Test Method for Measuring the Light Penetration of a Turf Reinforcement Mat (TRM);
• ASTM International D6575 Standard Test Method for Determining Stiffness of Geosynthetics Used as Turf Reinforcement Mats (TRMs);
• ASTM International D6818 Standard Test Method for Ultimate Tensile Properties of Turf Reinforcement Mats; and
• Erosion Control Technology Council Technical Guidance Manual: TASC 00197.

USDA attempted to gather data on the potential market for erosion control materials within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform construction, demolition or other site work or maintenance that requires the use of erosion control materials. Thus, they have a need for these products. Designation of erosion control materials will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 15 erosion control materials. Analyses of the environmental and human health benefits and the life-cycle costs of biobased erosion control materials were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

9. Floor Cleaners and Protectors (Minimum Biobased Content 77 Percent)

Floor cleaners and protectors are cleaning solutions for either direct application or use in floor scrubbers for wood, vinyl, tile, or similar hard surface floors.

USDA identified 25 manufacturers and suppliers of 39 floor cleaners and protectors. These 25 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased floor cleaners and protectors, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods and other measures of performance (as shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

*Test Methods:*

• ASTM International D4488 Standard guide for testing cleaning performance of products intended for use on resilient flooring and washable walls; and
• ASTM International D5343 Standard guide for evaluating cleaning performance of ceramic tile cleaners.

USDA attempted to gather data on the potential market for floor cleaners and protectors within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, activities that use floor cleaners and protectors. Thus, they have a need for these products. Designation of floor cleaners and protectors will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 14 floor cleaners and protectors. Analyses of the environmental and human health benefits and the life-cycle costs of biobased floor cleaners and protectors were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

10. Hair Care Products (Minimum Biobased Content: 66 Percent for Shampoos; 78 Percent for Conditioners)

Hair care products are products that are specifically formulated for hair cleaning and treatment applications, including shampoos and conditioners.

USDA identified 58 manufacturers and suppliers of 265 hair care products. Of these 265 products, 147 were identified as providing products designed specifically as shampoos and 118 were identified as providing products designed as conditioners. Based on the information available to it, USDA believes that it is appropriate to subcategorize this item into shampoo products and conditioner products. For the purpose of this rulemaking, products that contain a combination of shampoo and conditioner are considered to be shampoos because the primary purpose of these products is believed to be cleaning the hair.

The 58 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of hair care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any performance standards, test methods, or applicable industry measures of performance against which these products have been tested. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to

consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for hair care products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, some Federal agencies routinely procure hair care products, or procure services that use these products. Thus, they have a need for hair care products and for services that require the use of hair care products. Designation of hair care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 106 hair care products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased hair care products were performed for two of the shampoo products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

11. Interior Paints and Coatings (Minimum Biobased Content 67 Percent)

Interior paints and coatings are products used to protect and add color to an object or surface by covering it with a pigmented coating specifically formulated to provide protection in indoor applications.

USDA identified 15 manufacturers and suppliers of 114 different biobased interior paints and coatings. These 15 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased interior paints and coatings, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

*Test Methods:*

- ASTM International D2486 Standard Test Method for Scrub Resistance of Wall Paint;
- ASTM International 4828–91 Stain Resistance; and
- ASTM International D2805–88 Standard Test Method for Opacity.

USDA attempted to gather data on the potential market for interior paints and coatings within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies have residential and office buildings that requires the use of interior paints and coatings. In addition, Federal agencies may procure contract maintenance services that require the use of interior paints and coatings. Thus, they have a need for interior paints and coatings and for services that require the use of such products. Designation of interior paints and coatings will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 10 interior paints and coatings. Analyses of the environmental and human health benefits and the life-cycle costs of biobased interior paints and coatings were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

12. Oven and Grill Cleaners (Minimum Biobased Content 66 Percent)

Oven and grill cleaners are cleaning agents used on high temperature cooking surfaces such as barbeques, smokers, grills, stoves, and ovens to soften and loosen charred food, grease, and residue.

USDA identified 11 manufacturers and suppliers of 13 oven and grill cleaner products. These 11 manufacturers and suppliers do not necessarily include all manufacturers of oven and grill cleaners, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for oven and grill cleaners within the Federal government using the procedure described in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies routinely engage in operations where oven and grill cleaners are used. In addition, many Federal agencies contract for food service activities involving the use of such products. Thus, they have a need for oven and grill cleaners and for services that use oven and grill cleaners. Designation of oven and grill cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information including company contact, intended use, biobased content, and performance characteristics have been collected on nine oven and grill cleaners. Analyses of the environmental and human health benefits and the life-cycle costs of biobased oven and grill cleaners were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

13. Slide Way Lubricants (Minimum Biobased Content 74 Percent)

Slide way lubricants are products used to provide lubrication between the mating surfaces, or slides, found in machine tools. These lubricants eliminate stick-slip or table chatter by reducing friction between mating surfaces.

USDA identified three manufacturers and suppliers of four different biobased slide way lubricants. These three manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased slide way lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 10 test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as

performance standards and other measures of performance, applicable to products within this item, the 10 test methods identified by the manufacturers of products within this item are:

*Test Methods:*

- ASTM International D2161 Standard Practice for Conversion of Kinematic Viscosity to Saybolt Universal Viscosity or to Saybolt Furol;
- ASTM International D2270 Standard Practice for Calculating Viscosity Index from Kinematic Viscosity at 40 and 100 °C;
- ASTM International D2782 Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Fluids (Timken Method);
- ASTM International D2783 Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Fluids (Four-Ball Method);
- ASTM International D287 Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM International D445 Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity);
- ASTM International D5864 Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM International D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM International D92 Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester; and
- ASTM International D97 Standard Test Method for Pour Point of Petroleum Products.

USDA attempted to gather data on the potential market for slide way lubricants within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies have machinery and equipment that requires the use of slide way lubricants. In addition, Federal agencies may procure contract services that have machinery that requires the use of slide way lubricants. Thus, they have a need for slide way lubricants and for services that require the use of such lubricants. Designation of slide way lubricants will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on two slide way lubricants. An analysis of the environmental and human health benefits and the life-cycle costs of biobased slide way lubricants was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

14. Thermal Shipping Containers (Minimum Biobased Content: 21 Percent for Durable Containers; 82 Percent for Non-Durable Containers)

Thermal shipping containers are insulated containers for shipping temperature sensitive materials.

USDA identified two manufacturers of three biobased thermal shipping container products. Of these manufacturers, one was identified as providing two products designed for single, short term use (non-durable) and the other manufacturer was identified as providing a durable product intended for long term use.

The two manufacturers do not necessarily include all manufacturers of biobased thermal shipping containers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified four methods (as shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

*Test Methods:*

- ASTM International D4236 Standard Practice for Labeling Art Materials for Chronic Health Hazards;
- ASTM International D963 Specification for Copper Phthalcoyanine Blue Pigment;
- ASTM International D5338 Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions; and
- ASTM International D6868 Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates.

USDA attempted to gather data on the potential market for thermal shipping containers within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely use such containers, and procure services that use thermal shipping containers. Thus, they have a need for thermal shipping containers and for services that require the use of thermal shipping containers. Designation of thermal shipping containers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on two thermal shipping containers. Analyses of the environmental and human health benefits and the life-cycle costs of biobased thermal shipping containers were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

*C. Minimum Biobased Contents*

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimis biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an

item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all of the proposed designated items and subcategories. To assist the procuring agencies in determining which products have the highest biobased content, USDA will update the information in the biobased products catalog to include the biobased content of each product. Those products within each designated item that have the highest biobased content will be listed first and others will be listed in descending order. USDA is specifically requesting comments on the proposed minimum biobased contents of designated items and also requests additional data that can be used to re-evaluate the appropriateness of the proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated items and consider raising them whenever justified.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated item.

1. Animal Repellents

Six of the 109 biobased animal repellents have been tested for biobased content using ASTM D6866.[2] The biobased contents of these six biobased animal repellents range from 22 to 100 percent, as follows: 22, 28, 82, 98, 100, and 100. There is a wide range of tested biobased contents, and a significant break between the values for the two products with the lowest biobased contents and the values for the four products with the highest biobased contents. Because USDA found that the two products with the 22 and 28 percent biobased content did not claim to offer any unique performance or applicability features not offered by the products with 100 percent biobased content, and because we have data showing that at least two different products are available with a biobased content of 100 percent, we are proposing to set the minimum biobased content for this item at 79 percent based on the product with a tested biobased content of 82 percent.

2. Bath Products

Thirteen of the 850 biobased bath products have been tested for biobased content using ASTM D6866. The biobased contents of these 13 biobased bath products range from 21 to 100 percent, as follows: 21, 43, 64, 66, 67, 70, 74, 76, 83, 96, and 100 (three products). Because there is a wide range of tested biobased contents, and because there are significant breaks among the values for the three products with the lowest biobased contents, USDA considered the need to subcategorize this item. USDA found that there was not sufficient information on the performance or applicability of the products to justify subcategorization. USDA also found that the two products with the 21 and 43 percent biobased contents did not claim to offer any unique performance features. The biobased contents of these two products are also significantly below the content of the next highest (64 percent) product. In addition, seven of the 13 tested products had biobased contents in the narrow range between 64 and 83 percent. Therefore, USDA is proposing to set the minimum biobased content for this item at 61 percent, based on the product with a tested biobased content of 64 percent.

3. Bioremediation Materials

Three of the 53 biobased bioremediation materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased bioremediation materials are 24, 89, and 100 percent. Because there is a significant gap in the data between the 24 and the 89 percent biobased products, USDA investigated the 24 percent product to determine if there was justification in considering it when setting the minimum biobased content. USDA did not find any performance or applicability claims that would justify setting the minimum biobased content for the item at that level. Therefore, USDA is proposing to set the minimum biobased content for this item at 86 percent, based on the product with the tested biobased content of 89 percent.

4. Compost Activators and Accelerators

Two of the 32 biobased compost activators and accelerators identified have been tested for biobased content using ASTM D6866. The biobased contents of these two biobased compost activators and accelerators are 98, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for compost activators and accelerators at 95 percent, based on the product with a tested biobased content of 98 percent.

5. Concrete and Asphalt Cleaners

Five of the 37 biobased concrete and asphalt cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased concrete and asphalt cleaners range from 1 percent to 91 percent, as follows: 1, 11, 28, 73, and 91 percent.

USDA found that the products with 1 percent and 11 percent biobased contents are products that use microbial organisms as the active cleaning agents. As discussed earlier in this preamble, USDA is considering creating a separate designated item for microbial cleaners. As a result, USDA decided not to include these products when proposing the minimum biobased content for the concrete and asphalt cleaners item. USDA requests that manufacturers of these two microbial cleaning products, and manufacturers of any other microbial cleaners, provide comments and information on the creation of a separate category for microbial cleaners.

The three remaining concrete and asphalt cleaners had biobased contents of 28, 73, and 91 percent. Because there is a significant break between the 28 percent biobased product and the 73 percent biobased product, and there is no product information to suggest that the 28 percent product offers any unique performance or applicability features, USDA is proposing to set the minimum biobased content for this item at 70 percent, based on the product with a tested biobased content of 73 percent.

6. Cuts, Burns, and Abrasions Ointments

Eight of the 71 identified biobased cuts, burns, and abrasions ointments identified have been tested for biobased content using ASTM D6866. The biobased contents of these eight biobased cuts, burns, and abrasions ointments range from 87 percent to 100 percent, as follows: 87, 91, 93, 94, 97, 100, 100, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for this item at 84 percent, based on the product with the 87 percent biobased content.

[2] ASTM D6866, "Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis," is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

7. Dishwashing Products

Five of the 66 identified biobased dishwashing products identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased dishwashing products range from 30 percent to 95 percent, as follows: 30, 41, 61, 75, and 95 percent.

There are two significant breaks in the range of data, one between the 41 and 61 percent biobased products and another between the 75 and 95 percent biobased products. Considering these breaks, the tested products within the item fall into three groups. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these product groups to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the item. USDA also did not find any features of the 30 or 41 percent biobased content products that would justify setting the minimum biobased content at a level that would include these products. Therefore, USDA is proposing to set the minimum biobased content for this item at 58 percent, based on the product with the tested biobased content of 61 percent. USDA does not believe that it is reasonable to consider the break between the 75 percent biobased content product and the 95 percent biobased content product when setting the minimum biobased content because only one of the products would qualify if the minimum biobased content were set at this higher level.

USDA will continue to gather information on products within this item, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation (detergents versus soaps, liquids versus powders, *etc.*), performance, or applicability.

8. Erosion Control Materials

Eight of the 169 biobased erosion control materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these eight biobased erosion control materials ranged from 80 percent to 100 percent as follows: 80, 81, 96, 98, 99, 100, 100, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for erosion control materials at 77 percent, based on the product with a tested biobased content of 80 percent.

9. Floor Cleaners and Protectors

Seven of the 39 biobased floor cleaners and protectors identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased floor cleaners and protectors ranged from 40 percent to 99 percent as follows: 40, 57, 80, 80, 91, 97, and 99 percent.

There is a significant break in the range of data between the 57 and the 80 percent biobased content products, but the available product information does not justify creating subcategories within this item. The manufacturers of the two products with biobased contents of 40 and 57 do not make any performance or applicability claims for these products that would distinguish them from the other products. Therefore, USDA is proposing to set the minimum biobased content for biobased floor cleaners and protectors at 77 percent, based on the product with a tested biobased content of 80 percent.

10. Hair Care Products

Ten of the 263 biobased hair care products identified have been tested for biobased content using ASTM D6866. The biobased contents of these 10 biobased hair care products range from 38 percent to 89 percent as follows: 38, 40, 43, 69, 75, 76, 81, 82, 83, and 89 percent.

As noted earlier in this preamble, USDA is proposing to subcategorize this item into two subcategories: "Shampoos" and "Conditioners." The following paragraphs discuss the minimum biobased content for the two subcategories.

*Shampoos.* The biobased contents of the seven tested shampoos range from 38 percent to 83 percent, as follows: 38, 40, 43, 69, 75, 76, and 83. There is a significant break between the 43 percent biobased product and the 69 percent product, and USDA found no performance features claimed for the 38, 40, or 43 percent products that justified setting the minimum biobased content based on any of these products. Because the biobased contents of the remaining four products are within a narrow range, and there is no performance information to distinguish any one product from the others, USDA is proposing to set the minimum biobased content for shampoos at 66 percent, based on the product with a tested biobased content of 69 percent.

*Conditioners.* The biobased contents of the three tested conditioners range from 81 to 89 percent, as follows: 81, 82, and 89. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for conditioners at 78 percent, based on the product with a tested biobased content of 81 percent.

11. Interior Paints and Coatings

Five of the 114 biobased interior paints and coatings identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased interior paints and coatings range from 70 to 100 percent, as follows: 70, 83, 90, 91, and 100 percent. Because the range of these five values is relatively narrow and there are no significant breaks in the range of the data, USDA is proposing to set the minimum biobased content for this item at 67 percent, based on the product with a tested biobased content of 70 percent.

12. Oven and Grill Cleaners

Four of the 13 biobased oven and grill cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased oven and grill cleaners ranged from 22 percent to 91 percent, as follows: 22, 69, 88, and 91.

As shown, the tested biobased contents cover a wide range and there is a significant break between the 22 percent biobased product and the 69 percent biobased product. The one oven and grill cleaner whose tested biobased content was 22 percent was eliminated from consideration because USDA found no performance characteristics that set this product apart from other products in this item. Further, this product's tested biobased content is substantially lower than the next lowest oven and grill cleaner tested (69 percent). Therefore, USDA is proposing to set the minimum biobased content for oven and grill cleaners at 66 percent, based on the product with a tested biobased content of 69 percent.

13. Slide Way Lubricants

All of the four biobased slide way lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased slide way lubricants are 77, 99, 100, and 100 percent. Because the range of these four values is relatively narrow and eliminating the product with the 77 percent biobased content would result in an extremely high minimum biobased content for this item, USDA is proposing to set the minimum biobased content for this item at 74 percent, based on the product with a tested biobased content of 77 percent.

14. Thermal Shipping Containers

Two of the three biobased thermal shipping containers identified have been tested for biobased content using ASTM D6866. The biobased contents of these two biobased thermal shipping containers were 24 percent and 85 percent. As noted earlier in this

preamble, USDA is proposing to subcategorize this item into two subcategories: "Durable thermal shipping containers" and "Non-durable thermal shipping containers." The following paragraphs discuss the minimum biobased content for the two subcategories.

*Durable thermal shipping containers.* USDA is proposing to set the minimum biobased content for durable thermal containers at 21 percent, based on the product with a tested biobased content of 24 percent. USDA will continue to gather additional biobased content information for this subcategory and, if sufficient data are obtained, will consider increasing the minimum biobased content for the final rule.

*Non-durable thermal shipping containers.* USDA is proposing to set the minimum biobased content for non-durable thermal containers at 82 percent, based on the product with a tested biobased content of 85 percent.

*D. Compliance Date for Procurement Preference and Incorporation Into Specifications*

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would, with the exception of one designated item discussed below, have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect, because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 2902(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these items are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated items.

Only one manufacturer within each subcategory of the thermal shipping containers designated item has been identified. Therefore, USDA is proposing to defer the procurement compliance date for the subcategories within this designated item until two or more manufacturers of products within the subcategories are identified. When USDA identifies two or more manufacturers, USDA will publish a document in the **Federal Register** announcing that Federal agencies will have one year from the date of publication of that announcement to give procurement preference to biobased durable and non-durable thermal shipping containers, as appropriate.

## V. Where can agencies get more information on these USDA-designated items?

Information used to develop this proposed rule can be found in the TSD, which can be accessed on the BioPreferred Web site, which is located at: *http://www.biopreferred.gov.* At the BioPreferred Web site, click on the Proposed and Final Regulations link on the right side of the page. At the next screen, click on the Supporting Documentation link under Round 7 Designation under the Proposed Regulations section.

Further, once the item designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by the Agency on the BioPreferred Web site. USDA has begun performing periodic audits of the information displayed on the BioPreferred Web site and, where questions arise, is contacting the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products."

USDA has linked the BioPreferred Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To access this list, go to the BioPreferred Web site and click on the "Selling to Federal Government" tab and look for the DoD Specifications link.

## VI. Regulatory Information

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

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant regulatory action" as one that is likely to result in a rule that may: "(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

Today's proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with today's

proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 14 designated items, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if price is "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule. As discussed in Section III of this preamble, USDA is requesting comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

2. Benefits of the Proposed Rule

The designation of these items provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products.

Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

*B. Regulatory Flexibility Act (RFA)*

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, *etc.*) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the items designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being proposed for designation for preferred procurement in this rule are expected to be included under the following NAICS codes: 324191 (petroleum lubricating oil and grease manufacturing), 325320 (pesticide and other agricultural chemical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325611 (soap and other detergent manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet preparation manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 314999 (other miscellaneous textile mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 8,092 companies within these 10 NAICS categories and that these companies own a total of about 9,255 establishments. Thus, the average number of establishments per company is about 1.1. The Census data also reported that of the 9,255 individual establishments, about 9,119 (98.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is

about 58, with only one segment reporting an average of more than 100 employees (the pharmaceutical preparation industry segment at about 250 employees per company). Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the items being designated, but believes that the impact will not be significant. Most of the items being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items when biobased items do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

*C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

*D. Executive Order 13132: Federalism*

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

*E. Unfunded Mandates Reform Act of 1995*

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and Tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

*F. Executive Order 12372: Intergovernmental Review of Federal Programs*

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's proposed rule does not significantly or uniquely affect "one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

*H. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

*I. E-Government Act Compliance*

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

**List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

## CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES

## PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

**Authority:** 7 U.S.C. 8102.

2. Add §§ 2902.61 through 2902.74 to subpart B to read as follows:

Sec.
2902.61 Animal repellents.
2902.62 Bath products.
2902.63 Bioremediation materials.
2902.64 Compost activators and accelerators.
2902.65 Concrete and asphalt cleaners.
2902.66 Cuts, burns, and abrasions ointments.
2902.67 Dishwashing products.
2902.68 Erosion control materials.
2902.69 Floor cleaners and protectors.
2902.70 Hair care products.
2902.71 Interior paints and coatings.
2902.72 Oven and grill cleaners.
2902.73 Slide way lubricants.
2902.74 Thermal shipping containers.

### § 2902.61 Animal repellents.

(a) *Definition.* Products used to aid in deterring animals that cause destruction to plants and/or property.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal repellents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that

the relevant specifications require the use of biobased animal repellents.

**§ 2902.62 Bath products.**

(a) *Definition.* Personal hygiene products including bar soaps, liquids, or gels that are referred to as body washes, body shampoos, or cleansing lotions.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 61 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bath products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bath products.

**§ 2902.63 Bioremediation materials.**

(a) *Definition.* Dry or liquid solutions (including those containing bacteria or other microbes but not including sorbent materials) used to clean oil, fuel, and other hazardous spill sites.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 86 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bioremediation materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bioremediation materials.

**§ 2902.64 Compost activators and accelerators.**

(a) *Definition.* Products in liquid or powder form designed to be applied to compost piles to aid in speeding up the composting process and to ensure successful compost that is ready for consumer use.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased compost activators and accelerators. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased compost activators and accelerators.

**§ 2902.65 Concrete and asphalt cleaners.**

(a) *Definition.* Chemicals used in concrete etching as well as to remove petroleum-based soils, lubricants, paints, mastics, organic soils, rust, and dirt from concrete, asphalt, stone and other hard porous surfaces for commercial, industrial, or residential use.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 70 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt cleaners.

**§ 2902.66 Cuts, burns, and abrasions ointments.**

(a) *Definition.* Products designed to aid in the healing and sanitizing of scratches, cuts, bruises, abrasions, sun damaged skin, tattoos, rashes and other skin conditions.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 84 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased cuts, burns, and abrasions ointments. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased cuts, burns, and abrasions ointments.

**§ 2902.67 Dishwashing products.**

(a) *Definition.* Soaps and detergents used for cleaning and clean rinsing of tableware in either hand washing or dishwashing.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dishwashing products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dishwashing products.

**§ 2902.68 Erosion control materials.**

(a) *Definition.* Woven or non-woven fiber materials manufactured for use on construction, demolition, or other sites to prevent wind or water erosion of loose earth surfaces, which may be combined with seed and/or fertilizer to promote growth.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased erosion control materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased erosion control materials.

**§ 2902.69 Floor cleaners and protectors.**

(a) *Definition.* Cleaning solutions for either direct application or use in floor scrubbers for wood, vinyl, tile, or similar hard surface floors.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased floor cleaners and protectors.

**§ 2902.70 Hair care products.**

(a) *Definitions.* (1) Personal hygiene products specifically formulated for hair cleaning and treating applications, including shampoos and conditioners.

(2) Hair care products for which preferred procurement applies are:

(i) *Shampoos.* These are products whose primary purpose is cleaning hair. Products that contain both shampoos and conditioners are included in this subcategory because the primary purpose of these products is cleaning the hair.

(ii) *Conditioners.* These are products whose primary purpose is treating hair to improve the overall condition of hair.

(b) *Minimum biobased content.* The minimum biobased content for all hair care products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement products are:

(1) Shampoos—66 percent.

(2) Conditioners—78 percent.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hair care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hair care products.

**§ 2902.71 Interior paints and coatings.**

(a) *Definition.* Pigmented liquids, formulated for use indoors, that dry to form a film and provide protection and added color to the objects or surfaces to which they are applied.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 67 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased interior paints and coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased interior paints and coatings.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products within this item may, in some cases, overlap with the EPA-designated recovered content products: Reprocessed latex paints and consolidated latex paints. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated reprocessed latex paints and consolidated latex paints and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased interior paints and coating products within this designated item can compete with similar reprocessed latex paint and consolidated latex paint products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated reprocessed latex paints and consolidated latex paints containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

**§ 2902.72 Oven and grill cleaners.**

(a) *Definition.* Liquid or gel cleaning agents used on high temperature cooking surfaces such as barbeques, smokers, grills, stoves, and ovens to soften and loosen charred food, grease, and residue.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 66 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased oven and grill cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased oven and grill cleaners.

**§ 2902.73 Slide way lubricants.**

(a) *Definition.* Products used to provide lubrication and eliminate stick-slip and table chatter by reducing friction between mating surfaces, or slides, found in machine tools.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased slide way lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased slide way lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products within this item may, in some cases, overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance

standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased slide way lubricant products within this designated item can compete with similar slide way lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11(a).

**§ 2902.74 Thermal shipping containers.**

(a) *Definitions.* (1) Insulated containers designed for shipping temperature-sensitive materials.

(2) Thermal shipping containers for which preferred procurement applies are:

(i) *Durable thermal shipping container.* These are thermal shipping containers that are designed to be reused over an extended period of time.

(ii) *Non-durable thermal shipping containers.* These are thermal shipping containers that are designed to be used once.

(b) *Minimum biobased content.* The minimum biobased content for all thermal shipping container products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement products are:

(1) Durable thermal shipping containers—21 percent.

(2) Non-durable thermal shipping containers—82 percent.

(c) *Preference compliance date.*

(1) *Durable thermal shipping containers.* Determination of the preference compliance date for durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased durable thermal shipping containers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased durable thermal shipping containers.

(2) *Non-durable thermal shipping containers.* Determination of the preference compliance date for non-durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased non-durable thermal shipping containers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased non-durable thermal shipping containers.

**Pearlie S. Reed,**

*Assistant Secretary for Administration, U.S. Department of Agriculture.*

[FR Doc. 2010–29191 Filed 11–22–10; 8:45 am]

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# Part III

# Employment Training Administration

## 20 CFR Part 641

## Senior Community Service Employment Program; Notice of Proposed Rulemaking, Additional Indicator on Volunteer Work; Proposed Rule

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 641**

**RIN 1205–AB60**

## Senior Community Service Employment Program; Notice of Proposed Rulemaking, Additional Indicator on Volunteer Work

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) issues this notice of proposed rulemaking (NPRM) to seek feedback on a potential additional performance measure for volunteer work in the Senior Community Service Employment Program (SCSEP). Specifically, this rule proposes to amend regulations concerning performance accountability under title V of the Older American Act and corresponding definitions. These regulations provide administrative and programmatic guidance and requirements for the implementation of the SCSEP.

**DATES:** Interested persons are invited to submit comments on this proposed rule. To ensure consideration, comments must be received on or before January 24, 2011.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB60, by one of the following methods:

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

*Mail and hand delivery/courier:* Written comments, disk, and CD–ROM submissions may be mailed to Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

*Instructions:* Label all submissions with "RIN 1205–AB60."

Please submit your comments by only one method. Please be advised that the Department will post all comments received that relate to the proposed additional indicator on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments as such information may become easily available to the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard their personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on *http://www.regulations.gov.*

*Docket:* All comments on this proposed rule will be available on the *http://www.regulations.gov* Web site and can be found using RIN 1205–AB60. The Department also will make all the comments it receives 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 the rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the rule 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 below.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210; telephone (202) 693–3700 (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 (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The preamble to this proposed rule is organized as follows:

I. Background—provides a brief description of the development of the proposed rule.
II. Section-by-Section Review—summarizes and discusses proposed changes to the SCSEP regulations.
III. Administrative Information—sets forth the applicable regulatory requirements.

## I. Background

The SCSEP, authorized by title V of the OAA, is the only Federally-sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be unemployed, 55 years of age or older, and have incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service assignments in public and non-profit agencies. The dual goals of the program are to promote useful opportunities in community service activities and to also move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency. The Older Americans Act Amendments of 2006, Public Law 109–365 (2006 OAA), amended the statute authorizing the SCSEP and necessitated changes to the SCSEP regulations in 20 CFR Part 641. A final rule promulgating such changes was published on September 1, 2010 (75 FR 53786). The statute requires the Department to issue definitions of any indicator of performance through regulation. OAA section 513(b)(3).

The SCSEP performance measures have evolved over time. Program-specific measures to monitor the performance of each SCSEP grantee were first codified in the 2000 Amendments to the OAA. The 2006 OAA Amendments expanded these performance measures. The Department then refined the 2006 statutory measures in its regulations published June 29, 2007 (SCSEP IFR) and September 1, 2010 (SCSEP FR), and codified at 20 CFR Part 641 Subpart G. As established in these regulations, there are six core indicators of performance: (1) Hours (in the aggregate) of community service employment; (2) entry into unsubsidized employment; (3) retention in unsubsidized employment for six months; (4) earnings; (5) the number of eligible individuals served; and (6) the number of most-in-need individuals served (the number of participating individuals described in 20 CFR 641.700(b)). Additional indicators of performance include: (1) Retention in unsubsidized employment for 1 year; (2) satisfaction of the participants, employers, and their host agencies with their experiences and the services provided; and (3) any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. 20 CFR 641.700(c).

In comments on the SCSEP IFR of June 29, 2007, and the NPRM of August 14, 2008, several commenters expressed concern that the proposed measures were not appropriate to the SCSEP because they placed an undue emphasis

on employment outcomes and did not adequately reflect the importance of community service. When adopting the SCSEP Final Rule on September 1, 2010, we stated that the proposed measures were required by law in the 2006 amendments to the OAA and that the measures, taken as a whole, continued to maintain the balance between community service and employment outcomes that had been established by the 2000 amendments to the OAA. As we noted in the final rule, "[p]roviding an opportunity for low-income older adults in need of job training to work at community service organizations that need operational support is a 'win-win' situation."

We recognize that SCSEP participants provide valuable service to their communities. We believe that SCSEP promotes volunteer work, which benefits both the community and the participants who perform the work. Although in the SCSEP Final Rule we declined "at this time" to adopt any additional measures beyond those required by statute, we believe that the benefits of adopting an additional measure of volunteer work outweigh the minor additional burden of collecting the data for the measure. Specifically, grantees stated during the SCSEP Final Rule notice and comment period that they felt the SCSEP measurement system did not adequately value community service and that there was too much emphasis on employment outcomes. While the measures are evenly balanced between enrollment and employment measures, only one specifically measures community service. Although we share the sense of the Congress that community service and volunteer work are very important, the Secretary only has authority to create additional measures, not core measures. The Secretary is using that authority to respond to the comments and add an outcome measure for SCSEP that looks at volunteer work as a way to balance the mandated outcome measures for employment.

Under its authority in OAA section 513(b)(2)(C) to add additional indicators of performance, the Department is soliciting comments on an additional performance indicator for volunteer work. The Proposed Rule adds a new additional indicator to measure the number of exiting participants who enter volunteer work. The new measure recognizes that SCSEP promotes volunteer work, which benefits both the community and the participants who perform the work. We intend that the new measure will provide balance to the employment focus of the existing performance measures, which was an area of concern to commenters on the Final Rule, and will provide positive outcomes for participants who may not be employed but still build on the skills obtained in SCSEP to provide a benefit to their community. In our opinion, these reasons provide an adequate rationale for establishing the new indicator, which under section 513(b)(2)(C) of the Older Americans Act, may be established when the Secretary determines that an indicator is appropriate to evaluate services and performance.

For the Interim Final Rule, we published a **Federal Register** Notice seeking public input into the performance regulations because we did not have time to publish a proposed and Final Rule without causing disruption to program operations. With the performance regulations in place, we have chosen to consult with grantees, host agencies and the public on the new volunteer work indicator by seeking public comment through a proposed rule, to be followed by a final rule. To establish this new additional indicator, we propose to change the substantive provisions on performance in subpart G and revise or add definitions in subpart A. The regulatory text, related definitions, and further rationale are provided below.

## II. Section-by-Section Review

### *Subpart A—Purpose and Definitions*

What definitions apply to this subpart? (§ 641.140)

Section 641.140 of the SCSEP regulations provides definitions for the SCSEP, including those definitions relevant to the SCSEP performance measures. This NPRM proposes to amend the definitions in § 641.140 to accommodate the new additional performance measure in § 641.710. The first amendment adds "entry into volunteer work" to the definition of "additional indicators." The final rule provides that the only additional indicators are the two statutorily required measures: (1) Retention in unsubsidized employment for 1 year; and (2) the satisfaction of participants, employers and their host agencies with their experiences and the services provided. As proposed, the term "additional indicators" will include three measures.

Second, we propose to add a new definition of "volunteer work" to § 641.140 for clarity and uniformity, so that all grantees understand and use the same definition, all seniors are treated the same, and so that the data we receive is comparable from grantee to grantee. The definition states that volunteer work is the equivalent of "activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or similar non-profit organization, for civic, charitable, or for humanitarian reasons, and without expectation of compensation." It also clarifies that "[v]olunteer work does not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization."

This definition closely follows the principles of the Fair Labor Standards Act (FLSA), which is administered and enforced by the Department's Wage and Hour Division. The FLSA recognizes the generosity and public benefit of volunteering. Encouraging volunteerism, however, must be balanced with the fundamental purpose of the FLSA, which is to prevent covered employers from gaining an unfair competitive advantage through payment of substandard wages. *See Tony and Susan Alamo Found* v. *Sec'y of Labor,* 471 U.S. 290, 299 (1985). The Department has held consistently that individuals cannot volunteer in the business and commercial activities of a non-profit organization when those activities are covered by the FLSA. Therefore, volunteer work also may not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization.

SCSEP and its regulations, at 20 CFR 641.844, provide that SCSEP placements must result in an increase in employment opportunities in addition to those otherwise available; must not displace currently employed workers (including partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits); must not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and must not employ or continue to employ any eligible individual to perform the same work or substantially the same work as that performed by any other individual who is on layoff. In addition, attention must be paid that volunteer activities of former SCSEP participants do not unfavorably impact current employees and do not impair existing contracts for services, similar to the protections for paid placements.

Although non-profit organizations typically are not covered enterprises under the FLSA because they lack a business purpose, activities of such organizations that compete in the

market with retail businesses, are considered covered enterprises. *See* 29 CFR 779.214; WHD Opinion Letter FLSA 2002–9 (Oct. 7, 2002). Even if the business activities of a non-profit organization do not meet the FLSA's thresholds for enterprise coverage (for example, because their annual dollar volume of sales or business done is less than $500,000), employees who work on such business activities may still be individually covered by the FLSA.

We believe that the use of the FLSA standard for volunteers is consistent with the community service values that underlie SCSEP, and with the Secretary's goal of ensuring employees are paid required minimum wages and overtime.

*Subpart G—Performance Accountability*

What performance measures/indicators apply to SCSEP grantees? (§ 641.700)

20 CFR 641.700 separates SCSEP performance measures into two categories: Core and additional. This NPRM proposes amending § 641.700(a) to add a new additional indicator. Additional indicators are not subject to goal-setting and therefore are not subject to corrective action. However, the statute does mandate that the Department annually publish each grantee's performance on additional indicators. In addition, this NPRM also proposes to amend paragraph (c)(3) to reflect that the Secretary has designated entry into volunteer work as an additional measure in addition to the current measures of employment retention and customer satisfaction.

DOL intends for the new measure of "entered volunteer work" to parallel the traditional "entered employment" measure, which grantees have been recording since 2004. SCSEP grantees can capture much of the information required for this measure at the time of exit and need only confirm the participant's engagement in volunteer work at any time during the quarter after the exit quarter, as grantees have long captured the data for entered employment at the first follow-up after exit. Like the entered employment measure, which excludes participants who were employed at the time of enrollment, the new measure excludes those who were engaged in volunteer work before enrollment. However, as is true with the entered employment measure, DOL would collect data on several aspects of the volunteer work, including whether the participant had been performing volunteer work at the time of entry into the SCSEP, and information about the type of volunteer work performed after exit, the setting in which it is performed, and the number of hours of volunteer work per week. DOL would collect data on these characteristics in the SCSEP data collection system that could be used for analysis and additional reporting, but DOL would not use the data to measure the performance of the grantee.

How are the performance indicators defined? (§ 641.710)

This NPRM establishes the new additional indicator in § 641.710 by adding a new paragraph to (b)(3), which defines the "entered volunteer work" measure. As set forth above, DOL intends for the new measure to parallel the existing core measure of entered employment, which SCSEP has been reporting since 2004. The denominator for the new measure consists of all participants who exit during a quarter, and the numerator consists of all those participants who are engaged in any volunteer work in the quarter after the exit quarter. Participants who were engaged in volunteer work at the time of entry into the SCSEP are excluded from the measure.

Grantees will enter into the SCSEP data system information on the characteristics of the volunteer work (as they currently do for the characteristics of unsubsidized employment), including whether participants were engaged in volunteer work at the time of entry into the SCSEP, so that it will be possible to determine which participants are newly engaged in volunteer work after exiting as a result of participating in the SCSEP. Later in this preamble, the accompanying Paperwork Reduction Act section sets forth the data elements that DOL will capture in conjunction with this new measure.

## III. Administrative Information

### *A. Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605(b) of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Section 601 of the RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. Section 601(4) defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

SCSEP includes approximately 970 grantees, sub-recipients, and sub-sub-recipients. Of these, more than 50 are States, State agencies, or territories and are not small entities as defined by the RFA. The vast majority of the rest are non-profit organizations, many of which may be categorized as small entities for RFA purposes. The Department does not have a precise number of small entities that may be impacted by this rulemaking.

The Department has determined that the economic impact of this NPRM is not likely to be significant for any of these small entities, because these regulations will not result in any additional costs to grantees and sub-recipients. This new NPRM involving SCSEP performance measures will have only a minor information collection impact on a number of small entities. At the proper time, DOL will address this burden by submitting to OMB a request for a non-substantive change of the reporting forms. The SCSEP is designed so that SCSEP funds cover the vast majority of the costs of implementing this program. We reached a similar conclusion in our review of the August 14, 2008 NPRM. At that time, the Department requested public comments on the potential economic impact that the rule may have on small entities and did not receive any comments on this section. For these reasons, the Department has determined and certifies that this NPRM will not have a significant economic impact on a substantial number of small entities.

The Department has also determined that this rule is not a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Public Law 104–121 (1996) (codified in scattered sections at 5 U.S.C.). SBREFA requires agencies to take certain actions when a "major rule" is promulgated. 5 U.S.C. 801. SBREFA defines a "major rule" as one that will have an annual effect on the economy of $100 million or more; that will result in a major increase in costs or prices for, among other things, State or local government agencies; or that will significantly and adversely affect the business climate. 5 U.S.C. 804(2).

This NPRM will not significantly or adversely affect the business climate. First, the rule will not create a significant impact on the business climate at all because, as discussed above, SCSEP grantees are governmental jurisdictions and not-for-profit enterprises. Moreover, any secondary impact of the program on the business

community would not be adverse. To the contrary, the SCSEP assists the business community by training older Americans to participate in the workforce and benefits the overall community by providing volunteer work opportunities.

The proposed rule will also not result in a major increase in costs or prices for States or local government agencies. The SCSEP has no impact on prices. Finally, this proposed rule will not have an annual effect on the economy of $100 million or more.

Therefore, because none of the definitions of "major rule" apply in this instance, we determine that this NPRM is not a "major rule" for SBREFA purposes.

*B. Executive Order 12866*

Executive Order 12866 requires that for each "significant regulatory action" taken by the Department, the Department conduct an assessment of the regulatory action and provide OMB with the regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of $100 million or more, or an action that raises a novel legal or policy issue.

As stated in the SBREFA analysis, this NPRM will not have an annual effect on the economy of $100 million or more. However, the rule does raise novel policy issues concerning implementing an additional performance indicator on volunteer work in the SCSEP. The key policy change reinforces the dual purpose of the SCSEP by counting those who begin performing volunteer work—or who perform volunteer work in lieu of or in addition to unsubsidized employment—after participating in SCSEP. Therefore, the Department has submitted this NPRM to OMB.

*C. Paperwork Reduction Act*

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. 44 U.S.C. 3507.

Because the 2006 OAA necessitated changes in many of the SCSEP forms used by grantees prior to the effective date of the Act, in July 2007 the Department submitted to OMB for review and approval, in accordance with PRA § 3507(d), a modification to the SCSEP information collection requirements. The four-year strategy newly required by the 2006 OAA (*see* § 641.302) was accounted for in that PRA submission. The SCSEP PRA submission was assigned OMB control number 1205–0040 and was approved by OMB in October 2007. The approval expires October 31, 2010. This NPRM introduces new information collection requirements and thus will require a new PRA submission. The Department estimates that the added public reporting burden for this collection of information will be minor. The required information will be gathered during regularly scheduled follow-up contacts that gather information about the common performance measures. DOL will submit, at the proper time, a paperwork submission request for a non-substantive change of the reporting forms.

*D. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4, 2 U.S.C. 1501 *et seq.*) requires an agency to "prepare a written statement" providing specific information if the proposed rulemaking "is likely to result in promulgation of 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 million or more" in any 1 year. Since the Department has determined that this proposed rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments, or by the private sector, of more than $100 million, it has not prepared the written statement under section 1532 of the UMRA.

*E. Executive Order 13132*

The Department has reviewed this NPRM in accordance with Executive Order 13132 on federalism, and has determined that the NPRM does not have "policies that have federalism implications." As explained at § 1(a) of the Executive Order, "'Policies that have federalism implications' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule does not have such "substantial direct effects" because it does not preempt any State law, nor interfere with functions essential to the State's separate and independent existence, nor impose any form or method of program administration on the States. In addition, this new measure is reasonably related to the purpose of the SCSEP program; a grant program that flows directly from the 2006 OAA, in which State participation is voluntary. Therefore, the rule does not constitute a "substantial direct effect" on the States, nor will it alter the relationship, power, or responsibilities between the Federal and State governments. The relationship, power, or responsibilities were already established in the authorizing legislation.

*F. Executive Order 13045*

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This NPRM addresses the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

*G. Executive Order 13175*

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have "tribal implications." Required actions include consulting with tribal governments before promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having "tribal implications" when they have substantial direct effects 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.

The Department has reviewed this NPRM and concludes that it does not have tribal implications. Although tribes are sub-recipients of national SCSEP grant funds, this rule will not have a substantial direct effect on those tribes because, as outlined in the Regulatory Flexibility section of the preamble, there are only minor additional costs associated with implementing this NPRM and these are covered by grant funds. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and tribal governments.

Accordingly, we conclude that this NPRM does not have tribal implications for the purposes of Executive Order 13175.

*H. Environmental Impact Assessment*

The Department has reviewed this NPRM in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). The NPRM will not have a significant impact on the quality of the human environment, and thus the Department has not prepared an environmental assessment or an environmental impact statement.

*I. Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this NPRM on family well-being. An agency that determines that the rule will have a negative effect on families must support the rule with an adequate rationale.

The Department has assessed this NPRM and determines that it will not have a negative effect on families. Indeed, we believe the SCSEP strengthens families by providing job training and support services to low-income older Americans.

*J. Executive Order 12630*

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, is not relevant to this NPRM because the rule does not involve implementation of a policy with takings implications.

*K. Executive Order 12988*

This NPRM has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

*L. Executive Order 13211*

Executive Order 13211 is not relevant to this NPRM because the rule will not have a significant adverse effect on the supply, distribution, or use of energy.

*M. Plain Language*

The Department drafted this rule in plain language.

**List of Subjects in 20 CFR Part 641**

Aged, Employment, Government contracts, Grant programs—Labor, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR part 641 as follows:

## PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

1. The authority citation for part 641 continues to read as follows:

**Authority:** 42 U.S.C. 3056 *et seq.*

2. Section 641.140 is amended by revising the definition of "additional indicators" and adding the definition of "volunteer work" to read as follows:

### § 641.140 What definitions apply to this part?

* * * * *

*Additional indicators* mean retention in unsubsidized employment for 1 year; satisfaction of participants, employers and their host agencies with their experiences and the services provided; entry into volunteer work; and any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. (OAA section 513(b)(2)).

* * * * *

*Volunteer work* means activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or similar non-profit organization, for civic, charitable, or for humanitarian reasons, and without expectation of compensation. Volunteer work does not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization.

* * * * *

3. Section 641.700 is amended by adding paragraph (c)(4) to read as follows:

### § 641.700 What performance measures/indicators apply to SCSEP grantees?

* * * * *

(c) * * *

(4) The Secretary has designated entry into volunteer work as an additional indicator.

* * * * *

4. Section § 641.710 is amended by adding paragraph (b)(3) to read as follows:

### § 641.710 How are the performance indicators defined?

* * * * *

(b) * * *

(3) "Entry into volunteer work" is defined by the formula: Of those not engaged in volunteer work at the time of entry into the SCSEP, the number of participants who perform volunteer work in the first quarter after the exit quarter, divided by the number of participants who exit during the quarter.

Signed at Washington, DC, this 16th day of November 2010.

**Jane Oates,**

*Assistant Secretary for Employment and Training, U.S. Department of Labor.*

[FR Doc. 2010–29424 Filed 11–22–10; 8:45 am]

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**H.R. 3619/P.L. 111–281**

Coast Guard Authorization Act of 2010 (Oct. 15, 2010; 124 Stat. 2905)

**S. 1510/P.L. 111–282**

United States Secret Service Uniformed Division Modernization Act of 2010 (Oct. 15, 2010; 124 Stat. 3033)

**S. 3196/P.L. 111–283**

Pre-Election Presidential Transition Act of 2010 (Oct. 15, 2010; 124 Stat. 3045)

**S. 3802/P.L. 111–284**

Mount Stevens and Ted Stevens Icefield Designation Act (Oct. 18, 2010; 124 Stat. 3050)

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